FINAL DEVELOPMENT AGREEMENT FOR

GRAPEVINE MASTER-PLANNED COMMUNITY

THIS FINAL DEVELOPMENT AGREEMENT for the Grapevine Master-planned Community (the "Agreement") is entered into as of the 24th day of October, 2012, by and between MISI Investments, LLC ("MISI"), MSH Investments, LLC ("MSH"), Tuscan Lenders Group, LLC ("Tuscan"), Vijaya L. Sharma Family Trust ("Sharma"), and The Simkins 1975 Trust (together with MISI, "Miller Group" and collectively, with MISI, MSH, Tuscan and Sharma, "Developer") and the Town of Leeds, a municipal corporation and political subdivision of the state of Utah (the "Town"). Grapevine and the Town may be referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Developer owns approximately 370 acres of real property located within the municipal boundaries of the Town of Leeds, Washington County, State of Utah, as more particularly described in Exhibit "A" (the "Property") attached hereto and incorporated herein; and

WHEREAS, Developer desires and intends to develop the Property as a master-planned community currently known as Grapevine (~~the "Project" or~~ "Grapevine") as generally depicted on a preliminary site plan prepared by IBI Group (the "Preliminary Site Plan") attached hereto as Exhibit "B" and incorporated herein; and

WHEREAS, on October 28, 2009, the Town and Developer entered into that certain Annexation and Development Agreement (the "Annexation Agreement") attached hereto as Exhibit "C" and incorporated herein and recorded against the Property, in which the Town granted Developer certain vested rights, set forth the process of obtaining final development plan approval (the "Final Approval"), contemplated the establishment of a local district, and conceptually approved the Development Plan and Pattern Book, among other things; and

WHEREAS, the condition precedent to the recording and effectiveness of the Annexation Agreement was fulfilled when the 1st Annexation and 2nd Annexation were certified

by the lieutenant governor of the State of Utah on December 10, 2009; and

~~**WHEREAS**, Developer has provided the Town the additional information required for Final Development Plan approval as set forth in Section 5 and Exhibit J of the Annexation Agreement, in addition to specific information requested by the Planning Commission and Town Council during the Final Approval; and~~

WHEREAS, throughout this Agreement the term "Project" shall be used synonymously, and interchangeably with the defined terms "Grapevine" or "Property" which is different than the of term "Project" used in the Annexation Agreement and defined in the Recitals and Exhibit "G" of said Agreement as including both the Property and land owned by the US Bureau of Land Management ("BLM") that was annexed into the Town during the 1st Annexation and the 2nd Annexation totaling 630.70 acres in all (hereinafter referred to as the "Original Project").

WHEREAS, Developer has made changes to the Development Plan and Pattern Book upon request of the Town that do not restrict any of the vested rights as set forth in Section 4 of the Annexation Agreement; and

WHEREAS, Developer and Town have worked together through the Final Approval as set forth in Section 5 and Exhibit K of the Annexation Agreement in good faith to finalize a development master plan (the "Final Development Plan") that is compatible with both Parties interests; and

WHEREAS, specific modifications to the ~~height, square footage limitations, and~~ set back requirements of Chapter 23 of the Leeds Land Use Ordinance 2008-12 ("MXD Zoning Ordinance"), as amended, have been negotiated by Developer and Town as allowed by the MXD Zoning Ordinance; and

WHEREAS, the Planning Commission has reviewed the Final Development Plan and recommended its approval with conditions to the Town Council; and

WHEREAS, the Annexation Agreement stated "the Final Development Plan shall be approved as part of a development agreement entered into between the Parties ("Final Development Agreement"); and

WHEREAS, for the purpose of financing public improvements required for the Project,

Developer and Town have cooperated in the creation of the Grapevine Wash Basic Local District (the "Local District") as established by Resolution 2011-01 of the Leeds Town Council, attached hereto as Exhibit "D" and incorporated herein; and

WHEREAS, the Developer has executed the Declaration of Easements and Supplemental Agreement, attached hereto as Exhibit "E" and incorporated herein, with the purpose of granting cross easements to one another in the location of certain roads to be constructed within the Project which easements are in anticipation of future roadway dedications to the Town and a future waterline easement to the Washington County Water Conservancy District; and

WHEREAS, the Local District and Town anticipate entering into that Interlocal Cooperation Agreement described in section 6 of the Annexation Agreement, for the financing and development of certain Public Improvements defined therein (the "Interlocal Agreement"); and

WHEREAS, the Developer and Town desire to enter into this Agreement in order to implement the Grapevine Final Development Plan and to more fully set forth the covenants and commitments of each party, while giving effect to applicable state law; and

WHEREAS, the Final Development Plan described in Section 2 below and this Agreement are intended to be utilized together as a master plan in relation to the development of the Property. The Final Development Plan describes Grapevine as a master-planned community, which will include residential, mixed-use and civic-related development, including uses permitted by current Town ordinances. Grapevine is designed to conform with principles of traditional neighborhood development, including mixed-use development, diversity of housing choices, compact development, traditional neighborhood structure, walkable neighborhoods, civic identity, sustainability, connectivity, calmed streets, and preservation of view corridors. A portion of Grapevine will be designated as passive or active open space.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual covenants and conditions contained herein and subject to the condition precedent described in Section 17.2 below, the Parties agree as follows:

1. **Affected Property**. The legal description of the Property contained within the Project boundaries is attached as Exhibit "A". This Agreement shall be recorded against the Property as provided in Section 25 below. No other property may be added to or removed from this Agreement except by written amendment to this Agreement executed and approved by Developer and Town.

2. **Final Development Plan Approval**.

2.1. Town agrees development of the Project may proceed as provided in this Agreement, subject to the conditions set forth herein, including the conditions precedent in Section 3, and finds a) the Grapevine Final Development Plan, as contained in the documents listed below in this Section 2, is consistent with the Town's Land Use Ordinance and General Plan; and b) development of the Property pursuant to this Agreement and the Final Development Plan will result in significant planning and economic benefits to and will further the health, safety and welfare of the Town and its residents by, among other things: (i) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the Town as set forth in Section 21 below; (ii) providing for the dedication of infrastructure improvements to be completed in phases as set forth herein; (iii) increasing sales and/or property tax and other revenues to the Town derived from businesses and improvements to be constructed on the Property; and (iv) creating jobs from new businesses to be located on the Property.

2.2. The Final Development Plan consists of:

2.2.1. this Final Development Agreement;

2.2.2. the Grapevine Master Plan Book, as amended and attached hereto as Exhibit "F" and incorporated herein;

2.2.3. the Grapevine Pattern Book, as amended and attached hereto as Exhibit "G" and incorporated herein;

2.2.4. the Grapevine Existing Conditions exhibit augmenting information included in the Grapevine Master Plan Book attached hereto as Exhibits "H-1" through "H-3" and incorporated herein;

2.2.5. the Grapevine Emergency Response exhibit attached hereto as Exhibit "I" and incorporated herein;

2.2.6. the Grapevine Traffic Mitigation Plan as amended and attached hereto as Exhibit "J" and incorporated herein, which the parties acknowledge is based upon a Traffic Impact Study undertaken by the Developer and acceptable to the Town;

2.2.7. the preliminary Grapevine Master Utility plans including preliminary water site distribution, conceptual site drainage, preliminary sewer system and natural gas attached hereto as Exhibits "K-1" through "K-4"and incorporated herein; and

2.2.8. any and all other documents or instruments prepared by or entered into by one Party and accepted by the other Party and reasonably relating to the development of the Project.

2.3. The Parties~~Town~~ acknowledge~~s~~ that the plans for grading, water, drainage, sewer, telecommunications, natural gas, and power, are all preliminary and shall be finalized and reviewed and approved by the Town ~~staff~~ prior to approval of a site plan or subdivision plat for the Property or any portion thereof. Said final plans will comply with the requirements set forth in section 3.2 below and the recommendations set forth in all environmental, geotechnical and other studies required by Exhibit J of the Annexation Agreement which must be completed, reviewed and approved by the Town prior to the approval of a site plan or subdivision plat for the property affected by said plan/plat.~~, and w~~The above plans and studies, when approved shall be deemed incorporated into this Agreement as if originally attached hereto.

3. **Responsibilities of Developer; Conditions of Approval**. The Developer must fulfill the following conditions of approval to the satisfaction of the Town of Leeds prior to the first building permit issued within the Project.

3.1. With respect to all public infrastructure, future phasing of development is dependent on the adequacy of available infrastructure capacity at the time, and in compliance with all applicable laws, regulations, ordinances and specifications.

3.2. *Public Safety*:

3.2.1. Wildland-Urban Interface Code. Prior to or concurrent with the approval of any site plan or subdivision plat for the Property or a portion thereof, Developer shall demonstrate compliance with the Wildland-Urban Interface Code as administered by the State of Utah Department of Forestry, Fire and State Lands and all other applicable fire codes.

3.2.2. Emergency Access. Before Developer may record a final plat or commercial site plan for any portion of the Property, Developer shall design, fund, acquire, construct and dedicate the number of emergency accesses to the Project required by applicable fire codes and ordinances and obtain or acquire such easements, rights-of-way or other property rights or interest as are necessary to provide such access. Each emergency access shall have an all-weather surface and be designed per the Leeds Area Special Service District (LASSD) (or the primary fire protection provider for the Project at the time of subdivision approval) standards and approved by the Town Engineer. Emergency access for the first final plat or commercial site plan within the Project shall be separate from and in addition to the primary access to the Project as set forth in Section 17.1 below. Emergency access for the first building permit within Villages D & E shall be separate from and in addition to the primary access to Villages D & E as set forth in Section 17.2 below.

3.3. *Public Infrastructure/Utilities*:

3.3.1. Sewer. Developer shall design, fund, acquire, construct and dedicate a comprehensive sewer system to accommodate Project waste water flows, including treatment of waste water. The Developer has prepared a preliminary sewer master plan attached hereto as Exhibit "K1-A" and incorporated herein. The facility which ultimately treats wastewater generated by the Project shall be located upon either a) a property currently owned by the Washington County Water Conservancy District to the South of the Project as illustrated in Exhibit "K1-B" attached hereto and incorporated herein, or b) property acceptable to the Town, Washington County (including the Washington County Public Health Department, or successor agency), and the State of Utah (including the Utah Department of Environmental Quality ("DEQ") or successor agency). Developer

may also connect to an existing DEQ approved wastewater transmission system and treatment facility containing necessary capacity to serve the entire Project such as the Ash Creek Special Service District Sewer Ssystem ("ASSD Sewer System"). The sewer system must be approved by the Town and shall comply with the Town's Standards and Specifications for Public Improvements with all main lines being sized sufficient to service the Project at maximum build out. Developer shall also follow the established procedure for the approval of the sewer system design by the DEQ or successor agency, including, but not limited to collection systems and proposed treatment processes. The Grapevine sewer system design shall meet the requirements found under the "Design Requirements for Wastewater Collection, Treatment and Disposal Systems" published by the DEQ as well as the Grapevine Master Plan Book and the Grapevine Pattern Book. Furthermore, Developer covenants that the Grapevine sewer system will not include the use of open sewer lagoons. The preceding prohibition shall not apply if the ultimate sewer solution is the connection to, and transmission of wastewater through, the ASSD Sewer System and the ultimate treatment of wastewater from the Property occurs in Ash Creek Special Service Districts current lagoon treatment facility in Hurricane, Utah. Unless the Town is unwilling or unable to maintain the sewer system, the same shall ultimately be dedicated to the Town. If the Town is unwilling or unable to accept the dedication and maintenance responsibility for the sewer system, the Local District, or another body politic utilized by Developer and approved by the Town, shall own, maintain and operate the same.

3.3.2. Culinary Water. Developer shall design, fund, acquire, construct and dedicate a comprehensive water system to accommodate the water demands of the Project, including water storage and distribution and that meets the requirements of the DEQ. The Developer has prepared a preliminary water master plan attached hereto as Exhibit "K-2" and incorporated herein. The design and of the water storage and distribution systems shall be approved by the Town and shall comply with the Town's Standards and Specifications for Public Improvements with all main lines being sized sufficient to service the Project at maximum buildout. Town agrees to provide water to the Project subject to and -as set forth in the

"Culinary Water Agreement" between the Town of Leeds and the Washington County Water Conservancy District (WCWCD). In the event WCWCD cannot, or will not, provide sufficient culinary water to the Town pursuant to the Culinary Water Agreement, the Town shall not be obligated to obtain new sources of water in order to provide culinary water service to the Project. Moreover, Town agrees to work with Developer in good faith as it seeks approval of the Project's water system design by the DEQ. The water system shall ultimately be dedicated to the Town, unless the Town is unwilling or unable to maintain the water system. If the Town is unwilling or unable to accept the dedication and maintenance responsibility for the water system, the Local District, or another body politic utilized by Developer and approved by the Town, shall own, maintain and operate the same.

3.3.3. Natural Gas. As needed, Developer shall cause Questar Gas, its successors and/or any other natural gas provider registered with the Utah Public Service Commission, to design, fund and construct a natural gas transmission and delivery system within the Project and provide natural gas service to the Project. Questar Gas has prepared a preliminary master plan for natural gas attached hereto as Exhibit "K-3" and incorporated herein. Where possible, natural gas lines shall be located within the public rights of way. Design of natural gas lines shall be part of roadway construction drawings. Said natural gas system shall be constructed in compliance with all applicable laws, regulations, ordinances and specifications.

3.3.4. Telecommunications. Developer shall cause one or more telecommunications providers to design, fund and construct a telecommunications transmission and delivery system within the Project and provide telephony service to the Project. Where possible, telecommunications infrastructure shall share a common utility trench with electric power and shall be located within public rights of way. Design of telecommunications lines shall be part of roadway construction drawings. Said telecommunications system shall be constructed in compliance with the Town's Standards and Specifications for Public Improvements as well as all applicable laws, regulations, ordinances and specifications.

3.3.5. Electric Power. Developer shall cause Rocky Mountain Power, its successor and/or any other electrical power provider registered with the Utah Public Service Commission to design, fund and construct an electrical transmission and delivery system within the Project and provide electrical power service to the Project. Where possible, electric power lines shall share a common utility trench with telecommunications and shall be located within public rights of way. Design of electric power lines shall be part of roadway construction drawings. Said electrical power system shall be constructed in compliance with all regulations and ordinances including the Town's Standards and Specifications for Public Improvements.

3.3.6. Storm Drainage. Based upon the concept site drainage plan provided the Town attached hereto as Exhibit "K-4" and incorporated herein, Developer shall design, engineer and construct a comprehensive Project Storm Drainage master plan to be approved by the Town. The site drainage plan shall be prepared by a licensed civil engineer. The historical volume of storm run-off from the Property will be increased by development. The Project currently has few to none natural drainage channels. The preliminary drainage system has been designed in a manner to direct run-off into detention basins to be constructed throughout the Project. Although detention basins will not be present within each development area or village depicted on the Final Development Plan, detention basins for the Project as a whole will be designed to accommodate the increased storm run-off from the entire Property. The Town will therefore not require developers to construct individual detention basins within each development area or village.

4. **Project and System Improvements – Cost Sharing**. Developer, through the Local District or otherwise, pursuant to and subject to the exceptions which may be set forth in the Interlocal Agreement, shall bear the entire cost of constructing Project Improvements needed to service the Project. Developer may also bear the initial cost of constructing System Improvements required as a result of the Project but shall be entitled to be reimbursed or credited for the cost of such System Improvements pursuant to the Utah Impact Fee Act, (11-36a-101 *et seq*.) and this Agreement, except for Developer's proportionate share of System Improvements costs. The determination of whether to upgrade or upsize infrastructure as a system

improvement shall be the sole and exclusive province of the Town. The Town shall not be obligated to share or contribute to the cost of construction of System Improvements, except as it may otherwise elect under the Interlocal Agreement, nor shall the Developer be obligated to construct such improvements, except by subsequent written agreement between the Town and the Developer pursuant to Section 5 below. The terms "System Improvements" and "Project Improvements" as used herein shall have the same meaning as those terms are defined in the Utah Impact Fee Act (11-36a-101 *et seq*.).

5. **Reimbursement Agreement**. Subject to the restrictions of Section 6 below, if prior to constructing any System Improvements required for the Project and authorized by the Town, in their sole and absolute discretion, through the approval of a land use application, Developer and Town may execute an agreement whereby Developer is reimbursed by the Town for the cost of constructing such System Improvements less Developer's proportionate share thereof. Reimbursement for System Improvements shall only be made to Developer in the form of impact fee credits. The amount of an impact fee credit to be given for a particular system improvement or set of System Improvements shall be reviewed and approved by the Town in two stages as follows, and which procedure shall be preserved in any reimbursement agreement signed between the Town and Developer.

5.1. First, Developer shall furnish an estimate of the cost of constructing such System Improvements prepared by an engineer registered to practice in the State of Utah, which estimate shall be reviewed and approved by the Town's Engineer in the Town' sole and reasonable discretion. The approved estimated shall be stated in the reimbursement agreement. The reimbursement agreement shall assure that neither Developer nor Town bears more than their respective proportionate share of the cost of System Improvements and shall take into consideration the provision of Sections 4 and 6 of this Agreement. Following execution of the reimbursement agreement and after the Town has approved construction cost estimates for the improvements (and all rights of way have been secured), Developer is free to proceed with construction of the agreed System Improvements.

5.2. Second, upon completion of the agreed improvements, Developer will present to the Town a final accounting of reasonable and verifiable actual cost to the Developer, including such changes to the scope of the improvements as affected final costs, and shall

propose the final proportionate share of costs based upon said final accounting. The final accounting, and any proposed adjustment to the proportionate share of costs between the parties resulting from the final accounting, shall be reviewed and approved by the Town's engineer and the Town's Treasurer or delegated accountant in the Town's sole and reasonable discretion. If the final accounting of costs, and the final proportionate share of costs, approved by the Town is different from the estimates originally approved, then the reimbursement agreement shall be deemed amended and the impact fee credit shall be established based upon such final approval by the Town.

6. **Impact Fee Credits**. If, prior to the date an impact fee would be payable as provided under Town's Ordinances, Developer constructs System Improvements for which an impact fee is normally collected, Developer's cost of constructing such System Improvements shall be credited against the impact fees otherwise due, consistent with the Utah Impact Fee Act, cited *supra*. Developer shall also be given an impact fee credit for land dedicated to and accepted by Town for System Improvements. In each instance, Developer shall submit to the Town invoices, or other reasonably acceptable documentation, as determined by the Town, demonstrating the reasonable and verifiable costs incurred for such System Improvements or, in the case of land, appraisals indicating fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements paid by Developer and the fair market value of the unimproved land at the time of dedication. Impact fee credits shall only be given back to the Developer in the category for which the applicable system improvement was made giving rise to the credit (i.e. impact fee credits for water System Improvements shall be applied and used to offset water impact fees). In applying the foregoing provisions, any impact fee which is payable shall be charged as provided under Town's Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due. In no instance shall the Town be required to reimburse Developer for system improvement constructed and installed by Developer in any other form than a category specific impact fee credit. All impact fee credits shall be given in a fixed amount of dollars, and not based upon per-unit impact fees or any other basis, unless expressly agreed otherwise by the Town and Developer in a written reimbursement agreement pursuant to Section 5, above. Likewise, the Town will not give cash reimbursements under any circumstances unless agreed to in an express written reimbursement agreement pursuant to Section 5 above.

7. **Payments in Lieu of Impact Fees**. With respect to any improvement identified by the Town in a Capital Facilities Plan, or which the Town and the Developer otherwise recognize will be required in the future wholly or partly as a result of the impacts of the Project, the Town and the Developer may agree that in lieu of impact fees which otherwise could be applied to such improvement, the Developer will deposit with the Town funds specifically reserved for future construction of the identified improvement. Although this section shall not require any party to agree to such payments in lieu of impact fees, the parties recognize that such payments may be of value to the parties hereto. As for the Developer, such payments in lieu of impact fees can assure that certain payments to the Town are actually applied to improvements identified as necessary to address the impacts of the Project; furthermore, such payments set aside in reserve can provide greater flexibility for the Town in scheduling future improvements by allowing funds to be held in reserve longer than the six- (6) year time limit before impact fees must be expended pursuant to the Utah Impact Fee Act.

8. **Authorization to Develop**. The Parties desire that the Town have reasonable certainty concerning the manner in which the Property will be developed, and that the Developer, and its successors and assigns, will have reasonable certainty in proceeding with development of this Property. The Developer shall comply with the terms and conditions of the Final Development Plan and this Agreement, and the Town authorizes the Developer, and its successors and assigns, to develop this Property as set forth in the Final Development Plan and this Agreement. Any amendment, change or modification of the Final Development Plan, or any deviation from the Final Development Plan by Developer, must be approved by the Town in writing. Developer agrees to, where possible, without unduly affecting the development of the Project 1) preserve existing trees, native land cover, natural watercourses and topography; 2) encourage reasonable grading and minimal scarring of the landscape; and 3) interface with most current adopted street plans and/or the Leeds Master Road Plan and/or subdivisions contiguous to the Property, as required by Leeds Town ordinances.

9. **Restrictive Covenants and Property Owners' Association**. The Developer recognizes the importance of ensuring continuity in the community as it develops and therefore will adopt certain standards and requirements that will guide development and construction over the entire project area. Accordingly, prior to transferring ownership of any portion of the Property, via recorded title, the Developer shall record against the Property covenants, conditions and

restrictions consistent with the Final Development Plan, particularly, the Grapevine Pattern Book and this Agreement (the "Master CC&Rs"). In the event a discrepancy exists between the Master CC&Rs and the Final Development Plan, the more restrictive requirements shall apply. Moreover, prior to transferring ownership of any portion of the Property, via recorded title, the Developer shall establish a non-profit property owners' association according to the laws of the state of Utah for the governance and enforcement of the Master CC&Rs. The Master CC&Rs shall establish a mechanism for transferring ongoing maintenance related obligations to a property owners' association, for such items as landscaping within the Town's rights of way, private roadways, residential front yards, neighborhood trails, neighborhood parks and certain open spaces, at which time the Developer shall have no further obligation except as set forth in the Master CC&Rs. Developer and the property owners' association shall be solely responsible to enforce the Master CC&Rs to the extent such guidelines exceed Town Ordinance requirements.

10. **Zoning**. The zoning for the Project shall be Mixed Use, which shall be shown on Town's zoning map. The following development standards shall apply to the Project:

10.1. *Maximum Development Area*. The entire area of the Project shall be contained within the land described on Exhibit A. Any change to the maximum development area of the Project shall be accomplished only pursuant to Town's then-applicable Ordinances and an amendment to this Agreement as provided in Section 23.

10.2. *Residential Density*. The total residential density permitted for the Property~~within the Project~~ shall not exceed the average density of 3.8 dwelling units per acre of land presently owned by the Developer which is believed to be approximately 370 acres, thus one thousand four hundred and three ~~two thousand five hundred~~ (1403~~2,500~~) ~~residential~~ dwelling units ("Maximum Property Density"). The total residential density permitted for the Original Project (defined the Recitals) shall be the lesser of: a) the average density of 3.8 dwelling units per acre of land within the Original Project presently owned, or hereinafter acquired, by the Developer, or b) twenty five hundred (2500) dwelling units. As shown on the Final Development Plan and the Grapevine Village Data Sheet attached hereto as Exhibit L and incorporated herein, residential dwelling units are dispersed throughout the Project villages at varying densities, which may be modified pursuant to the density transfer provision set forth in Sections 10.5 and 15 of this Agreement.

10.3. *Commercial Density*. In Developer's sole discretion, the Project may include up to three hundred thousand five hundred (300,500) square feet of gross floor area of commercial uses in the locations shown on the Final Development Plan and Exhibit L. The particular uses allowed within these locations shall be determined upon submission and approval of a site plan for such commercial or mixed used development subject to then-applicable provisions of the Town's Land Use Ordinance except as otherwise provided by this Agreement. Commercial density may be modified pursuant to the density transfer provision set forth in Sections 10.5 and 15 of this Agreement.

10.4. *Development Phasing*. The phasing plan set forth in the Final Development Plan contemplates development pursued in four major phases, as outlined in the Grapevine Phasing Plan attached hereto as Exhibit "M" and incorporated herein. Developer and Town acknowledge that ~~the number of major phases may be modified, and that~~ each of the major development phases may be broken into smaller development sub-phases depending upon the real estate market, developer financing and other factors. Development of the Property may continue for many years, possibly decades. The Town acknowledges that the Developer intends to submit multiple land use applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in development phases. However, to coordinate public services and facilities with the demand from public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by the Town, of all required infrastructure and the provision of all reasonably related public services, including but not limited to, adequate fire protection and necessary emergency access. With respect to all public infrastructure, future phasing of development is dependent on the adequacy of available infrastructure capacity at the time.

10.5. *Density Transfers*. Developer's transfer of density units or commercial gross square footage from one development phase or village or more to others within the Project shall be approved provided that (a) the total density and/or commercial gross square footage does not exceed the density or commercial gross square footage authorized for the Project; (b) the proposed transfer does not assign any density or commercial gross square footage to park or open spaces shown on the Final Development

Plan; (c) infrastructure is sufficient and available to meet the demands created by such transfer, as reasonably determined by the Town. Density or commercial gross square footage transfers shall be initiated by notice to Town from Developer which describes the development phase or village from which density is to be transferred, describes the development phase or village to which density is to be transferred, and summarizes the impact of such transfer on infrastructure improvements. All density transfers shall be disclosed on all final plat by: (a) noting the village in which property to be platted is located, (b) the number of ERU's or commercial gross square footage allowed in said village, (c) the number of ERUs or commercial gross square footage platted to date within said village, (d) the number of ERUs or commercial gross square footage consumed in the plat at hand, (e) the number of ERUs or commercial gross square footage being utilized by virtue of a density transfer (if applicable), and (f) the name of the village in which the density or commercial gross square footage is being transferred from (if applicable). A density or commercial gross square footage transfer shall be considered approved and complete when a subdivision application submitted by Developer, including the extension or expansion of required infrastructure improvements, is approved by Town.

10.6. *Density Allocation within Property*. In order to ensure that the density is spread ~~generally~~fairly proportional~~ly~~ across the Property, Developer agrees with the Town that, without the express consent of the Town, Developer shall not, by virtue of a density transfer, increase the density or commercial gross square footage of any village by more than ~~25~~ten percent (10%) of the maximum identified ~~at described~~ in Exhibit L (Grapevine Village Data Sheet). Notwithstanding the preceding, without the express consent of the Town, Developer shall not, by virtue of a density transfer, increase the density or commercial gross square footage of Village A by more than five percent (5%) of the maximum identified in Exhibit L (Grapevine Village Data Sheet) for that village.

10.7. *Development Applications*. Except as expressly provided in this Agreement, any land use application made subsequent to the execution of this Agreement shall conform to the applicable provisions of Town's Land Use Ordinance in effect when a complete application is submitted. The Parties agree that land use applications for the Project, or a portion thereof, shall include the following information in addition to any other

information required by the Town's Land Use Ordinance:

10.7.1. Residential Development. Each residential development application submitted by Developer and/or its assignees who have purchased or leased portions of the Project shall include a statement of (a) the total number of residential dwelling units allowed in the Project under this Agreement; (b) the cumulative total number of residential dwelling units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of dwelling units and densities for which a permit is sought under the particular development phase application; and (d) the balance of the residential dwelling units remaining allowable to the Project. For each subdivision containing single-family residential properties, the final plat and CC&Rs governing such subdivision shall state that use on such properties is limited to residential use only, subject to applicable Leeds Town ordinances.

10.7.2. Mixed Use Development. Each mixed use development application submitted by Developer and/or its assignees who have purchased or leased portions of the Project shall include, in addition to those items listed in Section 10.6.1 above, a statement of (a) the total number of square feet of gross floor area of commercial uses referenced in this Agreement; (b) the cumulative total number of square feet of gross floor area of commercial uses previously approved for all the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of square feet of gross floor area of commercial uses for which a permit is sought under the particular development phase application; (d) the balance of square footage remaining for commercial uses compared to the total amount permitted under this Agreement; and (e) the suggested number of required off-street parking spaces, which number shall ultimately be determined by the Town in its sole and reasonable discretion.

11. **Grapevine Wash Basic Local District**. The Grapevine Wash Basic Local District was established for the purpose of providing for the acquisition, construction, and operation of parks or recreation facilities or services, health care facilities, including health department or hospital service, the acquisition, construction, and operation of a system, or one or more components of a system, for the collection, storage, retention, control, conservation, treatment, supplying,

distribution, or reclamation of water, including storm, flood, sewage, irrigation, and culinary water, and the construction and maintenance of rights-of-way, for curb, gutter, sidewalk, street, road, water, sewage, storm drain, electricity, communications, and/or natural gas improvements within the Property. The Town has agreed in the Annexation Agreement to enter into an Interlocal Agreement with the Grapevine Wash Basic Local District that is acceptable to the Town for the purpose of coordinating the design, financing, construction, and control of the public infrastructure and improvements, including the infrastructure summarized in Section 3.2 above. Said Interlocal Agreement shall be approved and executed by the Town and the Grapevine Wash Basic Local District before the commencement of any development on the Property.

12. **Community Parks; Trails**.

12.1 Developer shall design, fund and construct, with the approval of the Town, community parks within each village as depicted on the Final Development Plan. The Town shall review all park design and dedication proposals in advance and shall have sole and absolute discretion to approve park design elements and scope. Park dedications and improvements that provide the level of service identified in the then current Town standards (including those set forth in the Town's current Parks & Recreation Capital Facilities Plan) and which are approved by the Town shall be eligible for park impact fee credits; however, Developer may also dedicate additional land and construct additional improvements if approved by the Town, but said additional dedications and improvements shall be considered Project Improvements and shall not be eligible for park impact fee credits. The Developer shall dedicate the underlying park property and the park improvements to the Town when any final plat that includes the park or property abutting the park is recorded in the Official Records of Washington County, State of Utah, at which time the Town shall grant park impact fee credits to the Developer in accordance with Section 6 and this paragraph. The amount of the park impact fee credits shall be one hundred percent (100%) of the fair market value of the unimproved land at the time of the dedication, plus the reasonable and verifiable costs of the eligible park improvements paid by Developer.

12.2 Developer shall design, fund and construct the system of trails and trails heads in the general locations described and depicted on the Final Development Plan. Developer shall construct at its own expense and dedicate any areas of the trail system that runs through, or are

adjacent to, a village or phase of the Project at the time of approval and recording of any final plat for said village or phase. The trail system for the Project shall be constructed to the approval of the Town Council and the Town Engineer and in compliance with all AASHTO standards. Eligibility of trail dedications and improvements for impact fee credits shall be determined in the same manner as for parks in the previous paragraph.

13. **Mixed-Use and Multi-Family Development**. For all structures except detached single family dwellings, the building design shall be subject to design review and approval by the Town Council with recommendation from the Planning Commission. Town staff shall review the building design for all other buildings for compliance with the Final Development Plan and the Leeds Land Use Ordinances. Subject to approval by LASSD (or the primary fire protection provider for the Project at the time of subdivision approval), which might require Developer to participate in the acquisition of a ladder truck or other necessary firefighting equipment, by virtue of the density granted for the Project and the nature of mixed use development, the Town expressly determines that a maximum structure height that does not exceed thirty-five (35) feet is approved, as allowed by the Final Development Plan.

14. **School Site**. Developer agrees to assist the Town and the Washington County School District in applying for a Recreation and Public Purpose ("R&PP") Lease from the United States of America Bureau of Land Management for the construction of an elementary school facility adjacent to the Project.

15. **Permitted Uses and Density; Dimensions of Proposed Structures and Improvements**. The Final Development Plan sets forth, for each village, the permitted uses, permitted density of use or development, minimum lot sizes, allowable building heights, building setbacks and parking requirements per land use. Within each village, the Developer may adjust the relative location of land uses to the extent such adjustments are in conformance with the approved uses for that village. The Developer may also transfer density between the villages, subject to the provisions of Section 10.5. In no event shall the overall approved density or commercial gross square footage for the Property be exceeded.

16. **Open Space**. Open space within the Project is identified as "active" or "passive" as depicted in the Final Development Plan. Open space is considered "active" if it is improved and/or developed, including but not limited to community parks, trails, tennis courts, pickle ball

courts, community gardens, and storm drain facilities. Open space is considered "passive" if it remains unimproved and/or natural. Trails may traverse passive open space. The Developer intends to dedicate the passive open space to the property owners' association and the Town shall have no obligation toward such areas. The Developer intends to dedicate active open space to the Town and the Town shall have obligation toward such areas. The Developer shall dedicate active open space to the Town through the instrument of a dedication plat or as part of a subdivision plat. In no way is the Town obligated to accept dedication of active open space.

The boundaries of the open space as depicted on the Final Development Plan are approximate and the actual boundaries of open space will be described with specificity at such time as land use applications for the adjacent development parcels or roadways are submitted to the Town for approval. In any event the amount of open space will continue to conform to the requirements of the Final Development Plan, this Agreement and Chapter 23 of the Leeds Land Use Ordinance governing the Mixed-Use zone.

17. **Rights of Way**. Developer shall fund and construct any and all ingress and egress roads to the Project and all roads within the Project. Developer shall also obtain or acquire, at its expense, all easements, rights-of-way or other property rights or interests necessary for construction of such ingress and egress roads to the Project. The Town agrees to employ its best efforts to assist the Developer in securing necessary rights of way from the Bureau of Land Management (BLM) for ingress and egress roads to the Project. All fees, costs, and financial commitments associated with such rights of way (including environmental mitigation) shall be borne by Developer. Developer agrees that it will not pursue a right-of-way for access along the Babylon Mill Road extension, or elsewhere, without the consent of the owner(s) upon whose property the road would be established; as a result, the Town agrees that Developer shall not be required to build any~~this~~ master-planned road should the owners' consent not be given. All right-of-way acquisition and construction required by this section shall be consistent with the General Plan and planning documents adopted by the Town in support thereof, and shall be reasonably related and proportional to the anticipated impacts of the Project; however, Developer shall cooperate and coordinate with the Town to acquire additional right-of-way or make additional System Improvements at the Town's additional cost or in return for credits consistent with this Agreement. All road improvements shall be constructed according to the Town's Standards and Specifications for Public Improvements and the Town's hillside ordinance, except

as expressly set forth herein or as otherwise modified or amended. Prior to the construction of any road improvements or road intersection improvements within the Project, the Town shall review and approve or reject with suggested changes, all plans, drawings and specifications with respect to the alignment and construction of such road and intersection improvements. All ingress and egress roads to the Project and all roads within the Project, except those roads designated as private roads in the Final Development Plan, shall be dedicated to the Town, or Washington County, as appropriate. Road improvements shall be dedicated to the Town or Washington County, as appropriate, upon Developer's completion of the construction of such improvements.

17.1. *Main Street.* Developer acknowledges that the Project will impact traffic on Leeds Main Street and agrees to mitigate this impact as outlined in the attached Traffic Mitigation Plan (Exhibit J). Moreover, Developer and Town acknowledge that traffic on Leeds Main Street (generated by all new construction and facilities in the Leeds area) will increase to a level in the future where improved access to the interstate freeway is required from the Leeds area. The Town agrees to a) update its Road Master Plan and Roadways Capital Facility Plan to include plans necessary to uniformly address increased traffic on Main Street, and b) employ its best efforts in working with the Utah Department of Transportation and to utilize its powers to facilitate appropriate and timely improvements to interstate freeway access.

17.2. *Project Accesses.* The primary access to the Project is a county road identified as 900 North or Babylon Road ("Primary Access"). The Primary Access in a width of at least sixty six (66) feet shall be dedicated as a public right of way to the Town or Washington County (as appropriate) as a condition precedent to the effectiveness and enforceability of this Agreement. Furthermore, the Primary Access shall be designed and constructed per Washington County, Utah and the Town's standards and specifications for a major arterial road prior to the first building permit issued within the Project. An improved secondary access (not Emergency Access) to the Project is required prior to the 101st equivalent residential unit (ERU) within the Project. An improved third access (not Emergency Access) to the Project is required prior to the 601st ERU. Established Emergency Accesses as defined in Section 3.2.2 shall only become project accesses when constructed and improved according to Town's Standards

and Specifications. All project accesses shall be constructed according to the standards and specifications of that governmental jurisdiction within which the project access is located. The Town acknowledges one or more project accesses will be located within the boundaries of unincorporated Washington County, Utah and thus, designed and constructed according to the standards and specifications established by Washington County, State of Utah.

17.3. *Access to Villages D & E*. Primary access to Villages D & E from Village C shall be along that corridor included in the Bureau of Land Management right-of-way identified as UTU-80502, attached hereto as Exhibit "N" and incorporated herein. An improved secondary access (not Emergency Access) to Villages D & E is required prior to the 101st ERU within Villages D & E. An improved third access (not Emergency Access) to Villages D & E is required ~~only if~~ prior to construction of the 601st ERU within Villages D & E.

17.4. *Local Thoroughfares*. Town acknowledges and agrees it has approved the cross section and design of certain local roadways, referred to as "thoroughfares," within the Project as more particularly described in the "Grapevine Typical Section" attached hereto as Exhibit "O-1" and incorporated herein, which refers to the unique cross sections and designs per this Agreement. Such thoroughfares shall be constructed according to Town's Standards and Specifications except as otherwise provided in the "Grapevine Development: Traffic Standards Development" attached hereto as Exhibit O-2 and incorporated herein.

~~17.4.~~17.5. *Village A Roundabout*. Developer represents, acknowledges and agrees that the large roundabout located in Village A is not, and will not, be designed and or constructed such that it encroaches on any other persons property, or property interests, other than that which is owned by the Developer.

~~17.5.~~17.6. *Regional Corridor(s)*. The Town and Developer acknowledge that the Eastern Washington County Rural Planning Organization (RPO) is contemplating commissioning a feasibility study ("Roadway Study") to analyze the future need for one or more regional roadway(s) connecting Leeds with neighboring municipalities to the East and the South. The Town and Developer acknowledge further that in the case the

Roadway Study concludes one or more regional roadway(s) is/are necessary at some future date and that the best corridor alignment for one or more regional roadway(s) is through the Project, such regional roadways will affect the current design and location of some of the Project's local thoroughfares. In this case, Developer agrees to work collaboratively with the RPO and the Town to reconcile any potential conflicts between the alignment and design of one or more regional roadway(s) through the Project and local thoroughfares, including but not limited to: modifying the design of the prominent "Y" intersection contemplated in the Main Street town center of the Grapevine Master Plan and revising thoroughfare design speeds.

18. **Parking**. Off-street parking throughout the Development shall be governed by the Leeds Parking Ordinance (ORD 2008-04 Chapter 6) as set forth in Exhibit G hereto. The ~~Town~~Parties ~~of Leeds~~ acknowledge~~s~~ that the Leeds Parking Ordinance (ORD 2008-04 Chapter 6) does not address parking in ~~contemplate~~ mixed use developments. Accordingly, any exceptions to to Leeds Parking Ordinance requested by the Developer will be reviewed and approved by the Town ~~and therefore will establish parking requirements for mixed use areas identified on the Grapevine Master Plan~~ on a case-by-case basis after evaluating the proposed number of required spaces suggested by the Developer in its mixed use development application(s) as established in 11.7.2. The Grapevine property owners' association shall enforce no-parking restrictions in private alleys and thoroughfares throughout the Project.

19. **Impact Fees**. As a condition of development approval, under the Utah Impact Fee Act, Utah Code Ann. §§11-36a-101 *et seq*., the Town may impose impact fees in accordance with the impact fee formula established by ordinance in effect at the time development occurs. The Town may only charge impact fees at the ordinary time in the course of development of the Property as the Town customarily charges to other developers, in a non-discriminatory manner. With respect to the Project, the following conditions with regard to impact fees shall apply:

19.1. The Developer is entitled to certain impact fee credits for System Improvements, including Public Improvements, as mandated in §11-36a-402 of the Impact Fee Act;

19.2. Both the Town and Developer acknowledge that because of the geographic location and configuration of the Project relative to the balance of the Town, storm water runoff from the Project is likely to have no impact on any other portion of the Town. As

a result, neither the Developer, nor Developer's successors or assigns, will be charged impact fees related to storm water management after the completion of the comprehensive storm drainage system, except to the extent that the completed Project system has additional impact upon the Town's existing drainage system. Developer agrees that it will comply with applicable Utah law regarding the effect of its storm water on adjacent properties;

19.3. The Developer's impact fee credits are assignable in whole or in part. To evidence the transfer of impact fee credits, the Developer may issue certificates to Developer's successors or assigns, with copies of the same to the Town. Each certificate will state the specific dollar amount it represents and will set forth the type of impact fee credit being utilized thereunder. The impact fee credits will not be allocated on a pro rata basis across all of the units to be developed, amounting to a partial impact fee payment, but rather, shall be utilized as full impact fee payments until the total dollar amount available is exhausted. The Town shall maintain the authoritative ledger accounting for the impact fee credits, which ledger shall be available for review by Developer or its successors and assigns on request.

20. **No Further Exactions**. Subject to the obligations of the Developer set forth herein, no further exactions will be required of the Developer or its successors or assigns by the Town as it relates to the entire Project; provided, however, that this paragraph shall not be construed to relieve the Developer from any dedications or other requirements required by applicable law or ordinance or exactions or conditions of approval that may be required on a development pod or subdivision basis.

21. **Applicable Laws and Regulations**. Except as otherwise set forth in this Agreement, all development and improvements of any type, on-site or off-site, relating to the Project shall comply with Town ordinances, regulations, requirements and procedures established by and for Town. Developer acknowledges it shall comply with all applicable ordinances, resolutions, policies and procedures and constructions guidelines of the Town necessary for approval of land use applications, subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc. for the Project in effect at the time the land use approval is sought. Developer further acknowledges and agrees that the vesting in existing laws and as provided in this Agreement shall not relieve it from the obligation to comply with the

generally applicable building codes and pay the building permit fees, pay any generally applicable impact fees, pay any generally applicable connection fees, pay any generally applicable land use review fees and any other fees in effect at the time an application is made for each building permit or land use approval. As used herein, "generally applicable" means that is applies throughout the Town and was not enacted to mainly apply to the Project. The Parties agree that any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other Town Ordinances relating to the construction of any structure in effect when the person or entity files with the Town a complete application for a building permit. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent applicable to the Project.

22. **Term**. This Agreement shall have an initial term of Twenty~~thirty~~ five (2~~3~~5) years from the date of execution by both parties ("Initial Term"). Developer shall have option to extend the Initial Term of this Agreement for an additional five~~fifteen~~ (5~~15~~) year term ("Extension Term") subject to the condition that by the end of the Initial Term, Developer shall have subdivided and constructed not less than five hundred (500) equivalent residential units ("ERUs") comprised of both residential and/or commercial units. At any time during the Initial Term or Extension Term, or should Developer not meet the stated condition by the end of the Initial Term, this Agreement may ~~otherwise~~ be extended by the mutual written agreement of the P~~p~~arties in increments of no longer than five (5) years each. The Developer shall have the right to record this Agreement and any extensions hereof in the Official Records of ~~the~~ Washington County, State of Utah. In the event that during the first ten ~~twenty~~ (~~2~~10) years of the Initial Term of this Agreement (the "Introductory Term"), Developer has not: (a) ~~filed, and~~ received approval of and had filed in the Official Records of Washington County, State of Utah, a final ~~, any preliminary~~residential subdivision plat containing no less than five lots or a commercial site plan with structures containing no less than two thousand five hundred (2,500) gross square feet of floor space ~~(the "Initial Application")~~, and (b) designed and constructed the Project's Primary Access (as defined in Section 17.2 and including all underground utilities) in compliance with all Town or Washington County standards and specifications, then this Agreement will terminate unless otherwise extended by mutual agreement of the ~~p~~Parties. Provided the Project's Primary Access has been designed and constructed during the Introductory Term and a final residential subdivision plat or final commercial site plan is submitted for approval not less than one hundred

eighty (180) days prior to expiration of the Introductory Term of this Agreement, the Introductory Term shall be reasonably extended to allow full consideration and review of said final plat or final site plan by the Town, and a reasonable opportunity for Developer to respond or comply with requested revisions or conditions set forth by the Town as conditions of approval of such final plat or final site plan. ~~The Town agrees that it shall review and consider approval of the Initial Application within one hundred eighty (180) days of filing of such plat by Developer. If Town fails to review and consider approval of the Initial Application within one hundred eighty (180) days of filing of such plat by Developer, the Initial Application shall be deemed approved by default. If Developer's Initial Application approval expires after the first twenty (20) years of the Initial Term of this Agreement, then this Agreement shall also terminate unless otherwise extended by mutual agreement of the parties.~~

23. **Amendments**. The Town acknowledges the Final Development Plan is a general outline of the proposed development of the Property. The Developer may, after consultation with the Town, make changes to the locations of uses and the densities attributable to such parcels and uses. Either the Developer or Town can initiate discussion of potential amendments. In the event the Developer desires to make any modification to the Final Development Plan which conflicts with the terms of this Agreement, the Developer shall submit to the Town an application to amend the Final Development Plan containing a specific statement of what modifications to the Final Development Plan is being requested and the reasons for said request. A subdivision plat filed for approval with the Town, which subdivision plat modifies the boundaries of development pods or areas and/or the locations, boundaries, and densities of particular uses, shall be considered a request for amendment of this Agreement with respect to such matters, and the approval of any such subdivision plat shall be deemed to amend this Agreement accordingly. In no instance however shall any amendment (whether express by operation of the recording of a subdivision plat or commercial site plan) alter the maximum densities authorized by this Agreement. The Developer and the Town shall cooperate in accomplishing any amendments to this Agreement and the Final Development Plan that are reasonably necessary to accomplish the goals expressed in this Agreement and the Final Development Plan or to respond to any changes in market conditions or development requirements. In the event the Developer determines it is necessary to amend the Final Development Plan, review and modification of the Final Development Plan shall be limited to the matter submitted and any substantive impacts consequent to such amendments. The Final

Development Plan and this Agreement shall not be amended in a manner that eliminates the vested rights of the Developer, except as agreed to by the Developer. All amendments to this Agreement shall be in writing and shall be approved and signed by both the Developer and the Town and shall be recorded.

24. **Reserved Legislative Powers and Vested Rights**.

24.1. On December 18~~October 24~~, 2012 the Town approved this Agreement, by which the Developer acquired vested rights to develop the Property in conformance with the Final Development Plan and this Agreement. The rights granted to the Developer under this Agreement are both contractual and as provided under the common law concept of vested rights. The Town will grant to the Developer such permits and other approvals as may be necessary for the Developer to develop and construct the Project pursuant to the Final Development Plan, this Agreement, applicable state and federal law, and applicable ordinances. The Developer may assign all or any portion of its rights under this Agreement. Notwithstanding the preceding, any assignee will be bound by the terms of this Agreement as provided in Section 27.

24.2. The Town acknowledges the Developer is relying on the Final Development Plan, the execution and continuing validity of this Agreement, and the Town's performance of its obligations hereunder. The Developer has expended substantial funds in the development of the Property and, in reliance upon this Agreement, will continue to expend additional funds. The Developer acknowledges that the Town is relying on the Final Development Plan and the execution and continuing validity of this Agreement, and the Developer's performance of its obligations under this Agreement, in continuing to perform its obligations hereunder. The Town has expended substantial time and effort in the development of the Property and, in reliance on this Agreement, will continue to expend time and effort.

24.3. Nothing in this Agreement shall limit the future exercise of Town's police powers in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of Town to enact such legislation under its police power, such legislation shall not modify

Developer's rights under this Agreement unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc. v. Town of Logan, 617 P.2d 388 (Utah, 1988), or successor case law or statute. Any such proposed change affecting Developer's rights shall be of general application to all development activity in Town. Unless Town declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project. Town acknowledges that, as of the date of this Agreement, to its best knowledge, information and belief, it is not aware of any existing facts or circumstances under which a moratorium or ordinance that would impact Developer's rights under this Agreement might be enacted. This Agreement is not intended to and does not bind the Town Council in the independent exercise of its legislative discretion with respect to such future land use regulations generally, as they apply to other developments within the Town.

25. **Agreement to Run With the Land**. This Agreement shall be recorded in the Office of the County Recorder, shall be deemed to run with the Property, shall encumber the same, and shall be binding on and inure to the benefit of all successors and assigns of the Developer in the ownership or development of any portion of the Property. This Agreement shall be recorded against the Property identified in Exhibit A immediately after its full execution.

26. **Termination upon Sale to the Public**. In recognition that the purposes of this Agreement shall be fulfilled once each unit or lot of the Property is subdivided, developed and sold or leased to unrelated third parties, not for further development (each such unit or lot a "Developed Parcel"), as to each Developed Parcel this Agreement shall terminate without execution or recordation of any further document or instrument when such Developed Parcel has been finally subdivided and individually leased (for a period of longer than one year) or sold to the purchaser or user thereof. Upon said termination, such Developed Parcel shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

27. **Assignment**. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning also the responsibilities arising hereunder. All assignments must be: a) in writing, b) approved by the Town, which approval shall not unreasonably be withheld, ~~and~~ c) recorded in the Official

Records on file in the Office of the Recorder of Washington County, State of Utah, ~~and~~ d) ~~shall be~~ executed by the assignee, and e) contain an acknowledgement and covenant that the assignee agrees to be bound by, and adhere to, all applicable provisions of this Agreement. This restriction on assignment is not intended to prohibit or impede the sale or transfer of the Property, a portion of the Property or, after approved lots are properly subdivided, any lots within the Property. Any purchaser of a portion of the Property or a lot shall be obligated to abide by this Agreement as it relates to that property or lot only. However, nothing in this Agreement shall limit the right to place a mortgage or trust deed on the Property or otherwise assign an interest in the Property to a lender. The mortgagee, trustee, or lender shall have no obligations under this Agreement unless the mortgagee, trustee, or lender becomes an owner of the Property, in which case it shall have the rights and assume the responsibilities of an owner under this Agreement.

28. **No Joint Venture, Partnership or Third Party Rights**. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the Parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

29. **Integration**. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding or whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties hereto.

30. **Severability**. If any provision of this Agreement is found invalid by a court of competent jurisdiction, then such provision shall be severed from this Agreement and the remaining terms hereof shall be binding and remain in effect.

31. **Exhibits Incorporated**. The Exhibits to this Agreement are incorporated herein by the reference to them in this Agreement. Given the size and shape of Exhibits F, G and H-3 when this Agreement is recorded at the County Recorder's office, only the first page of those Exhibits will be recorded, which reference the title and date of the Grapevine Development Plan and Pattern Book and conceptual grading plans. There shall also be included a notice that a complete set of the Exhibits is maintained in the Official Records on file in the Office of the Town Recorder of the Town of Leeds and are available for copying and inspection during normal business hours. Given Exhibits C, D and E have already been recorded independent of this Agreement, only the first page of those Exhibits will be recorded, which reference the document

number assigned by the Washington County Recorder.

32. **Default**. Failure by a party to perform any of such party's obligation under this Agreement for a period of 30 days (the "Cure Period") after written notice thereof from the other party shall constitute a default by such failing party under this Agreement; provided, however, that if the failure cannot be reasonably cured within 30 days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing party commences its efforts to cure within the initial 30 day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. Upon Default by Developer, Town may declare Developer to be in breach of this Agreement and Town (i) may revoke this Agreement, (ii) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (iii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either Town or Developer (in the case of a Default by the Town) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief. In the event the Developer is deemed liable for any monetary damages, costs, court costs, attorneys fees, etc., the parties constituting the Developer who are signatories to this Agreement shall be jointly and severally liable.

33. **Notices**. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the Party for who intended, or if mailed by certified mail, return receipt requested, postage prepared to the Parties as follows:

TO: Developer

Jon Michael Richter
MSH Investments LLC
20 Mary Watersford Rd
Bala Cynwyd, PA 19004

Tracy Blaine Belliston
Tuscan Lenders Group LLC
692 North 350 East
Lindon, UT 84042

Dick Miller

MISI Investment LLC/Simkins 1975 Trust
510 South 200 West, Suite 250
Salt Lake City, UT 84101

Shree N and Vijaya L Sharma
4535 Westview Drive
Salt Lake City, UT 84124

With a copy to:
Matthew J. Ence
Snow Jensen & Reece, P.C.
912 West 1600 South, Ste. B-200
St. George, UT 84770

TO: Town of Leeds
218 North Main Street
PO Box 460879
Leeds, UT 84746

With a copy to:
Heath H. Snow
Bingham, Snow & Caldwell, LLP
~~Leeds Town Attorney~~
253 West St. George Blvd, Ste #100
St. George, UT 84770

Any Party may change its address by giving written notice to the other Party in accordance with the provisions of this Paragraph.

34. **Governing Law**. Any dispute regarding this Agreement shall be heard and settled under the law of the State of Utah. ~~If there is any discrepancy between this Agreement and Town land use ordinances, this Agreement shall prevail.~~ This Agreement is accepted by the Town pursuant to the discretion granted under Chapter 23 of the Town ordinances regarding Mixed-Use Zoning, and the Town has determined that this Agreement meets the spirit and intent of its General Plan, said mixed-use ordinance, and the Town's other applicable land use ordinances. The Parties hereby agree that this Agreement shall constitute an integral part of the zoning regulations for the Property. The Parties agree to mediate any dispute before proceeding to litigation.

35. **No Monetary Damages Relief Against Town**. The Parties acknowledge that Town would not have entered into this Agreement had ~~it~~ the Town, its elected or appointed officials, employees, or consultants been exposed to monetary damage claims from the Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover

monetary damages against the foregoing~~Town~~ for breach of this Agreement but shall only be entitled to specific performance as may be determined by the court.

36. **Attorneys' Fees and Costs**. In the event of any litigation between the Parties arising out of or related to this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney's fees and costs.

37. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy or a scanned electronic copy of this Agreement, including the signature pages hereto, shall be deemed to be an original.

38. **Waiver**. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or the Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other covenant of condition of this Agreement.

39. **Headings**. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

40. **Further Acts**. Each of the parties shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

41. **Time of the Essence; Force Majeure**. Except as otherwise provided in this section, time is of the essence for this Agreement. If either party is delayed or hindered in or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the party delayed in performing work or doing acts required under this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

42. **Binding Effect**. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

43. **No Partnership or Third Party Beneficiaries**. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the Town. No term or provision in this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and not such other person, firm, organization or corporation shall have any right or cause of action hereunder.

44. **Names and Plans**. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of the Developer in connection with the Project.

45. **Entire Agreement**. The Final Development Plan together with this~~is~~ Agreement, ~~together with the Final Development Plan~~, constitute the entire agreement between the parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

46. **Good-Standing: Authority**.

46.1. *Developer*. The Developer hereby represents and warrants to the Town that: (i) the individuals executing this Agreement on behalf of the Developer are duly authorized and empowered to bind the Developer; and (ii) this Agreement is valid, binding and enforceable against the Developer in accordance with its terms.

46.2. *Town*. The Town hereby represents and warrants to the Developer that: (i) the Town is a Utah municipal corporation; (ii) the Town has power and authority pursuant to enabling legislation, the Land Use Act, and the Zoning Ordinance to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement on behalf of the Town are duly authorized and empowered to bind the Town; and (iv) this Agreement is valid, binding, and enforceable against the Town in accordance with its terms to the extent that this Agreement does not violate any existing Town ordinances.

(remainder of page intentionally left blank)

47. **Recordation**. No later than ten (10) days after this Agreement has been executed by the Town and the Developer, it shall be recorded in its entirety, at the Developer's expense, in the Official Records of Washington County, Utah.

48. **No Waiver of Governmental Immunity**. Nothing in this Agreement is intended to, or shall be deemed, a waiver of the Town's governmental immunity.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN:

TOWN OF LEEDS

_____
Mayor

Attest:

_____
Town Clerk/Recorder

Approved as to form and compliance with applicable law:

_____
Town~~City~~ Attorney
Date: _____

_____
Attorney for Developer
Date: _____

DEVELOPER:

MISI Investments, LLC

_____

Richard Miller, Manager

[insert notary acknowledgment]

MSH Investments, LLC

_____

Jon Michael Richter, Manager

[insert notary acknowledgment]

DEVELOPER (cont.):

Tuscan Lenders Group, LLC

_____

Tracy Belliston, Manager

[insert notary acknowledgment]

The Simkins 1975 Trust

_____

Kenneth A. Simkins, Trustee

_____

Donlee Simkins, Trustee

[insert notary acknowledgment]

DEVELOPER (cont.):

The Vijaya L. Sharma Family Trust

_____

Shree Sharma, Trustee

[insert notary acknowledgment]