COTTONWOOD HEIGHTS

ORDINANCE NO. 255-A

AN ORDINANCE APPROVING A GENERAL PLAN AMENDMENT, RE-ZONE AND DEVELOPMENT AGREEMENT FOR REALTY AT 3801 EAST NORTH LITTLE COTTONWOOD CANYON ROAD (ROLA V PARCEL)

WHEREAS, the "Municipal Land Use, Development, and Management Act," UTAH CODE ANN. §10-9a-101 *et seq.*, as amended (the "*Act*"), provides that each municipality shall prepare and adopt a comprehensive, long-range general plan; and

WHEREAS, the Act requires the municipality's planning commission to prepare the general plan and submit it to the municipality's legislative body; and

WHEREAS, the Act also provides certain procedures for the municipality's legislative body to adopt and amend the general plan; and

WHEREAS, on 26 July 2005, following full compliance with the procedures for formulation, public hearing and recommendation specified in UTAH CODE ANN. §§10-9a-401 through -404, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") enacted its Ordinance No. 24 adopting a general plan (with all previous amendments, the "*Plan*") for the City; and

WHEREAS, as authorized by statute, the Plan includes a land use element and an official map (collectively, the "*Land Use Element*") allocating to each parcel of land in the City a specific land use designation authorized by the Plan; and

WHEREAS, the Act also provides that each municipality may enact a land use ordinance and a zoning map establishing regulations for land use and development; and

WHEREAS, pursuant to the Act, the municipality's planning commission shall prepare and recommend to the municipality's legislative body, following a public hearing, a proposed land use ordinance and a zoning map, or amendments thereto, that represents the planning commission's recommendations for zoning the area within the municipality; and

WHEREAS, the Act also provides certain procedures for the municipality's legislative body to adopt or amend the land use ordinance and zoning map for the city; and

WHEREAS, on 14 July 2005, the Council enacted its Ordinance No. 25 adopting a land use ordinance for the City and codifying such ordinance as Title 19 of the City's code of ordinances (the "*Code*"); and

WHEREAS, pursuant to its Ordinance No. 25, the Council also adopted a zoning map for the City (the "*Zoning Map*"); and

WHEREAS, in response to an application (the "*Application*") by ROLA V, LLC to amend (the "*Amendments*") (a) the Land Use Element affecting about 11.5 acres of land located at approximately 3801 East North Little Cottonwood Canyon Road in the City (the "*Property*") to Rural Residential, and (b) the Zoning Map affecting the Property from F-20 (Foothill Recreation) to RR-1-21 (Rural Residential), all on the terms and conditions specified in a proposed "Development Agreement" (the "*Development Agreement*") between the Property's owner and the City, on 6 April 2016, following all required notices, a public hearing was held before the Planning Commission concerning the proposed Amendments, where citizens were given the opportunity to provide written or oral comment concerning the Amendments; and

WHEREAS, on 20 April 2016, the Planning Commission recommended approval of the Amendments conditioned on the terms and conditions specified in the Development Agreement, and forwarded such recommendation to the Council for final action; and

WHEREAS, on 10 May 2016, the Council solicited and received additional public comment concerning the proposed Amendments and the Development Agreement; and

WHEREAS, photocopies of the Amendments to the Land Use Element of the Plan and to the Zoning Map proposed by the Application are attached as exhibits "A" and "B," respectively, to this ordinance (this "*Ordinance*") and are incorporated herein by this reference; and

WHEREAS, a photocopy of the Development Agreement also is attached as exhibit "C" to this Ordinance and is incorporated herein by this reference; and

WHEREAS, the Council met in regular meeting on 24 May 2016 to consider, among other things, (a) approving and adopting the Amendments to the Land Use Element of the Plan and to the Zoning Map on the terms and conditions specified in the Development Agreement, as recommended by the Commission, and (b) authorizing and directing the City's simultaneous entry into the Development Agreement such that the Council's approval and adoption of the Amendments is, and shall remain, conditioned on the enforceability of the Development Agreement as a valid and binding senior encumbrance on the Property, thereby controlling all future development of the Property as provided in the Development Agreement; and

WHEREAS, after careful consideration of the recommendations of the Planning Commission, the comments at the public hearings and public meetings, and other pertinent information, and otherwise being fully advised, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to (a) approve and adopt the Amendments as proposed by the Application and on the terms and conditions specified in the Development Agreement, and to ratify the Plan and the Zoning Map, as so amended, as the City's general plan and zoning map, respectively, and (b) approve and direct the City's simultaneous entry into the Development Agreement such that the Council's approval of the Amendments shall be and remain conditioned on the enforceability of the Development Agreement as a valid and binding senior encumbrance on the Property, thereby controlling all future development of the Property as provided in the Development Agreement;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Development Agreement***. The Council hereby authorizes and approves the Development Agreement, directs the City's immediate entry into the Development Agreement, and directs the City recorder to record the Development Agreement in the official records of the recorder of Salt Lake County, Utah as soon as possible after the Development Agreement is fully executed (with signatures notarized) and delivered by all necessary parties. To provide additional constructive notice of the existence and effect of the Development Agreement, the zoning designation shown for the Property on the Zoning Map shall include "DA" (e.g., RR-1-21-DA), and the Development Agreement shall be clearly described on the final subdivision plat for the Property.

Section 2. ***Adoption of New Plan***. Conditioned on Section 1, above, and the continued efficacy of the Development Agreement as a valid and binding senior encumbrance on the Property, thereby further controlling all future development of the Property as provided in the Development Agreement, the Council hereby adopts the attached Amendment to the Land Use Element amending the land use designation of the Plan to Rural Residential, and hereby ratifies the Plan, as so amended, as the City's general plan. Subject to the foregoing, from and after the effective date of this Ordinance, the Plan shall be deemed amended as specified by such

Amendment for all purposes. Pursuant to the authority granted in the Act, the Council shall have, and hereby expressly reserves, the right to hereafter further amend the Plan at any time or from time to time hereafter for any purpose upon recommendation by the Planning Commission following all appropriate public notices and hearings required by the Act.

Section 3. ***Re-zone***. Conditioned on Sections 1 and 2, above, and the continued efficacy of the Development Agreement as a valid and binding senior encumbrance on the Property, thereby further controlling all future development of the Property as provided in the Development Agreement, the Council hereby approves the attached Amendment to the Zoning Map and hereby re-zones the Property to RR-1-21 (Rural Residential) on the terms and conditions specified in the Development Agreement. Subject to the foregoing, the Council hereby amends the City's Zoning Map to reflect the RR-1-21 re-zone of the Property effected by this Ordinance, and hereby adopts the amended Zoning Map that is attached as an exhibit hereto as the City's current Zoning Map.

Section 4. ***Action of Officers***. All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 5. ***Severability***. All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 6. ***Repealer***. All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 7. ***Effective Date***. This Ordinance, assigned no. 255-A, shall take immediate effect upon the last to occur of the following: (a) the parties' full execution (with signatures notarized), delivery and recording in the official records of the recorder of Salt Lake County, Utah of the Development Agreement as a valid and binding senior encumbrance on the Property, thereby further controlling all future development of the Property as provided in the Development Agreement; and (b) publishing or posting of this Ordinance as required by law and deposit and recordation of this Ordinance in the office of the City's recorder; or (c) such later date as may be required by Utah statute.

PASSED AND APPROVED this 24th day of May 2016.

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Kelvyn H. Cullimore, Jr., Mayor

COTTONWOOD HEIGHTS, UTAH
2005
CORPORATE SEAL

ATTEST:

_____
Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea ✓	Nay ___
Michael L. Shelton	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Michael J. Peterson	Yea ✓	Nay ___
Tee W. Tyler	Yea ✓	Nay ___

DEPOSITED in the Recorder's office this 24th day of May 2016.

POSTED this __ day of _____ 2016.

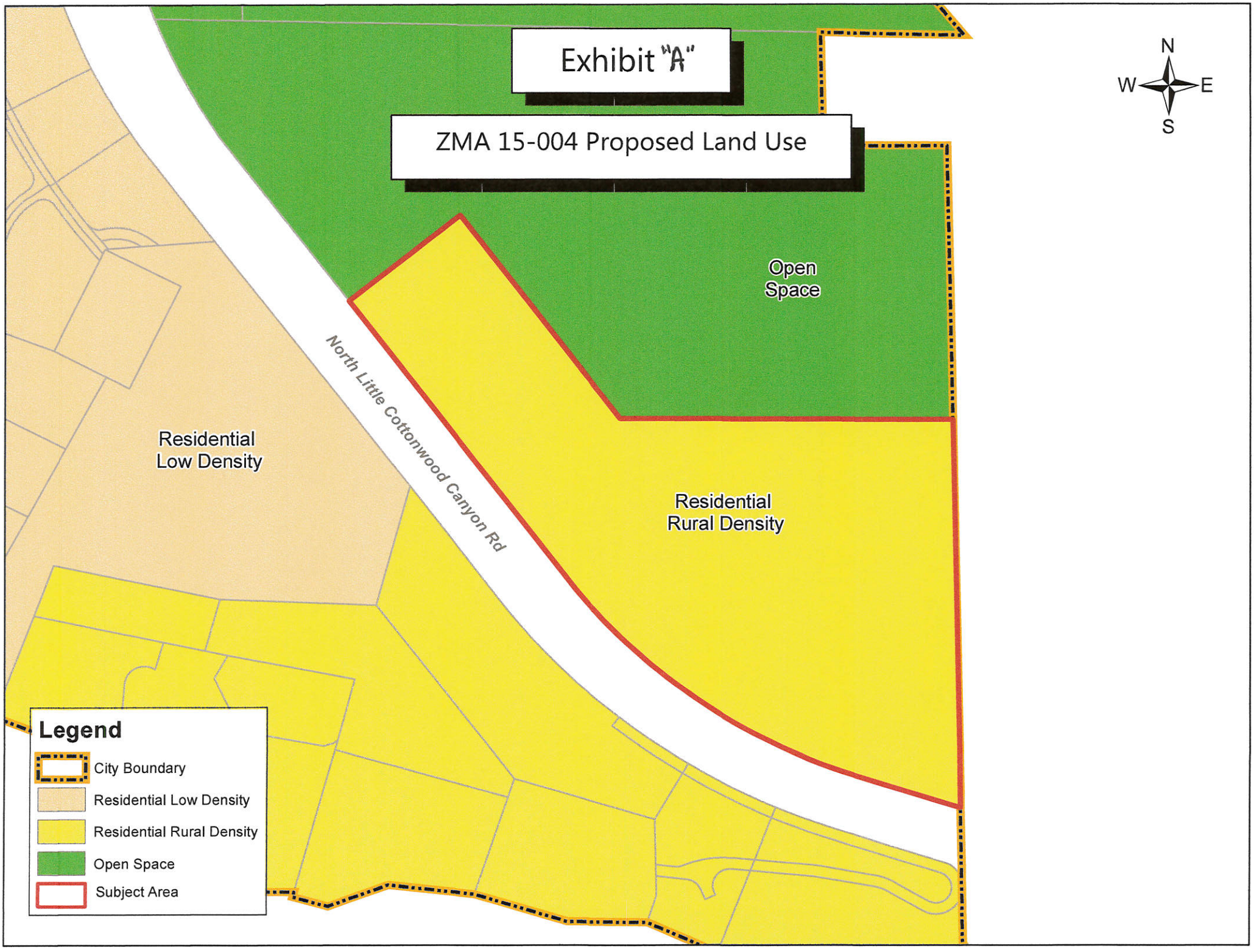


Exhibit "A"
ZMA 15-004 Proposed Land Use
N
W
E
S
Open Space
Residential Low Density
Residential Rural Density
North Little Cottonwood Canyon Rd
Legend
City Boundary
Residential Low Density
Residential Rural Density
Open Space
Subject Area

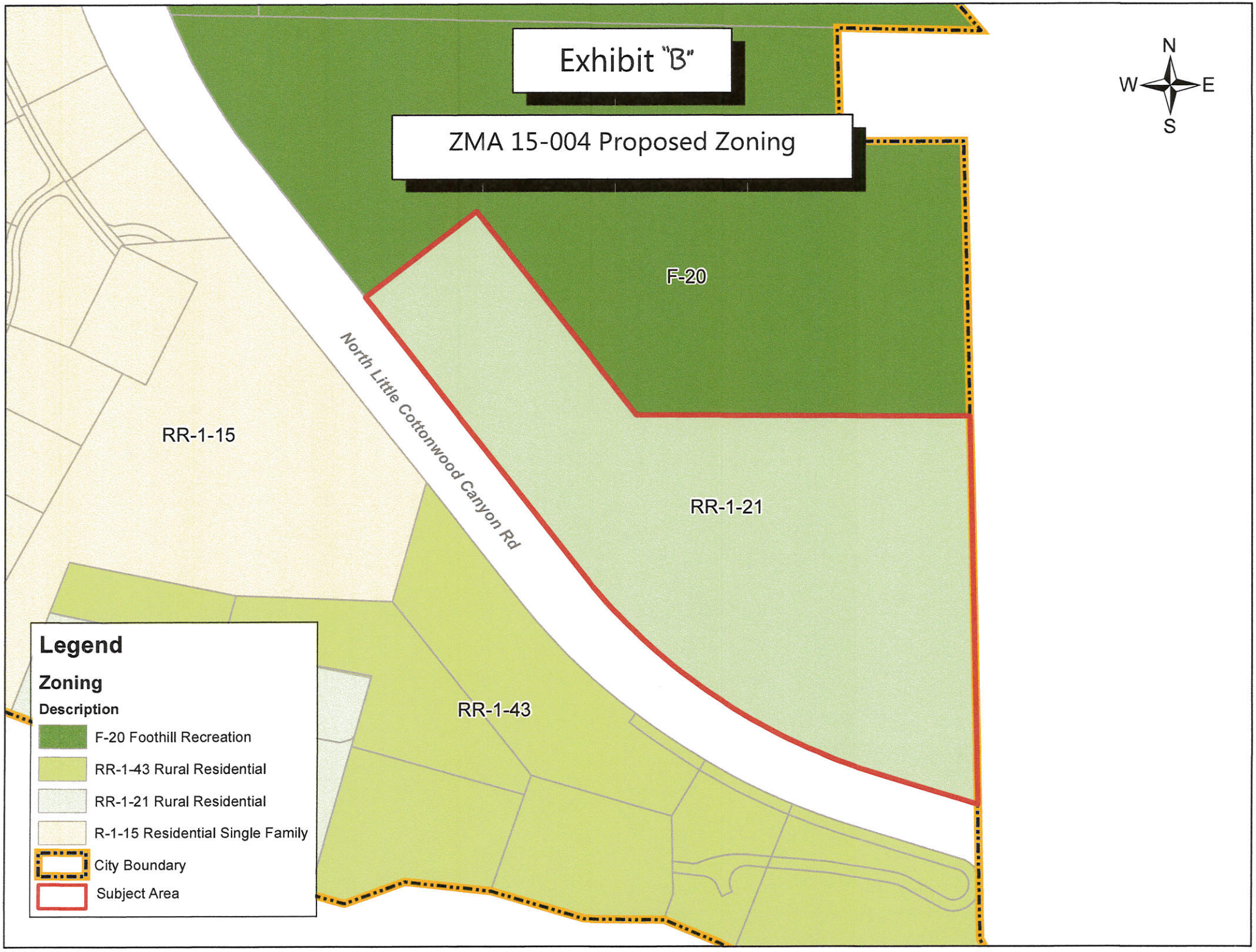


Exhibit "B"
ZMA 15-004 Proposed Zoning
N
W
E
S
F-20
RR-1-21
RR-1-15
RR-1-43
North Little Cottonwood Canyon Rd
Legend
Zoning
Description
F-20 Foothill Recreation
RR-1-43 Rural Residential
RR-1-21 Rural Residential
R-1-15 Residential Single Family
City Boundary
Subject Area

Exhibit "C" to
Ordinance 255-A

(Attach Photocopy of Development Agreement)

WHEN RECORDED RETURN TO:

COTTONWOOD HEIGHTS
Attn: Linda Dunlavy, City Recorder
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Development Agreement
(11.54 Acres--3801 East North Little Cottonwood Canyon Road)

THIS DEVELOPMENT AGREEMENT (this "*Agreement*") is entered into effective __ May 2016 by and among **ROLA V, LLC**, a Utah limited liability company f/k/a **ROLA V, LTD.**, **DAVID L. DESPAIN** and **OLSON FAMILY LIMITED PARTNERSHIP**, an Idaho limited partnership, whose joint address is c/o 3802 East North Little Cottonwood Canyon Road, Sandy, UT 84092 (collectively, "*Developer*"); and the city of **COTTONWOOD HEIGHTS**, a municipality and political subdivision of the State of Utah whose address until 1 September 2016 is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047, and whose address after 1 September 2016 is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"). Developer and City are hereinafter sometimes referred to individually as a "*Party*" or collectively as the "*Parties*."

RECITALS:

A. Developer owns, and hereby covenants to City that it is the sole owner of, approximately 11.54 acres of real property located near 3801 East North Little Cottonwood Canyon Road within City's boundaries (the "*Property*"). The legal description of the Property is set forth on Exhibit "A" annexed hereto.

B. The Property currently is zoned F-20, which allows as a conditional use one residence per 20 acres of land. Further, the Property is located on a hillside and most of the Property consists of slopes exceeding 30% (collectively, the "*30% Slope*"), which are deemed undevelopable under Title 19 of City's code of ordinances (the "*Code*").

C. Developer has made application to City for a general plan map amendment and rezone or map amendment necessary to assign an RR-1-21 zoning designation to the Property in anticipation of developing the Property as residential subdivision (the "*Project*") containing six buildable lots ("*Lots*") comprising approximately 3.11 acres and three undevelopable parcels comprising approximately 8.43 acres and containing most of the 30% Slope ("*30% Slope Parcels*").

D. The intent of this Agreement is to facilitate development of the Project in accordance with the Code and the site-specific land uses and development standards specified in this Agreement in order to provide for a creative development with unique and unusual characteristics for the benefit of all Parties.

E. City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.* ("*LUDMA*") has made certain determinations with respect to the Property and the proposed Project, and, in the exercise of its legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals; Entire Agreement**. The above recitals and the exhibits referenced in this Agreement are hereby incorporated by reference as part of this Agreement. This Agreement integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to such subject matter.

2. **Condition Precedent**. This Agreement is contingent upon and shall only become effective at such time, and in the event that, the Cottonwood Heights City Council (the "*Council*"), in the independent, unfettered exercise of its legislative discretion, elects to approve the proposed rezoning of the Property to the RR-1-21 zoning designation. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the Council in deciding whether to approve or deny the application for the rezoning of the Property. If any such rezoning occurs by legislative action of the Council but subsequently is reversed or revoked by any means other than legislative action of the Council, then this Agreement shall be deemed void *ab initio*.

3. **Plan**. Subject to Section 4.2, below, a plan (the "*Plan*") depicting the permissible lots, building envelopes, street(s) and certain other dimensions and physical attributes of the Project is attached hereto as Exhibit B and is incorporated herein by this reference. The Project shall be limited to a maximum of six Lots, which shall be exclusively used for single family residential purposes and shall be configured and located substantially as shown on the Plan. The approval of the Plan as part of this Agreement satisfies any Code requirement for a site plan, development plan or similar for the Project, provided that the Plan shall not constitute a preliminary or final subdivision plat for the Project.

4. **Project-Specific Development Standards.**

4.1. *Site Standards*. By this Agreement, the Parties intend to limit the uses, development standards and other regulations otherwise applicable to the Property under the RR-1-21 zoning designation as described in Code Chapter 19.20 in order to promote the efficient and creative development of the Property, which has unique or unusual characteristics. The specific allowed land uses, development standards and regulations for the Project that are to be used in substitution for the uses, development standards and other regulations contained in Code Chapter 19.20 are attached hereto as Exhibit C (the "*Site Standards*") and incorporated herein by this reference. Developer shall develop the Project in accordance with the Plan (subject to Section 4.2) and in full compliance with the Site Standards and the Code.

4.2. *Amendments to Plan*. The Plan is a general depiction of locations and dimensions of Lots, building envelopes, streets, and certain other dimensional development attributes of the proposed Project. If required by the Code or the Site Standards, more detailed

and specific site plans, subdivision plats and similar shall be submitted for approval before any actual construction may begin on any portion of the Property. Actual development of the Project may deviate or vary slightly or in ways that are irrelevant to planning considerations from what is depicted on the Plan or which represent logical development of the details depicted on the Plan, provided that:

4.2.1. City reserves the right to require modifications of the Plan as reasonably necessary to assure Code compliance, including reducing the number of Lots to fewer than six based on geotechnical considerations or other Code requirements.

4.2.2. The number of Lots on the Property may not exceed six absent a subsequent legislative decision to the contrary by the Council in its sole, unfettered discretion. Developer otherwise irrevocably waives any right to seek to increase the number of Lots on the Property, including, without limitation, pursuant to any "density credit" applicable to the 30% Slope portion of the Property under Code Section 19.72.040(A), as amended.

4.2.3. Except as provided below in this subsection 4.2.3, Developer irrevocably waives any right to seek, through a conditional use or other administrative (non-legislative) process, to modify the size or location of Lots, building envelopes, streets, or other development attributes of the Property as shown on the Plan except as follows:

(a) If Developer desires to reduce the number of Lots to fewer than six, Developer may administratively seek related increases in the size of, and the location of building envelopes on, the remaining Lots; and

(b) If Developer desires to seek minor modifications to the Plan which neither increase the number of Lots; cause any of the Lots to further impinge on the 30% Slope portion of the Property; materially change the road alignment or the sizes or locations of Lots or building envelopes, setbacks and other dimensional attributes of the Plan; nor change the Site Standards, then Developer shall submit a detailed request to City's community development director (the "*Director*"), who may administratively approve minor modifications to the Plan under the foregoing standards.

Any other modifications to the Plan or the Site Standards desired by Developer are subject to approval or disapproval by the Council in the independent, unfettered exercise of its legislative discretion following public hearing before, and recommendation by, the Commission.

4.3. *Appeals*. Any decision of the Director (a) approving or denying a request for a minor modification to the Plan, or (b) as to whether a proposed modification is a major amendment to the Plan that requires Council approval, is an administrative decision of City staff that may be appealed to City's appeal authority as provided in the Code. Any decision of the Council concerning a proposed major amendment to the Plan, or any amendment to the Site Standards, is a legislative decision that may be appealed to court as provided in LUDMA.

5. **Approval Process for Development Applications**. City shall process applications for development of the Project in accordance with the Code. Nothing in this Agreement shall be deemed to relieve Developer of the obligation to comply with all of the applicable requirements for approval of preliminary and final subdivision plats, or preliminary

and final site plans, as applicable, for the proposed development of the Project consistent with the terms and conditions of this Agreement and the applicable provisions of the Code.

6. **Phasing**. Developer shall proceed with construction of the Project with reasonable diligence once construction commences. Developer may develop the Project in several phases as market conditions dictate so long as each phase provides for the logical extension of infrastructure and utilities as approved by City and in compliance with the terms of this Agreement and the applicable provisions of the Code. All phasing decisions for the Project shall constitute minor modifications subject to approval by the Director.

7. **Payment of Fees**.

7.1. *Development Application and Review Fees*. Developer shall pay to City all fees imposed by City (including, without limitation, application fees, impact fees and connection fees) for review and approval of development of any and all phases of the Project in the amounts set forth in City's Consolidated Fee Schedule from time to time. The Council hereby determines that there is a prevailing public interest in allowing deferral of the payment of fees for final subdivision and final site plan approval on a phase by phase basis for the Project.

7.2. *Other Fees*. City may charge other fees in existence from time to time during development of the Project, including, without limitation, standard building permit review and inspection fees for improvements to be constructed on the Property that are generally applicable to other developments within City.

7.3. *Reservation of Right to Challenge Fees*. Notwithstanding any provision of this Agreement, the Developer does not waive Developer's rights under any applicable law to challenge the reasonableness or legality of the amount or imposition of any fees.

8. **Vested Rights**.

8.1. *Vested Rights*. Developer shall have the vested right to have preliminary and final subdivision plats, or preliminary and final site plans, as applicable, approved and to develop and construct the Project in accordance with and subject to compliance with the terms and conditions of this Agreement and applicable provisions of the Code. If no substantial construction has been initiated as part of the Project within three years from the date of this Agreement plus any period of force majeure, City may rezone the Property back to the F-20 zoning district that existed prior to the Council's approval of the RR-1-21 zoning designation, in which event this Agreement shall be deemed terminated. To the extent that there is any conflict between the main body (text portion) of this Agreement and the exhibits to this Agreement, the more specific language or description, as the case may be, shall control. Where any conflict or ambiguity exists between the provisions of the Code and this Agreement (including the exhibits to this Agreement), this Agreement shall govern. Notwithstanding the foregoing, however, the rights vested as provided in this Agreement are not exempt from the application of the Code and to subsequently enacted ordinances to the extent such exemption would impair City's reserved legislative powers under Section 8.2, below.

8.2. *Reserved Legislative Powers*. The Parties acknowledge that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to City those police powers

that cannot be so limited. Notwithstanding the retained power of City to enact such legislation under the police powers, such legislation shall only be applied to modify any development standards that are applicable to the Project under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine of the State of Utah. Any such proposed legislative changes shall be of general application to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

9. **Infrastructure and the Provision of Municipal Services.**

9.1. *Construction of Necessary Infrastructure*. Developer shall have the obligation to construct or cause to be constructed and installed all of the public or private infrastructure which are located on and/or necessary to service any portion of the Property, including, without limitation, roads, utilities and any off-site improvements necessary to connect to existing utilities.

9.2. *Third Party Service Providers*. City will only be the service provider of the public roads and storm drainage facilities to service the Project. Developer shall be responsible to obtain the approval and incur the costs of constructing any off-site and on-site infrastructure and improvements from third party service providers (including, but not limited to, Rocky Mountain Power, Questar Gas and the Cottonwood Improvement District) that are necessary to service any portion of the Property. City shall reasonably cooperate, as necessary, in seeking approval and permits from such third party service providers.

9.3. *Maintenance of Private Roads and Improvements*. Developer shall have the duty to maintain all private roads and areas designated as such on subdivision plats that are located on the Property; provided, however, that responsibility for such maintenance may be assigned to an association of Lot owners (the "*HOA*") pursuant to covenants, conditions and restrictions recorded against the Property.

10. **Term of Agreement**. The term of this Agreement (the "*Term*") shall be for a period of 20 years following the effective date specified above, unless it is terminated earlier or its Term is modified by written amendment to this Agreement; provided that this Agreement shall continue to be effective perpetually as to applications that have been submitted and development that has occurred within the Project notwithstanding the termination of this Agreement.

11. **Assignment**. Subject to Section 13 below, Developer may not assign its rights or delegate its duties under this Agreement to any third party without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such assignment shall relieve Developer from the obligation to assure the full and timely payment and performance of all of its duties under this Agreement.

12. **Default.**

12.1. *Notice*. If a Party fails to timely perform its obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide written notice (a "*Notice of Default*") to the defaulting Party as provided herein.

12.2. *Contents of the Notice of Default*. The Notice of Default shall:

12.2.1. Claim of Default. Specify the claimed event of default;

12.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

12.2.3. Specify Materiality. Identify why the default is claimed to be material; and

12.2.4. Optional Proposed Cure. In connection with an alleged default by Developer, a Notice of Default from City may also propose a method and time for Developer to cure the default.

12.3. *Meet and Confer*. Upon the issuance of a Notice of Default, the Parties shall meet within ten business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

12.4. *Remedies*. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties shall have the following remedies:

12.4.1. Legal Remedies. The rights and remedies available at law and in equity including, without limitation, injunctive relief, specific performance and termination, but not including compensatory damages, punitive damages or attorney's fees.

12.4.2. Enforcement of Security. City shall have the right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular default.

12.4.3. Withholding Further Development Approvals. City shall have the right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Property; provided, however, that City shall not have such right with respect to any Lot that is not the subject of the Notice of Default but has been previously sold to an unrelated third party for purposes of construction of a single-family residence thereon.

12.5. *Public Meeting*. Before any remedy in Section 12.4 may be imposed by City, the party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

12.6. *Emergency Defaults*. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of City and that any delays in imposing such a default would also impair a compelling, countervailing interest of City, then City may impose the remedies of Section 12.4 without meeting the requirements of Section 12.5. City shall give written notice to the defaulting party of any public meeting at which an emergency default is to be considered and the defaulting party may address the Council at that meeting regarding the claimed emergency default.

12.7. *Extended Cure Period*. Any applicable cure period may be extended as needed by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. *Cumulative Rights*. The rights and remedies set forth herein shall be cumulative.

12.9. *Waiver of Jury Trial*. **Each of the Parties hereby irrevocably waives, to the fullest extent possible under applicable law, the right to request or obtain a trial by jury in connection with any lawsuit between the Parties arising from or related to this Agreement.**

13. **Covenants Run with Land; Recording**. This Agreement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon Developer, City and their respective successors and assigns. City may record this Agreement in the office of the Salt Lake County Recorder so long as City records a termination of this Agreement contemporaneously with any termination of this Agreement due to failure of a condition precedent under Section 2, above.

14. **Dedication/Conservation of 30% Slope Parcels**. Developer believes that preservation and conservation of the 30% Slope Parcels as unbuildable open space will enhance the desirability and market value of the Lots, and City believes that such preservation and conservation of the 30% Slope Parcels will constitute a public benefit. Consequently, pursuant to the final subdivision plat for the Project and as a condition precedent to final subdivision approval by City, Developer shall (a) dedicate the 30% Slope Parcels to City or its designee for open space purposes; (b) create an open space or conservation easement on the 30% Slope Parcels in favor of City or its designee; or (c) otherwise act in a similar fashion to perpetually preserve and conserve the 30% Slope Parcels as undevelopable open space, all as reasonably directed by City and utilizing such documents, instruments and agreements as City reasonably may require, such as, for example, a recordable general warranty deed effecting or affirming conveyance to City or its designee of unencumbered legal title to the 30% Slope Parcels for open space purposes; provided that such title may be subject to easements, rights of way, the lien of current year taxes (which shall be prorated as of the date of conveyance) and similar non-financial encumbrances acceptable to City in its reasonable judgment. City shall cooperate, without cost or liability, with Developer's reasonable efforts under applicable tax law to structure such conveyance as a donation to City. Notwithstanding the foregoing, however, if City desires to be conveyed legal title to the 30% Slope Parcels (designated as Parcels A, B and C on the Plan), Developer may, at its option, elect to not convey legal title to Parcel A and/or Parcel B but instead to retain (or have the HOA retain) title to Parcels A and/or B as landscaped, but otherwise undeveloped, amenities of the Project maintained at Developer's or the HOA's cost, so long as such parcel(s) are perpetually preserved at the time of final subdivision approval by City as open space through an express easement or similar legal mechanism as reasonably directed by City utilizing such documents, instruments and agreements as City or its designee may require.

15. **General Provisions**. The following provisions are also integral parts of this Agreement:

15.1. *Binding Agreement*. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

15.2. *Captions*. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

15.3. *Counterparts*. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

15.4. *Severability*. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

15.5. *Waiver of Breach*. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

15.6. *Cumulative Remedies*. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

15.7. *Amendment*. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

15.8. *Time of Essence*. Time is the essence of this Agreement.

15.9. *Interpretation*. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

15.10 *Notice*. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above. Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Subsection.

15.11. *Force Majeure*. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power surges or failures, earthquakes, unseasonably severe weather conditions, or any other disasters or unusual and reasonably unforeseeable events beyond the reasonable control of the party required to perform, so long as the party charged with performance in that situation diligently pursues such performance. Force majeure events exclude, however, those arising from the financial condition of Developer or its successors.

15.12. *Non-Liability of City Officials or Employees*. No officer, representative, agent, or employee of City shall be personally liable to Developer, or any owner, officer, representative, agent, employee, successor-in-interest or assignee of Developer, in the event of

any default or breach by City or for any amount which may become due to Developer or such related parties of Developer for any obligation arising pursuant to this Agreement.

15.13. *No Third-Party Rights*. The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to City, Developer and their permitted successors and assigns. City and Developer, and their permitted successors and assigns, alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

15.14. *Survival*. All agreements, covenants, representations, and warranties contained herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

15.15. *Public Information*. The Parties acknowledge that this Agreement and all documents and instruments related to this Agreement will be public records as provided in the Utah Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101, *et seq.*

15.16. *Execution and Delivery; Irrevocable Offer*. This Agreement may be executed and delivered by facsimile, e-mail or other electronic means with the same legal effect as manual execution and physical delivery. In recognition of the lengthy public process that must be followed by City to approve, execute and deliver this Agreement, Developer's delivery to City of one or more Developer-executed counterpart of this Agreement shall constitute Developer's irrevocable promise to not withdraw, rescind or otherwise void or attempt to void such execution and delivery unless City fails to approve, execute and deliver this Agreement within 90 days after such execution and delivery to City by Developer.

[*Signature pages follow*]

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By:_____
Linda W. Dunlavy, Recorder

By:_____
Kelvyn H. Cullimore, Jr., Mayor

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On __ May 2016, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Linda W. Dunlavy**, who duly acknowledged to me that they executed the foregoing document as the mayor and the recorder, respectively, of **COTTONWOOD HEIGHTS**, a Utah municipality.

_____
Notary Public

DEVELOPER:

OLSON FAMILY LIMITED PARTNERSHIP,
an Idaho limited partnership

By:_____
_____, General Partner

_____
DAVID L. DESPAIN

ROLA V, LLC, a Utah limited liability company
f/k/a **ROLA V, LTD.**, a Utah limited partnership

By:_____
Susan Despain, Manager

By:_____
Shane P. Nielsen, Manager

By:_____
Eric M. Despain, Manager

STATE OF _____)
: ss.
COUNTY OF _____)

On __ May 2016, personally appeared before me _____, who duly acknowledged to me that _he executed the foregoing document as the general partner of **OLSON FAMILY LIMITED PARTNERSHIP**, an Idaho limited partnership.

_____
Notary Public

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On __ May 2016, personally appeared before me **DAVID L. DESPAIN**, who duly acknowledged to me that he executed the foregoing document.

_____
Notary Public

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On __ May 2016, personally appeared before me **Susan Despain**, **Shane P. Nielsen** and **Eric M. Despain**, who duly acknowledged to me that they executed the foregoing document as the managers of **ROLA V, LLC**, a Utah limited liability company.

_____
Notary Public

Exhibit "A" to
Development Agreement

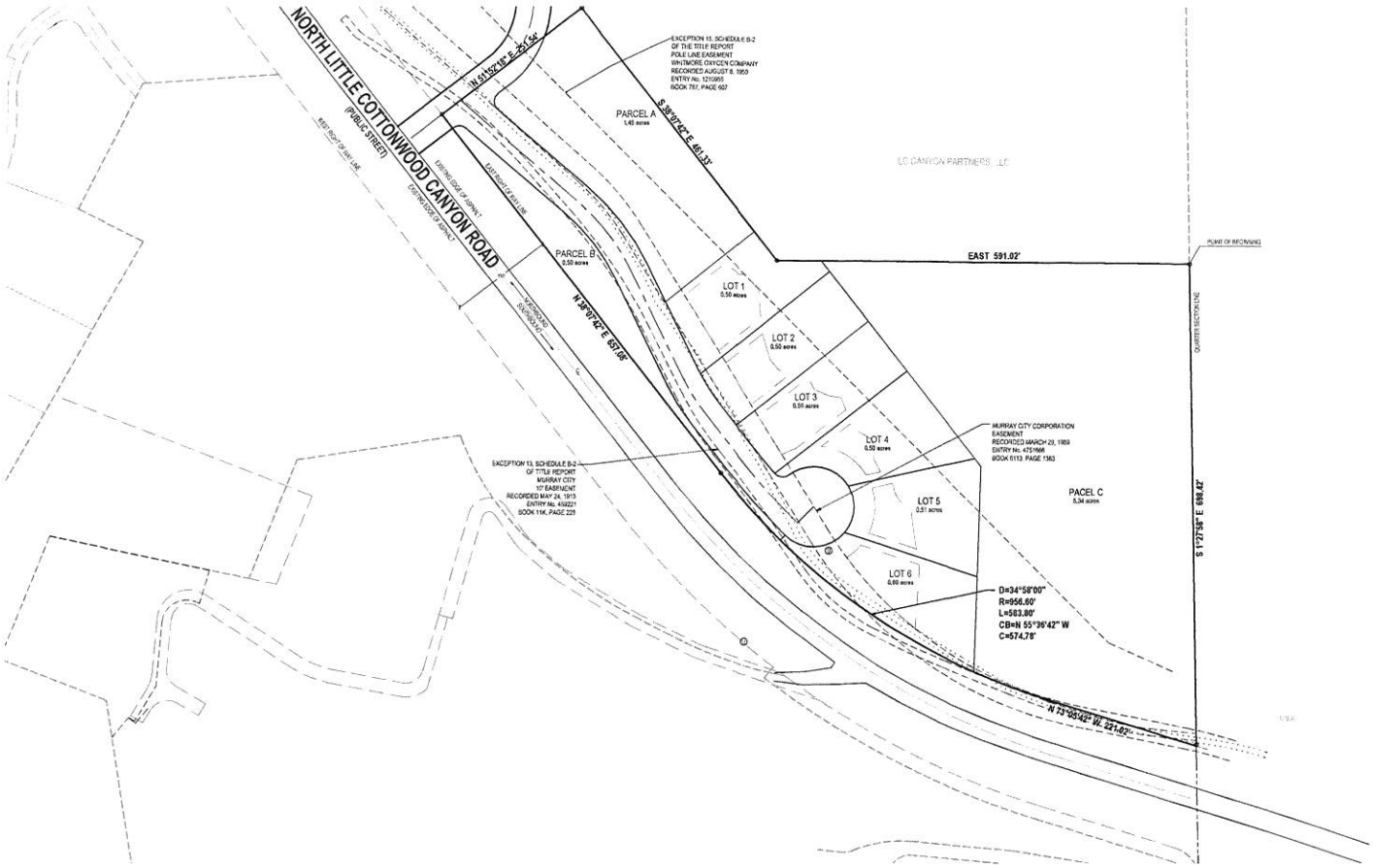
LEGAL DESCRIPTION OF THE PROPERTY:

Beginning at a point which is South 1°27'58" East 690 feet from the North 1/4 corner of Section 12, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 1°27'58" East 696.41 feet to the Northeasterly line of North Little Cottonwood Road; thence North 73°05'42" West 220.72 feet; thence Northwesterly along the arc of a 956.60 foot radius curve to the right (center bears North 16°54'18" East and long chord bears North 55°36'42" West 574.78 feet) along the Northeasterly line of said road; thence North 38°07'42" West 655.84 feet along the Northeasterly line of said road; thence North 51°52'18" East 250 feet; thence South 38°07'42" East 461.33 feet; thence East 591.13 feet to the point of beginning.

Parcel I.D. No. 2812126004

Exhibit "B" to
Development Agreement

(Attach Plan Showing Project with Lot Lines, Building Envelopes, Roads, Etc.)



LEGEND

- SECTION CORNER
- RIGHT OF WAY
- CENTERLINE
- PROPERTY LINE
- ADJACENT PROPERTY LINE
- SETBACK LINE

NORTH

HORIZONTAL GRAPHIC SCALE

80 0 40 80 160

(IN FEET)
HORZ: 1 inch = 80 ft.

ENSIGN
THE STANDARD IN ENGINEERING

SALT LAKE CITY
45 W. 10000 S., Suite 500
Sandy, UT 84070
Phone: 801.255.0529

LAYTON
Phone: 801.547.1100

TOOELE
Phone: 435.843.3590

CEDAR CITY
Phone: 435.865.1453

RICHFIELD
Phone: 435.896.2983

WWW.ENSIGNENG.COM

FOR:
ROLA V, LTD
3802 EAST NORTH LITTLE COTTONWOOD RD
SALT LAKE CITY, UTAH

CONTACT:
SUSAN DESPAIN
PHONE: 801-669-7416

ROLA V, LTD

3801 NORTH LITTLE COTTONWOOD ROAD
SANDY, UTAH

CONCEPT PLAN

PROJECT NUMBER: 6504	PRINT DATE: 5/23/16
DRAWN BY: KTW	CHECKED BY: PMH
PROJECT MANAGER: PMH	

Exhibit "C" to
Development Agreement

To be used in substitution for Code Chapter 19.20 (RR-1-21, Rural Residential Zone), as amended:

Section 1. **Purpose**. The purpose of this project (this "*Project*") is to provide for low density rural residential development.

Section 2. **Permitted uses**. Permitted uses in the Project are limited to the following:
(a) Single family detached dwellings; and
(b) Accessory buildings customarily incidental to permitted uses.

Section 3. **Conditional uses**. There are no conditional uses in the Project except home occupations without customers/visitors.

Section 4. **Lot area**. The minimum lot size for any use in the Project is 21,780 square feet.

Section 5. **Lot width**. The minimum width of any lot in the Project is 80 feet measured 20 feet from the front lot line.

Section 6. **Front yard**. The minimum depth of the front yard for main buildings and for private garages which have a minimum side yard of eight feet shall be 30 feet. All accessory buildings, other than private garages which have a side yard of at least eight feet, shall be located at least six feet in the rear of the main building.

Section 7. **Side yard**.
(a) The minimum side yard for any dwelling shall be ten feet, and the total width of the two required side yards shall be not less than 20 feet.
(b) The minimum side yard for a private garage shall be eight feet, except that detached private garages and other accessory buildings located in the rear yard and at least six feet away from the main building shall maintain a minimum side yard of not less than five feet.
(c) On corner lots, the side yard which faces on a street for both main and accessory buildings shall be not less than 20 feet.

Section 8. **Rear yard**. The minimum depth of the rear yard for any main building shall be 30 feet, and for accessory buildings five feet; provided, that on corner lots which rear upon the side yard of another lot, accessory buildings shall be located not closer than ten feet to such side yard.

Section 9. **Maximum height of structures**. The maximum structure height shall be 30 feet.

Section 10. **Accessory buildings**.
(a) Accessory buildings in the Project shall maintain a minimum distance from property lines as follows:

(i) Front. Accessory buildings, including detached garages, shall maintain a setback of at least six feet from the main building in the rear yard of the particular property.

(ii) Sides. Five feet on interior lots; 20 feet on the street side of corner lots.

(iii) Rear. Five feet on interior lots; 20 feet on the street side of corner lots;

(b) Attached garages shall conform to the rear and side yard requirements of main buildings.

(c) No detached accessory structure shall exceed 20 feet in height. For each foot of height over 14 feet, a detached accessory structure shall be set back from property lines an additional foot from the minimum setback.

Section 11. **Maximum lot coverage**. The maximum lot coverage in the Project is 30%, which includes all structures.

Section 12. **Open space requirement**. The minimum open space requirement is 10% for a standard subdivision.