



## **CITY COUNCIL AGENDA**

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a regular public meeting in the Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **6:00 p.m. on February 5, 2008**.

### AGENDA ITEMS:

#### **1. CALL TO ORDER, PLEDGE, OPENING CEREMONY, RECOGNITIONS:**

- a. Pledge
- b. Employee of the Quarter

#### **2. PUBLIC COMMENTS:**

Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comment will be limited to three minutes per person. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing. The Mayor or Council may restrict the comments beyond these guidelines.

#### **3. COUNCIL COMMENTS:**

#### **4. PUBLIC HEARINGS: 6:00 p.m.**

- a. \* [Davis Annexation and Annexation Agreement](#)
- b. \* [Envision Annexation and Annexation Agreement](#)

#### **5. CONSENT ITEMS:**

These items are considered by the City Council to be routine and will be enacted by a single motion. If discussion is desired on any particular consent item, that item may be removed from the consent agenda and considered separately.

- a. \* [Minutes of Spanish Fork City Council Meeting – January 22, 2008](#)
- b. \* [Revised ALA Facilities Amended Agreement](#)
- c. \* [Peak Alarm Contract – Snack Shack](#)

#### **6. NEW BUSINESS:**

- a. \* [Airport Board Ordinance Amendment – Changing the Board Composition](#)
- b. \* [Appeal Authority - Staff Denial of Billboard Building Permit – Jamie Evans](#)
- c. \* [Appeal Authority – Variance Request - Tracy Peterson Homes](#)
- d. Appointment of Boards and Committees
- e. \* [Home Depot Storm Water Agreement](#)

#### **7. EXECUTIVE SESSION:**

- a. Jamie Evans Appeal Deliberation
- b. Pending Litigation
- c. Land Purchase

### ADJOURN:

\* Supporting documentation is available on the City's website [www.spanishfork.org](http://www.spanishfork.org)

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed executive meeting for any of the purposes identified in that Chapter.

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.



# REPORT TO THE PLANNING COMMISSION DAVIS ANNEXATION

**Agenda Date:** January 22, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** The applicant, Envision Development, is requesting approval for an Annexation.

**Zoning:** R-1-15 Requested

**General Plan:** Residential 1.5 to 2.5 Units Per Acre

**Project Size:** 47.79 acres

**Location:** Approximately 2550 East 100 South.

## Background Discussion

Accompanying this report is an Annexation Report and proposed Annexation Agreement. In short, this proposed annexation has been in the review process for a number of months and a number of specific issues have been addressed during this review. In recent weeks, the Development Review Committee recommended that it be approved. Draft minutes from that meeting read as follows:

### Davis Annexation

Applicant: Mike Davis  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15 requested  
 Location: approximately 200 South 2800 East

Mr. Baker explained the Strawberry Electric Service District buyout for the lines that run through the area.

Discussion was held regarding the SESD power lines and the applicants need to contact SESD with regard to the buyout.

Mr. Baker moved to approve the Davis Annexation located at approximately 200 South 2800 East and the Envision Annexation located at 600 South 2550 East subject to the following conditions:

### Conditions

1. That the applicants enter into annexation agreements and based on all of the information in Richard Nielson's report.

Mr. Nielson seconded and the motion passed all in favor.

The Planning Commission reviewed this request in their January 9 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

### Davis Annexation

Applicant: Mike Davis  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15 requested  
 Location: approximately 200 South 2800 East

Mr. Anderson explained the proposals and the purpose of the annexation reports. Feels the



biggest issue is power. A substation is needed in this area of town and until a substation site has been acquired by the City; no development will be approved in the area. He commended the applicants and the working relationship with them.

Commissioner Lewis asked if annexing these two proposals would limit other annexations in the area.

Mr. Anderson explained that this area is one of the places in that has been earmarked for annexation and development and that there would not be issues providing utilities at the current general plan.

Mr. Nielson explained he had talked to UDOT regarding an update on the 2550 east railroad crossing reopening. UDOT is waiting for word from the railroad in Omaha, Nebraska.

Discussion was held regarding the annexation agreements, 90 foot right-of-way, and the City hiring a firm to do a master traffic plan for the entire City.

Commissioner Marshall **moved** to recommend to City Council **approval** of the Davis Annexation located at approximately 2550 East 100 South with a R-1-15 zone and subject to the following condition:

#### **Condition**

1. That the applicants enter into the accompanying Annexation Agreements.

Commissioner Christianson **seconded** and the motion **passed** all in favor by a roll call vote.

#### **Staff Recommendation**

Staff recommends that the City Council approves the proposed Annexation subject to the following condition:

1. That the applicant enter into the accompanying Annexation Agreement.

**ANNEXATION AGREEMENT  
FOR THE MICHEAL DAVIS ANNEXATION**

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_\_ day of December, 2007 by and between Micheal G. Davis (hereinafter Petitioner) and Spanish Fork City, (hereinafter City), (together, the "Parties").

**RECITALS**

A. WHEREAS, Petitioner owns approximately \_\_\_\_\_ acres of real property at approximately 100 South 2700 East (the Project Area), which area is described in Exhibit A, and which is part of a larger area consisting of 47.79 acres, which larger area is under consideration for annexation (the Annexed Area), which area is described in Exhibit B; and

B. WHEREAS, Owners have filed a Petition with City (the Petition), formally requesting the annexation of the property described in Exhibit B; and

C. WHEREAS, the Parties intend to enter into this Agreement to allow Petitioner and City to agree on issues such as streetscape, amenities, and other development objectives prior to development of the area in the Project Area. This process will lead to an attractive community that functions in a way that will add quality of life to future residents while allowing City to provide municipal services in a cost effective and efficient manner and in accordance with the Spanish Fork City General Comprehensive Plan, applicable zoning ordinances, and the Construction and Development Standards of City; and

D. WHEREAS, approval of this annexation agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Spanish Fork City ordinances. Petitioner expressly acknowledges that nothing in this agreement shall be deemed to relieve Petitioner from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

**SECTION I. DEFINITIONS**

Unless the context requires a different meaning, any term or phrase used in this Agreement shall have that meaning given to it by the Spanish Fork City Land Use Ordinance in effect on the date of a complete application. Certain other terms and phrases are referenced below. In the event of a conflict in definitions, that definition which provides the most restrictive development latitude shall prevail.

1.1 **Annexed Area** means the 47.79 acres under consideration for annexation into Spanish Fork City as described in Exhibit B.

1.2 **Buildout** means the completion of all of the development of the land in the Project Area, described in Exhibit A, in accordance with this Agreement.

1.3 **Design Guidelines** means the Design and Development Standards, found in the Spanish Fork Municipal Code, Title 15, Part 4, Chapter 16, and the Spanish Fork City Construction Standards, including the Specifications, Details, and Design Guidelines.

1.4 **Owner or Owners** means the owner(s) of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.

1.5 **Project Area** means the \_\_\_\_\_ acres of land identified in Exhibit A, which has been petitioned for annexation and which is the subject of this agreement.

## SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

### 2.1 General Rights and Responsibilities of Developer

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project Area, Petitioner accepts and agrees to comply with the impact, connection and building fees of the City in effect at the time of assessment, whether or not currently in effect, the City agreeing and representing that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Developer acknowledges that the Project requires infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. Petitioner agrees not to challenge, contest or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

2.1.2 **Construction Mitigation.** Petitioner shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of construction within Project Area. Petitioner shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

2.1.2.1 Limits of disturbance, vegetation protection and the re-vegetation plan for all construction, including construction of public improvements;

2.1.2.2 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed;

2.1.2.3 Construction traffic routing plan to minimize traffic impacts on Spanish Fork City and residential areas as approved by City; and

2.1.3 **Subsequent Applications Under Future Development Code.** Without waiving any rights granted by this Agreement, Petitioner may choose to submit some or all of Petitioner's properties for development under the version of the City's Design Guidelines existing at the time of the application. In the event an application or plat expires, the version of the Design Guidelines existing at the time of re-application shall apply.

### 2.2 General Rights and Responsibilities of the City

2.2.1 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development or zoning.

2.2.2 **Compliance with City Requirements and Standards.** Petitioner expressly acknowledges that nothing in this Agreement shall be deemed to relieve any of them from their obligations to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats and site plans for the Project Area, or any other portions of the Property, in effect at the time of development approval, or re-approval in the event of expiration, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of City.

2.2.3 **Power of Eminent Domain.** City agrees that, in the event Petitioner needs to obtain easements or rights of way for the purpose of constructing offsite infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Petitioner, may *consider* the exercise of its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Petitioner, including land costs, court costs, appraisal costs, legal fees, and any other costs associated with any such condemnation action.

2.3 **Recording.** City or Petitioner may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

#### 3.1 Obligations of Petitioner

##### 3.1.1 Municipal Utilities

**Satisfaction of Water Rights Requirement.** Petitioner hereby asserts that it has read and is familiar with Spanish Fork City Code §15.4.16.080 and hereby agrees that prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in the Project Area, the owner of the subject parcel shall either dedicate water rights to the City, or pay a cash equivalent in value to the cost of the required water rights, as specified by, or as determined in accordance with the provisions of the City Code. City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

**Installation and Design Criteria.** City provides the following utilities, which need to be brought to the Project by Petitioner, at no cost to City: Electric Power, Culinary Water, Pressurized Irrigation Water, Sewer, Storm Drain, and Telecommunications. Petitioner shall design, build and dedicate to the City adequate delivery systems for each of these utilities according to City specifications and standards, including all distribution lines, conduit, street lights, valving, fire hydrants, meters, and other required services to meet the needs for the Project Area. Improvements shall be upsized at the direction of the City Engineer to meet future needs of the City utilities. All facilities necessary to provide adequate utility services installed by Petitioner within the Project Area, upon acceptance by the City, shall be owned, operated, and maintained by City, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner. Petitioner or its successors or assigns shall be responsible for such infrastructure until such time as City accepts the improvements.

**Easements.** Petitioner shall grant to City, at no cost to City, all easements necessary for the operation, maintenance, and replacement of all utilities, located within the Project Area as City determines to be necessary. In addition to on site easements, an off site sewer easement is necessary to service the Project Area with sewer. Petitioner shall be required to obtain and transfer to City the off site sewer easement needed to provide sewer service, unless another developer has already provided it. This shall be provided prior to recordation of the annexation plat, or prior to the filing of a development application with City. It shall be in a location suitable to the public works department of City.

**Master Plan Utility Infrastructure Sizing.** Petitioner shall design, build and dedicate to City the utility infrastructure as shown in Exhibit C, unless it has already been provided by another developer. The timing of construction shall be dependent on project phasing and necessary sizing requirements to meet the standards of service at a level generally provided to other areas of the City and as determined by the City Engineer. Petitioner shall be entitled to reimbursement for the difference in cost between a twelve inch and twenty inch culinary water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between a ten inch and sixteen inch pressure irrigation water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between an eighteen inch and

twelve inch sewer line in 100 South. Petitioner shall be entitled to reimbursement for the cost of the storm drain line in 2550 East. Reimbursement shall be made from impact fees pursuant to a separate agreement, to be drafted and executed when the actual costs of construction are known. Reimbursement will be over a period of years, based upon a ratio of these costs compared to the overall costs for which impact fees are assessed, and are subject to the collection of impact fees. If another developer has previously provided this infrastructure, Petitioner shall not be entitled to reimbursement, but may be obligated to pay the earlier developer under the terms of a connector's agreement.

**Storm Drain.** In addition to the storm drain line shown on Exhibit C, Petitioner shall construct facilities to retain storm water on site until such time as the regional facilities shown on City's Storm Drain Master Plan are constructed and ready to accept storm drain flows. These on site facilities shall be constructed during the first phase of any development and shall be ready for use prior to the issuance of any certificate of occupancy.

**SESD.** Petitioner shall be obligated to buy out SESD electrical facilities which may exist in the Annexed Area. This shall be accomplished prior to recording of the Annexation ordinance. A letter from SESD, indicating payment for the facilities has been received, shall accompany the annexation mylar.

**Reimbursement.** The cost of upsizing the culinary water, pressurized irrigation water, electric power, telecommunications, storm drain, or sewer infrastructure, except as set forth in the preceding paragraph, shall be borne by the Petitioner without reimbursement. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who connect to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### 3.1.2 Transportation, Including Streets and Trails

**Roadway Dedication.** Petitioner shall dedicate sufficient property for an 80 foot wide roadway right of way (minor collector, with trail) along 100 South (currently 6800 South, County). The dedication shall take place prior to recording of the annexation ordinance, and shall be a condition of annexation.

**Roadway Construction.** Petitioner shall be required to build a road along the frontage of the Project Area, in accordance with the Design Guidelines, for a minor collector along 750 South when development of the Project Area takes place. Other offsite road improvements may be required, at the time of development, if traffic or safety studies indicate the development in the Project Area will create a need for offsite improvements. The parties may negotiate the details and timing of any such improvements. Offsite sidewalk improvements may also be required in order to create safe sidewalks for children from development in the Project Area to walk to the nearest public school.

**Railroad Crossings.** The railroad crossing at 2550 East and the railroad adjacent to State Road 6 is in need of upgrading to handle increased traffic created by this Project, together with other development in the vicinity. UDOT is currently undertaking to upgrade that crossing. However, no timetable for completion is known. Petitioner agrees that no final plats may be approved until that railroad crossing is complete.

**Trail Corridor Dedication and Trail Construction.** Petitioner will dedicate land for a trail along the Rocky Mountain Power electric easement corridor in the Project Area, which event shall be a condition of annexation. Petitioner may elect to build, to City Design Guidelines, a trail on the dedicated

ground. Should Petitioner so elect, a density bonus for the trail dedication and installation shall be granted to Petitioner, in accordance with the Master Planned Development ordinance of City.

**Reimbursement.** The cost of required, offsite improvements in this section 3.1.2 are subject to a pro-rata reimbursement from other properties benefitting from the improvements. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who have frontage to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### 3.1.3 Land Transfer

**Electric Substation.** City needs a new electric substation in order to provide electric service to the Mapleton Bench area of City, including the Project Area. City is underway with various studies, which will recommend suitable locations for a new electric substation in the vicinity of the Project Area. Until City obtains the location for the electric substation, no development application may be submitted by Petitioner.

**Well Property.** City is investigating various locations for a well, to serve culinary and/or pressure irrigation water needs. If it is determined that the well location needs to be within the Project Area, Petitioner agrees to transfer up to one-half an acre, together with an appropriate source protection zone if a culinary well is to be drilled. The location will be designated by City.

**Purchase Price.** City shall be obligated to pay fair market value for any land transfer required by this section 3.13. If the parties cannot agree upon the fair market value, City, at its sole cost and expense, shall obtain an appraisal of the property. If Petitioner does not agree with City's appraisal, it shall, at its sole cost and expense, obtain a second appraisal. The average of the two appraisals shall be deemed to be fair market value.

## 3.2 Obligations of City.

**Acceptance of Infrastructure.** City shall accept the dedication and maintenance of all streets, trails and open spaces in the Project Area, so long as such streets are constructed to the City specifications and standards, and are dedicated free of all liens and encumbrances, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner.

**Utility Service.** Upon the dedication and acceptance by City of the utility infrastructure, satisfaction of the water rights requirements (as outlined in section 3.1.1), and payment of impact fees, connection fees, and any other applicable fees by Petitioner, City shall provide all of the Project Area served by such infrastructure with utility service at a level generally provided to other areas of the City.

**Plat Review.** Upon Petitioner complying with all the conditions of this Agreement, City shall promptly review development requests made by Petitioner, including plat approval, in accordance with City ordinances, rules, and policies. Petitioner shall comply in all respects with requirements of plat and/or development approval. Nothing herein shall be considered to limit or restrict the police powers of the City Council in approving, denying, or establishing conditions for any development request. Development approval is not guaranteed hereby, but vesting may occur only through the provisions of the Utah Land Use Development and Management Act, Utah Code Ann. §10-9a-101 et seq. (1953, as amended) and Spanish Fork Municipal Code, Title 15.

## SECTION IV. ZONING

4.1 **Master Planned Development and Underlying Zoning.** Petitioner may desire to provide amenities and obtain bonus densities based upon a Master Planned Development as contemplated by Spanish Fork Municipal Code §15.3.24.030. Petitioner shall be allowed to proceed with the development of a Master Planned Development and to receive bonus densities, for a total project density up to 2 ½ units per acre, as authorized by the Master Planned Development Ordinance as long as Petitioner provides amenities allowed by the Ordinance and required by the City Council during preliminary plat approval and remains in full compliance with the Municipal Code and all Design Guidelines of City. Nothing herein shall be construed to limit the ability of the City Council from exercising its police powers to enact zoning ordinances, some of which may affect the Project Area.

## SECTION IV. GENERAL PROVISIONS

5.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title, or which would apply to the Developer through whom the interest was acquired. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project.

5.2 **Assignment.** Petitioner shall have the right, with City's consent, to assign or transfer all or any portion of his/her rights and obligations under this Agreement to any party acquiring an interest or estate in the Project or any portion thereof, except as specifically set forth below. The City may not unreasonably withhold its consent to such assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Petitioner to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement. Petitioner shall provide written notice of any proposed or completed assignment or transfer. Unless City objects in writing within thirty (30) days, City shall be deemed to have approved of and consented to the assignment. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights under this Agreement. Notwithstanding the foregoing, Petitioner's selling or conveying individual lots or parcels of land to builders, individuals or developers shall not be deemed to be an assignment subject to the above requirement for approval unless specifically designated as an assignment by Petitioner.

5.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project Area is a private development; (ii) City and Petitioner hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and Petitioner; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Petitioner.

5.4 **Consent.** In the event this Agreement provides for consent from the City or Petitioner, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld or delayed.

5.5 **Legal Challenges.** In the event that any person challenges this Agreement or the development contemplated herein, Developer agrees to accept responsibility for all legal fees, including attorneys fees, expert witness expenses, and/or court costs incurred by the City upon presentation to Petitioner of an itemized list of costs, expenses, and fees. City shall not be required to make any reimbursements contemplated herein if the source of funds for such reimbursements are held invalid,

illegal, void, or otherwise unenforceable. Petitioner shall be allowed to participate in decisions related to this provision, including the selection and hiring of legal counsel and the conduct of the litigation or any settlement thereof.

## SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions, but are not to be considered part of the contract provisions.

6.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

6.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 **Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

6.6 **Governing Law, and Dispute Resolution, and Attorney's Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.6.1 **Mediation.** Any and all disputes arising out of or related to this Agreement or the Parties performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation. The parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute; and; (iii) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of contract and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys fees and costs incurred in said action.

6.6.2 **Default Litigation.** If any Party hereto is required to engage the services of counsel by reason of the default of another Party, the non-defaulting Party shall be entitled to receive its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be filed. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

6.7 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by certified mail, return receipt requested or by facsimile.

If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. If given by facsimile to the address and number for such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City to:  
SPANISH FORK CITY  
Attn: City Manager  
40 South Main  
Spanish Fork, Utah 84660

If to Petitioner to:  
Micheal G. Davis  
1957 S. 120 W.  
Orem, Utah 84058

6.8 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the Project Area
Exhibit B	Legal description of the Annexed Area
Exhibit C	Utility and Improvement Plan

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same and by the City of Spanish Fork, acting by and through its City Council as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

**SPANISH FORK CITY** by:

\_\_\_\_\_  
JOE L THOMAS, Mayor

ATTEST:

\_\_\_\_\_  
Kent R. Clark, City Recorder

\_\_\_\_\_  
MICHEAL G. DAVIS

**SPANISH FORK CITY  
Annexation Feasibility Report**



<b>Agenda Date:</b>	November 7, 2007
<b>Staff Contacts:</b>	Dave Anderson, Planning Director Richard Nielsen, Assistant Public Works Director
<b>Reviewed By:</b>	Development Review Committee
<b>Subject:</b>	Davis Annexation Report

**SECTION 1**

Annexation Map.

Annexation Plat.

**SECTION 2**

annexation sponsor: Michael Davis

phone: (801) 226-0810

annexation location: 2600 East Center Street

acreage in annexation: 48.91 acres

property owner(s) and parcels

owner: J. Merrill Hallam  
valuation: \$123,100

parcel: 27:032:0103

acreage: 16.26 acres

owner: Michael G. Davis Property  
valuation: \$154,200

parcel: 27:032:0078

acreage: 16.97 acres

owner: Julie Ann Curtis  
valuation: \$352,900

parcel: 27:032:0104

acreage: 3.11 acres

owner: Brian Bird  
valuation: \$153,800

parcel: 27:032:0073

acreage: 6.06 acres

owner: W. Jan & Sharon Storrs  
valuation: \$278,800

parcel: 27:032:0054

acreage: 3.03 acres

submittal date: February 26, 2007

acceptance date: March 20, 2007

certification date: April 13, 2007

date of protest filed: none

Development Review Committee recommendation date:

Planning Commission recommendation date:

City Council meeting date:

## SECTION 3

In accordance with 15.3.08.030 (B) of the Municipal Code, the following items are addressed in Section 3 of the Annexation report:

**1. Whether the proposed property is within the Growth Management Boundary of the General Plan.**

It has been proposed to amend the Growth Management Boundary to include the annexation area.

**2. Present and proposed land use and zoning.**

At present, there are two dwellings on the subject properties and the annexation area has a Residential Agricultural zoning designation in Utah County. Spanish Fork City has designated the annexation area as Residential 1.5 to 2.5 units per acre on the General Plan. The zoning that most appropriately correlates to the General Plan is R-1-15.

**3. Present and potential demand for various municipal services.**

At present, there is essentially no demand for municipal services. If the subject properties are annexed, the City will then be obligated to provide at least some municipal services to the area. Most immediately, the City will be required to provide public safety service to the area. As the properties develop, the City will then be obligated to provide utility service. Any residents of the annexation area would, of course, be entitled to any services (recreations programs, library....) that the City offers.

**4. Distances from existing utility lines, public schools, parks, and shopping areas.**

Detailed information is provided in Section 4 of this report relative to the proximity of the proposed annexation to utility lines. At present, the closest elementary school, Rees Elementary, is .9 miles from the proposed annexation. The closest junior high is Diamond Fork, is 1.8 miles from the proposed annexation. At present, a new high school, Maple Mountain, is under construction at a location that is essentially adjacent to the proposed annexation. It is anticipated that Maple Mountain will be open for classes in August of 2009. The closest shopping area of any substantial size is 2.1 miles from the proposed annexation.

**5. Specific time tables for extension of services to the area and how these services would be financed.**

It is anticipated that services will be extended to the area as development occurs. As such, it is expected that utilities will be funded by property owners or the development community. At present the City has no plans to extend utilities to the area or to make upgrades to City facilities that would serve the Annexation Area. It's possible that this situation may change with respect to power service. Within the next twelve months, the City may obtain property for a power substation and may budget funds to construct that substation within the next 24 months.

**6. Potential impact on existing and proposed streets.**

The streets in the Davis Annexation area that need to be addressed during the annexation process are 100 South (6800 South Utah County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

**100 South**

100 South is planned as Minor Collector (40' of asphalt) with a trail along the south side of the street. This cross section requires an 80-foot right-of-way and should be consistent with the existing improvements to the west of the proposed annexation. There is an existing railroad crossing east of the proposed annexation that will need to be upgraded and signalized as this area continues to develop.

**2550 East**

In the Spanish Fork City street master plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. 2550 East will need to curve to the east at 400 North to align with Expressway Lane, as this will allow for a signal that is not under the large UP&L power lines. The only portion of 2550 East that is in the proposed annexation is the easterly side from 400 South to 100 South, but the appropriate right-of-way should be dedicated for the widening of the street.

**7. The effect that the annexation will have upon City boundaries and whether the annexation will create potential for islands, or difficult service areas.**

Relative to the annexation's configuration and the provision of City services, Spanish Fork City is currently providing services in the immediate vicinity and it is not anticipated that the annexation would create a difficult service area for the City or other service provider.

**8. An estimate of potential revenue verses potential service costs.**

As it is anticipated that the annexation area would be developed residentially, there will be little generated in terms of revenue for the City. Such a situation is common with residential development given that municipalities commonly use sales tax revenue to subsidize the provision of services to residential neighborhoods.

**9. Requirements imposed by state law.**

Staff is aware of no requirements imposed by State Law, aside from following the requisite procedure for annexation, that would impact the annexation area.

**SECTION 4**

In order to evaluate the City's ability to provide municipal services to the proposed annexation, the following information is provided:

**1. Conformity to Master Plans for public utilities and facilities.**

**Water**

The culinary water system will need to be extended into and through the proposed annexation. The minimum size of any culinary line is to be 8". There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 20"

2550 East – 100 South to 400 North – 16"

100 South – 2550 East to UPRR – 12”

As the area develops and final densities are established, the Engineering Department will evaluate the need for any additional 12” lines in the area. The City has adopted the policy that the City will cover the additional cost of water lines in excess of 12”. This cost is funded through impact fees.

### **Sewer**

This annexation will be served by the existing Mapleton trunk line to the north of the area. There will need to be a new line constructed from the Mapleton trunk line to the south along Expressway Lane/ 2550 East that is 21” in size. This line will be constructed in 2550 East south of 400 North, but easements will be needed north of 400 North to the location of the Mapleton trunk line. These easements should follow the proposed alignment of Expressway Lane or possibly the Rocky Mountain Power high voltage corridor. These easements will need to be provided by the applicant/ developer in conjunction with the annexation. There will also be a new line in 100 South that is 18” in size. This line will extend to the south and east to serve the remainder of the Northeast Bench and the Ensign-Bickford property. There will also be a 12” constructed in 2550 East south of 100 South. The City has adopted the policy that the City will cover the additional cost of sewer lines in excess of 12”. This cost is funded through impact fees.

### **Storm Drain**

The storm drain system in the proposed annexation will need to follow the storm drain master plan for the northeast bench. That plan calls for a 24” storm drain line in Expressway Lane and an 18” storm drain line in 2550 East. These two lines are part of the impact fee projects. Other lines will need to be built in the area and should be sized appropriately for the development(s) the line will serve. The detention basins planned for the northeast bench area are not within the proposed annexation. In order for the proposed annexation to be developed, an alternate plan will need to be developed for this site. The detention requirements will need to be met by either providing the planned, off-site detention facilities, or by providing adequate detention facilities within the proposed annexation and development. This would require the construction and dedication of a retention basin (the minimum size accepted by the City is 3 acres) or providing additional landscaped retention areas adjacent to the streets. These areas will need to be of sufficient width and depth as to provide for the maintenance of the landscape and the requirements of the storm water. The construction of these facilities would not relieve the proposed development of this annexation from participating in the overall northeast bench storm drain master plan and paying the appropriate storm drain impact fees. Due to the fact that storm water flows downhill, the basin/ park areas will need to be placed in such locations as to allow for the storm water to enter the basin from the appropriate areas and also exit the basin into the storm drain outfall lines leading to Dry Creek.

The entire northeast bench area, not just this annexation, drains to the northwest. As the area continues to develop, there will be a point, at approximately the time when 50-55% of the land on the northeast bench is developed, that the lines that are outside of the northeast bench area will need to be constructed. This is similar to the scenario that took place on the southeast bench a few years ago. At that time, the developer and/or the City will need to construct the offsite lines to allow for the continued development of the area.

### **Pressurized Irrigation**

The pressurized irrigation system will need to be extended into and through the proposed annexation. The minimum size of any pressurized irrigation line is to be 6”. There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 16”

2550 East – 100 South to 400 North – 14”

100 South – 2550 East to UPRR – 10”

All other lines should be sized one size smaller than the culinary water lines.

### **Streets**

The streets in the Davis Annexation area that need to be addressed during the annexation process are 100 South (6800 South Utah County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

### **2550 East**

In the Spanish Fork City street master plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. 2550 East will need to curve to the east at 400 North to align with Expressway Lane, as this will allow for a signal that is not under the large UP&L power lines. The only portion of 2550 East that is in the proposed annexation is the easterly side from 130 North to 100 South, but the appropriate right-of-way should be dedicated for the widening of the street.

### **100 South**

100 South is planned as Minor Collector (40' of asphalt) with a trail along the south side of the street. This cross section requires an 80-foot right-of-way and should be consistent with the existing improvements to the west of the proposed annexation. There is an existing railroad crossing east of the proposed annexation that will need to be upgraded and signalized as this area continues to develop.

### **Surface Irrigation**

The East Bench Irrigation Company has existing ditches that run through the proposed annexation and continue beyond the proposed annexation and City boundary to existing users. These ditches will need to be piped through the annexation as the area develops. The other existing ditches in the area will need to be piped or abandoned as the area develops. This work will need to be coordinated with the canal company.

### **Parks and Trails**

The following improvements are required to meet the City's needs for parks and recreation facilities:

Parks needed: Neighborhood Park (this could be located in adjacent annexations)

Trails: Trail along power corridor, Trail along east side of 2550 East

### **Power**

This area is being serviced by SUVSD; the City has no power utilities in the area at this time. There will need to be a buy out of SUVSD line and customers in this area. There is a 46KV SUVPS line that runs through this area and easements and right of ways need to be addressed.

With the present loading of the City's current substations, the 600 amp line on 2550 East needs to be put in to service this area in 2008 to be able to service this area as it grows, the City also needs to put a new substation in this area by spring of 2009. Lastly, we need to obtain land and easements and right of ways for the power lines needed to feed power to this area.

### **Communications**

It is expected that all communications facilities will be installed at the time of development.

### **Gas**

Natural Gas is available in the immediate vicinity. Questar Gas is the service provider.

## **2. Presence of unique utility/facility needs or requirements.**

Aside from what has been noted in this report, there are no known unique facility needs or requirements.

## **3. Presence of irrigation or other ditches and related facilities.**

Aside from what has already been described in this report, there are no noteworthy ditches or irrigation facilities.

## **4. Public Safety evaluation.**

The City has a need for a substation in the immediate vicinity of this annexation. It is currently anticipated that the substation would house an ambulance and one fire engine. It is also anticipated that the development of this and other annexations in the area will generate the need for at least one additional police officer.

**5. Presence of Sensitive Lands or Watershed Protection issues.**

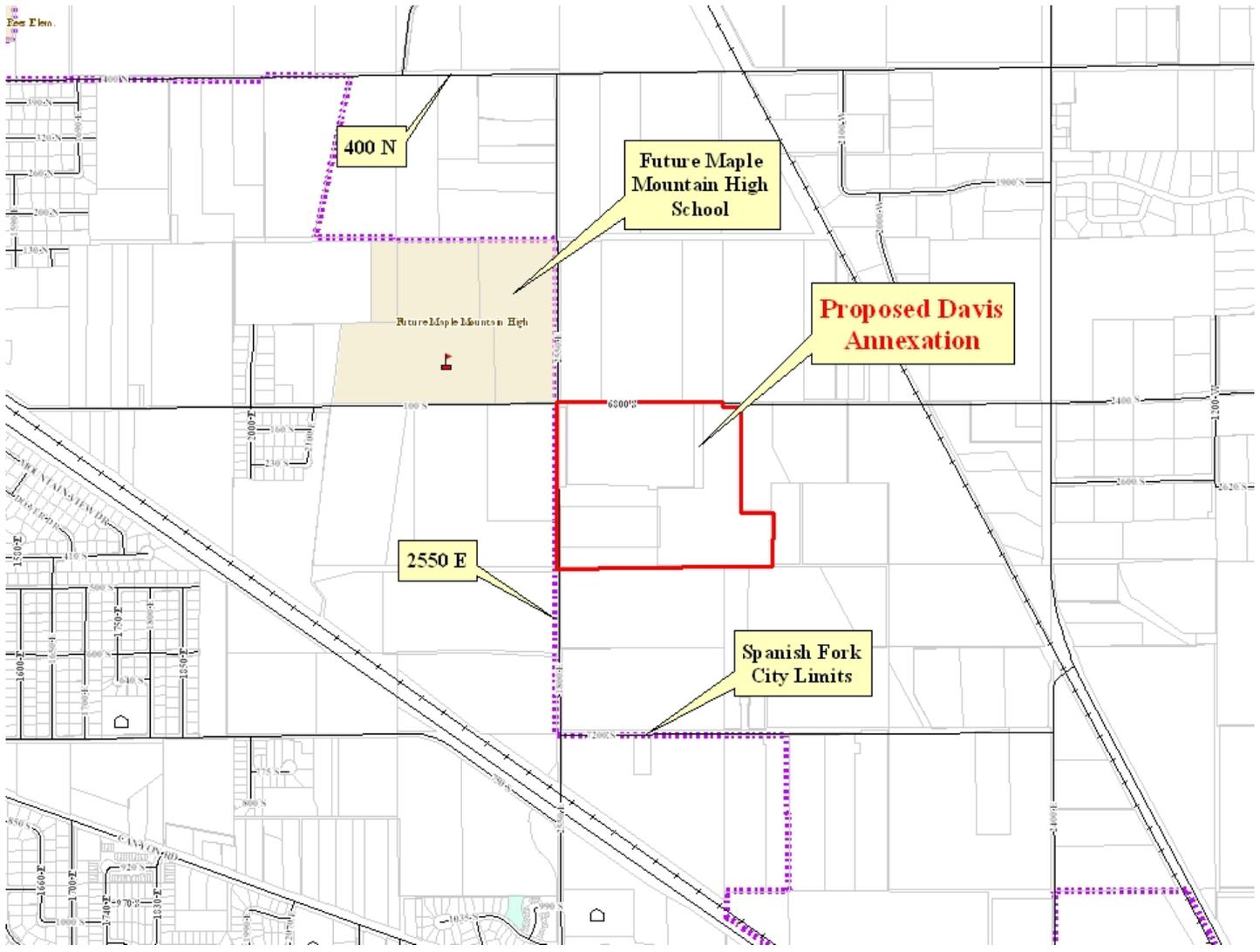
Staff is aware of no sensitive lands or watershed protection issues relative to the proposed annexation.

**6. Concept Plan's conformity with proposed zoning.**

To date, no concept plan has been formally reviewed for the proposed annexation.

**7. Annexation Agreement.**

A draft copy of the Annexation Agreement accompanies this report.







# REPORT TO THE PLANNING COMMISSION ENVISION ANNEXATION

**Agenda Date:** January 22, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** The applicant, Envision Development, is requesting approval for an Annexation.

**Zoning:** R-1-15 Requested

**General Plan:** Residential 1.5 to 2.5 Units Per Acre

**Project Size:** 78.17 acres

**Location:** Approximately 2550 East 500 South.

## Background Discussion

Accompanying this report is an Annexation Report and proposed Annexation Agreement. In short, this proposed annexation has been in the review process for a number of months and a number of specific issues have been addressed during this review. In recent weeks, the Development Review Committee recommended that it be approved. Draft minutes from that meeting read as follows:

## Envision Annexation

Applicant: Kay Heaps  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15  
 Location: 600 South 2550 East

Mr. Baker explained the Strawberry Electric Service District buyout for the lines that run through the area.

Discussion was held regarding the SESD power lines and the applicants need to contact SESD with regard to the buyout.

Mr. Baker moved to approve the Davis Annexation located at approximately 200 South 2800 East and the Envision Annexation located at 600 South 2550 East subject to the following conditions:

## Conditions

1. That the applicants enter into annexation agreements and based on all of the information in Richard Nielson's report.

Mr. Nielson seconded and the motion passed all in favor.

The Planning Commission reviewed this request in their January 9, 2008 meeting and recommended that it be approved. Draft minutes from that meeting read as follows:

## Envision Annexation

Applicant: Kay Heaps  
 General Plan: Residential 1.5 to 2.5 Units Per Acre  
 Zoning: R-1-15  
 Location: 600 South 2550 East



Mr. Anderson explained the property J. Merrill Hallam owns be assigned R-R.

Commissioner Lewis **moved** to recommend to the City Council **approval** of the Envision Annexation subject to the following condition:

#### **Condition**

1. That the applicants enter into the accompanying Annexation Agreements and based on all of the information in Richard Nielson's report.
2. J. Merrill Hallam parcel(s) be zoned R-R and the remaining portion R-1-15.

Commissioner Huff **seconded** and the motion **passed** all in favor.

#### **Staff Recommendation**

Staff recommends that the City Council approves the proposed Annexation subject to the following condition:

1. That the applicant enter into the accompanying Annexation Agreement.

## ANNEXATION AGREEMENT FOR THE ENVISION ANNEXATION

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_\_ day of December, 2007 by and between Envision Development, L.L.C. (hereinafter Petitioner) and Spanish Fork City, (hereinafter City), (together, the "Parties").

### RECITALS

A. WHEREAS, Petitioner owns approximately 28.83 acres of real property at approximately 750 South 2700 East (the Project Area), which area is described in Exhibit A, and which is part of a larger area consisting of 78.172 acres, which larger area is under consideration for annexation (the Annexed Area), which area is described in Exhibit B; and

B. WHEREAS, Owners have filed a Petition with City (the Petition), formally requesting the annexation of the property described in Exhibit B; and

C. WHEREAS, the Parties intend to enter into this Agreement to allow Petitioner and City to agree on issues such as streetscape, amenities, and other development objectives prior to development of the area in the Project Area. This process will lead to an attractive community that functions in a way that will add quality of life to future residents while allowing City to provide municipal services in a cost effective and efficient manner and in accordance with the Spanish Fork City General Comprehensive Plan, applicable zoning ordinances, and the Construction and Development Standards of City; and

D. WHEREAS, approval of this annexation agreement does not grant subdivision approval, site plan approval, or approval of any building permit, or other land use activity regulated by Spanish Fork City ordinances. Developer expressly acknowledges that nothing in this agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats, nor does it limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereinafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement shall have that meaning given to it by the Spanish Fork City Land Use Ordinance in effect on the date of a complete application. Certain other terms and phrases are referenced below. In the event of a conflict in definitions, that definition which provides the most restrictive development latitude shall prevail.

1.1 **Annexed Area** means the 78.172 acres under consideration for annexation into Spanish Fork City as described in Exhibit B.

1.2 **Buildout** means the completion of all of the development of the land in the Project Area, described in Exhibit A, in accordance with this Agreement.

1.3 **Design Guidelines** means the Design and Development Standards, found in the Spanish Fork Municipal Code, Title 15, Part 4, Chapter 16, and the Spanish Fork City Construction Standards, including the Specifications, Details, and Design Guidelines.

1.4 **Owner or Owners** means the owner(s) of the Property, or any part thereof, as indicated on the records of the Utah County Recorder.

1.5 **Project Area** means the 28.83 acres of land identified in Exhibit A, which has been petitioned for annexation and which is the subject of this agreement.

## SECTION II. GENERAL RIGHTS AND RESPONSIBILITIES

### 2.1 General Rights and Responsibilities of Developer

2.1.1 **Conditions of Approval and Impact Fees.** With respect to the development of the Project Area, Petitioner accepts and agrees to comply with the impact, connection and building fees of the City in effect at the time of assessment, whether or not currently in effect, the City agreeing and representing that any such fee schedule will be applied uniformly within the City or service area of the City, as applicable. Developer acknowledges that the Project requires infrastructure supported by impact fees and finds the fees currently imposed to be a reasonable monetary expression of exactions that would otherwise be required at this time. Petitioner agrees not to challenge, contest or bring a judicial action seeking to avoid payment of or to seek reimbursement for such fees, so long as such fees are applied uniformly within the City or service area.

2.1.2 **Construction Mitigation.** Petitioner shall provide the following measures, all to the reasonable satisfaction of the City, to mitigate the impact of construction within Project Area. Petitioner shall also adhere to the usual construction impact mitigation measures required by City. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included in each application for development of any final plat:

2.1.2.1 Limits of disturbance, vegetation protection and the re-vegetation plan for all construction, including construction of public improvements;

2.1.2.2 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed;

2.1.2.3 Construction traffic routing plan to minimize traffic impacts on Spanish Fork City and residential areas as approved by City; and

2.1.3 **Subsequent Applications Under Future Development Code.** Without waiving any rights granted by this Agreement, Petitioner may choose to submit some or all of Petitioner's properties for development under the version of the City's Design Guidelines existing at the time of the application. In the event an application or plat expires, the version of the Design Guidelines existing at the time of re-application shall apply.

### 2.2 General Rights and Responsibilities of the City

2.2.1 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards, or rules regulating development or zoning.

2.2.2 **Compliance with City Requirements and Standards.** Petitioner expressly acknowledges that nothing in this Agreement shall be deemed to relieve any of them from their obligations to comply with all applicable requirements of City necessary for approval and recordation of subdivision plats and site plans for the Project Area, or any other portions of the Property, in effect at the time of development approval, or re-approval in the event of expiration, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of City.

2.2.3 **Power of Eminent Domain.** City agrees that, in the event Petitioner needs to obtain easements or rights of way for the purpose of constructing offsite infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Petitioner, may *consider* the exercise of its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Petitioner, including land costs, court costs, appraisal costs, legal fees, and any other costs associated with any such condemnation action.

2.3 **Recording.** City or Petitioner may cause this Agreement, or a notice concerning this Agreement, to be recorded with the Utah County Recorder.

### SECTION III. SPECIFIC RIGHTS AND RESPONSIBILITIES

#### 3.1 Obligations of Petitioner

##### 3.1.1 Municipal Utilities

3.1.1.1 **Satisfaction of Water Rights Requirement.** Petitioner hereby asserts that it has read and is familiar with Spanish Fork City Code §15.4.16.080 and hereby agrees that prior to either approval of a final plat for, or issuance of a building permit on, any parcel of property that is included in the Project Area, the owner of the subject parcel shall either dedicate water rights to the City, or pay a cash equivalent in value to the cost of the required water rights, as specified by, or as determined in accordance with the provisions of the City Code. City shall not be required to approve any plat, or issue any building permit, until such requirements are fully satisfied.

3.1.1.2 **Installation and Design Criteria.** City provides the following utilities, which need to be brought to the Project by Petitioner, at no cost to City: Electric Power, Culinary Water, Pressurized Irrigation Water, Sewer, Storm Drain, and Telecommunications. Petitioner shall design, build and dedicate to the City adequate delivery systems for each of these utilities according to City specifications and standards, including all distribution lines, conduit, street lights, valving, fire hydrants, meters, and other required services to meet the needs for the Project Area. Improvements shall be upsized at the direction of the City Engineer to meet future needs of the City utilities. All facilities necessary to provide adequate utility services installed by Petitioner within the Project Area, upon acceptance by the City, shall be owned, operated, and maintained by City, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner. Petitioner or its successors or assigns shall be responsible for such infrastructure until such time as City accepts the improvements.

3.1.1.3 **Easements.** Petitioner shall grant to City, at no cost to City, all easements necessary for the operation, maintenance, and replacement of all utilities, located within the Project Area as City determines to be necessary. In addition to on site easements, an off site sewer easement is necessary to service the Project Area with sewer. Petitioner shall be required to obtain and transfer to City the off site sewer easement needed to provide sewer service, unless another developer has already provided it. This shall be provided prior to the filing of an application for preliminary plat approval with City. It shall be in a location suitable to the public works department of City.

3.1.1.4 **Master Plan Utility Infrastructure Sizing.** Petitioner shall design, build and dedicate to City the utility infrastructure as shown in Exhibit C, unless it has already been provided by another developer. The timing of construction shall be dependent on project phasing and necessary sizing requirements to meet the standards of service at a level generally provided to other areas of the City and as determined by the City Engineer. Petitioner shall be entitled to reimbursement for the difference in cost between a twelve inch and twenty inch culinary water line in 2550 East. Petitioner shall be entitled to reimbursement for the difference in cost between a ten inch and sixteen inch pressure irrigation water line

in 2550 East. Petitioner shall be entitled to reimbursement for the cost of the storm drain line in 2550 East. Reimbursement shall be made from impact fees pursuant to a separate agreement, to be drafted and executed when the actual costs of construction are known. Reimbursement will be over a period of years, based upon a ratio of these costs compared to the overall costs for which impact fees are assessed, and are subject to the collection of impact fees. If another developer has previously provided this infrastructure, Petitioner shall not be entitled to reimbursement, but may be obligated to pay the earlier developer under the terms of a connector's agreement.

**3.1.1.5 Storm Drain.** In addition to the storm drain line shown on Exhibit C, Petitioner shall construct facilities to retain storm water on site until such time as the regional facilities shown on City's Storm Drain Master Plan are constructed and ready to accept storm drain flows. These on site facilities shall be constructed during the first phase of any development and shall be ready for use prior to the issuance of any certificate of occupancy.

**3.1.1.6 SESD.** Petitioner shall be obligated to buy out SESD electrical facilities which may exist in the Annexed Area. This shall be accomplished prior to recording of the Annexation ordinance. A letter from SESD, indicating payment for the facilities has been received, shall accompany the annexation mylar.

**3.1.1.7 Reimbursement.** The cost of upsizing the culinary water, pressurized irrigation water, electric power, telecommunications, storm drain, or sewer infrastructure, except as set forth in the preceding paragraph, shall be borne by the Petitioner without reimbursement. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who connect to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### **3.1.2 Transportation, Including Streets and Trails**

**3.1.2.1 Roadway Dedication.** Petitioner shall dedicate sufficient property for a 68 foot wide roadway right of way (minor collector) along 750 South (currently 7200 South, County) with frontage to the Project Area. The dedication shall take place prior to recording of the annexation ordinance, and shall be a condition of annexation.

**3.1.2.2 Roadway Construction.** Petitioner shall be required to build a road along the frontage of the Project Area, in accordance with the Design Guidelines, for a minor collector along 750 South when development of the Project Area takes place. Other offsite road improvements may be required, at the time of development, if traffic or safety studies indicate the development in the Project Area will create a need for offsite improvements. The parties may negotiate the details and timing of any such improvements. Offsite sidewalk improvements may also be required in order to create safe sidewalks for children from development in the Project Area to walk to the nearest public school.

**3.1.2.3 Railroad Crossings.** The railroad crossing at 2550 East and the railroad adjacent to State Road 6 is in need of upgrading to handle increased traffic created by this Project, together with other development in the vicinity. UDOT is currently undertaking to upgrade that crossing. However, no timetable for completion is known. Petitioner agrees that no building permits may be issued until that railroad crossing is complete.

**3.1.2.4 Trail Corridor Dedication and Trail Construction.** Petitioner will dedicate land for a trail along the Rocky Mountain Power electric easement corridor in the Project Area, which event shall

be a condition of annexation. Petitioner may elect to build, to City Design Guidelines, a trail on the dedicated ground. Should Petitioner so elect, a density bonus for the trail dedication and installation shall be granted to Petitioner, in accordance with the Master Planned Development ordinance of City.

**3.1.2.5 Reimbursement.** The cost of required, offsite improvements in this section 3.1.2 are subject to a pro-rata reimbursement from other properties benefitting from the improvements. Connector's agreements will be granted to Petitioner to allow for a pro-rata reimbursement of costs from future developers or Owners who have frontage to the infrastructure installed by Petitioner. A separate connector's agreement shall be entered when the actual cost of those improvements is known. City's standard connector's agreement shall be used. Reimbursement shall come from those properties benefitting from the listed improvements, as determined by the City Engineer, at the time of development or otherwise when connecting to the improvements. The amount shall be determined on a pro-rata basis, based upon the benefit conferred, as determined by the City Engineer. Petitioner agrees to timely pay any connector's agreements to which it is subject.

### **3.1.3 Land Transfer**

**3.1.3.1 Electric Substation.** City needs a new electric substation in order to provide electric service to the Mapleton Bench area of City, including the Project Area. City is underway with various studies, which will recommend suitable locations for a new electric substation in the vicinity of the Project Area. Until City obtains the location for the electric substation, no development application may be submitted by Petitioner.

**3.1.3.2 Well Property.** City is investigating various locations for a well, to serve culinary and/or pressure irrigation water needs. If it is determined that the well location needs to be within the Project Area, Petitioner agrees to transfer up to one-half an acre, together with an appropriate source protection zone if a culinary well is to be drilled. The location will be designated by City.

**3.1.3.3 Purchase Price.** City shall be obligated to pay fair market value for any land transfer required by this section 3.13. If the parties cannot agree upon the fair market value, City, at its sole cost and expense, shall obtain an appraisal of the property. If Petitioner does not agree with City's appraisal, it shall, at its sole cost and expense, obtain a second appraisal. The average of the two appraisals shall be deemed to be fair market value.

## **3.2 Obligations of City.**

**Acceptance of Infrastructure.** City shall accept the dedication and maintenance of all streets, trails and open spaces in the Project Area, so long as such streets are constructed to the City specifications and standards, and are dedicated free of all liens and encumbrances, provided that any warranty periods as established by City ordinance or Design Guidelines shall be the responsibility of Petitioner.

**Utility Service.** Upon the dedication and acceptance by City of the utility infrastructure, satisfaction of the water rights requirements (as outlined in section 3.1.1), and payment of impact fees, connection fees, and any other applicable fees by Petitioner, City shall provide all of the Project Area served by such infrastructure with utility service at a level generally provided to other areas of the City.

**Plat Review.** Upon Petitioner complying with all the conditions of this Agreement, City shall promptly review development requests made by Petitioner, including plat approval, in accordance with City ordinances, rules, and policies. Petitioner shall comply in all respects with requirements of plat and/or development approval. Nothing herein shall be considered to limit or restrict the police powers of the City Council in approving, denying, or establishing conditions for any development request. Development approval is not guaranteed hereby, but vesting may occur only through the provisions of the Utah Land Use Development and Management Act, Utah Code Ann. §10-9a-101 et seq. (1953, as amended) and Spanish Fork Municipal Code, Title 15.

## SECTION IV. ZONING

4.1 **Master Planned Development and Underlying Zoning.** Petitioner may desire to provide amenities and obtain bonus densities based upon a Master Planned Development as contemplated by Spanish Fork Municipal Code §15.3.24.030. Petitioner shall be allowed to proceed with the development of a Master Planned Development and to receive bonus densities, for a total project density up to 2 ½ units per acre, as authorized by the Master Planned Development Ordinance as long as Petitioner provides amenities allowed by the Ordinance and required by the City Council during preliminary plat approval and remains in full compliance with the Municipal Code and all Design Guidelines of City. Nothing herein shall be construed to limit the ability of the City Council from exercising its police powers to enact zoning ordinances, some of which may affect the Project Area.

## SECTION IV. GENERAL PROVISIONS

5.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Project to which the successor holds title, or which would apply to the Developer through whom the interest was acquired. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Project.

5.2 **Assignment.** Petitioner shall have the right, with City's consent, to assign or transfer all or any portion of his/her rights and obligations under this Agreement to any party acquiring an interest or estate in the Project or any portion thereof, except as specifically set forth below. The City may not unreasonably withhold its consent to such assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Petitioner to any other party, individual or entity without assigning the rights as well as the obligations under this Agreement. Petitioner shall provide written notice of any proposed or completed assignment or transfer. Unless City objects in writing within thirty (30) days, City shall be deemed to have approved of and consented to the assignment. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights under this Agreement. Notwithstanding the foregoing, Petitioner's selling or conveying individual lots or parcels of land to builders, individuals or developers shall not be deemed to be an assignment subject to the above requirement for approval unless specifically designated as an assignment by Petitioner.

5.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) the Project Area is a private development; (ii) City and Petitioner hereby renounce the existence of any form of agency relationship, joint venture or partnership among City and Petitioner; and (iii) nothing contained herein shall be construed as creating any such relationship among City and Petitioner.

5.4 **Consent.** In the event this Agreement provides for consent from the City or Petitioner, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing, and in no event shall consent be unreasonably withheld or delayed.

5.5 **Legal Challenges.** In the event that a third party challenges this Agreement or the development reimbursement to Petitioner as contemplated herein, Petitioner agrees to accept responsibility for all legal fees, including attorneys fees, expert witness expenses, and/or court costs incurred by the City to defend such action, upon presentation to Petitioner of an itemized list of costs, expenses, and fees. City

shall not be required to make any reimbursements contemplated herein if the source of funds for such reimbursements are held invalid, illegal, void, or otherwise unenforceable. Petitioner shall be allowed to participate in decisions related to this provision, including the selection and hiring of legal counsel and the conduct of the litigation or any settlement thereof.

## SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Exhibits and Headings.** All Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein. The headings to the various paragraphs and sections are for assistance in locating contract provisions, but are not to be considered part of the contract provisions.

6.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

6.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

6.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

6.5 **Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

6.6 **Governing Law, and Dispute Resolution, and Attorney's Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.6.1 **Mediation.** Any and all disputes arising out of or related to this Agreement or the Parties performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation. The parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute; and; (iii) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the mediation shall be in Utah County. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed from an approved mediator list provided by the Utah State Bar Association with specialized knowledge of contract and municipal law. The appointment shall take place pursuant to the guidelines set forth by the Utah State Bar. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys fees and costs incurred in said action.

6.6.2 **Default Litigation.** If any Party hereto is required to engage the services of counsel by reason of the default of another Party, the non-defaulting Party shall be entitled to receive its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be filed. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

6.7 **Notices.** Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by certified mail, return receipt requested or by facsimile. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. If given by facsimile to the address and number for such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses set forth below:

If to City to:  
SPANISH FORK CITY  
Attn: City Manager  
40 South Main  
Spanish Fork, Utah 84660

If to Petitioner to:  
Envision Development, L.L.C.  
Attn: L. Kay Heaps  
P.O. Box 717  
Springville, Utah 84663

6.8 **Exhibits.** The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A	Legal description of the Project Area
Exhibit B	Legal description of the Annexed Area
Exhibit C	Utility and Improvement Plan

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same and by the City of Spanish Fork, acting by and through its City Council as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

**SPANISH FORK CITY** by:

\_\_\_\_\_  
JOE L THOMAS, Mayor

ATTEST:

\_\_\_\_\_  
Kent R. Clark, City Recorder

**ENVISION DEVELOPMENT, L.L.C.** by:

\_\_\_\_\_  
L. KAY HEAPS, Manager

**SPANISH FORK CITY  
Annexation Feasibility Report**



<b>Agenda Date:</b>	November 7, 2007
<b>Staff Contacts:</b>	Dave Anderson, Planning Director Richard Nielsen, Assistant Public Works Director
<b>Reviewed By:</b>	Development Review Committee
<b>Subject:</b>	Envision Annexation Report

**SECTION 1**

Annexation Map.

Annexation Plat.

**SECTION 2**

annexation sponsor: Envision Development

phone: (801) 489-0750

annexation location: 200 South 2600 East

acreage in annexation: 74.08 acres

property owner(s) and parcels

owner: Arne & J. Merrill Hallam  
valuation: \$324,900

parcel: 27:032:0036

acreage: 20.3 acres

owner: Carol & J. Merrill Hallam  
valuation: \$324,900

parcel: 27:032:0035

acreage: 19.99 acres

owner: Bruce & Crystal Tietjen  
valuation: \$80,200

parcel: 36:525:0001

acreage: 5.25 acres

owner: Sunrise Ridge at Springville  
valuation: \$724,400

parcel: 36:525:0003

acreage: 13.82 acres

owner: Sunrise Ridge at Springville  
valuation: \$724,400

parcel: 36:525:0003

acreage: 14.99 acres

submittal date: April 12, 2007

acceptance date: April 17, 2007

certification date: May 4, 2007

date of protest filed: none

Development Review Committee recommendation date:

Planning Commission recommendation date:

City Council meeting date:

### SECTION 3

In accordance with 15.3.08.030 (B) of the Municipal Code, the following items are addressed in Section 3 of the Annexation report:

**1. Whether the proposed property is within the Growth Management Boundary of the General Plan.**

It has been proposed to amend the Growth Management Boundary to include the annexation area.

**2. Present and proposed land use and zoning.**

At present, there are no dwellings on the subject properties and the annexation area has a Residential Agricultural zoning designation in Utah County. Spanish Fork City has designated the annexation area as Residential 1.5 to 2.5 units per acre on the General Plan. The zoning that most appropriately correlates to the General Plan is R-1-15.

**3. Present and potential demand for various municipal services.**

At present, there is essentially no demand for municipal services. If the subject properties are annexed, the City will then be obligated to provide at least some municipal services to the area. Most immediately, the City will be required to provide public safety service to the area. As the properties develop, the City will then be obligated to provide utility service. Any residents of the annexation area would, of course, be entitled to any services (recreations programs, library....) that the City offers.

**4. Distances from existing utility lines, public schools, parks, and shopping areas.**

Detailed information is provided in Section 4 of this report relative to the proximity of the proposed annexation to utility lines. At present, the closest elementary school, Rees Elementary, is 1.2 miles from the proposed annexation. The closest junior high is Diamond Fork, is 1.8 miles from the proposed annexation. At present, a new high school, Maple Mountain, is under construction at a location that is essentially adjacent to the proposed annexation. It is anticipated that Maple Mountain will be open for classes in August of 2009. The closest shopping area of any substantial size is 2.4 miles from the proposed annexation.

**5. Specific time tables for extension of services to the area and how these services would be financed.**

It is anticipated that services will be extended to the area as development occurs. As such, it is expected that utilities will be funded by property owners or the development community. At present the City has no plans to extend utilities to the area or to make upgrades to City facilities that would serve the Annexation Area. It's possible that this situation may change with respect to power service. Within the next twelve months, the City may obtain property for a power substation and may budget funds to construct that substation within the next 24 months.

**6. Potential impact on existing and proposed streets.**

The streets in the Envision Annexation area that need to be addressed during the annexation process are 750 South (7200 South County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

**750 South**

750 South is planned as Minor Collector (68' right-of-way w/40' of asphalt).

**2550 East**

In the Spanish Fork City Street Master Plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. The only portion of 2550 East that is in the proposed annexation is the easterly side from approximately 400 South to 750 South, but the appropriate right-of-way should be dedicated for the widening of the street.

**7. The effect that the annexation will have upon City boundaries and whether the annexation will create potential for islands, or difficult service areas.**

Relative to the annexation's configuration and the provision of City services, Spanish Fork City is currently providing services in the immediate vicinity and it is not anticipated that the annexation would create a difficult service area for the City or other service provider.

**8. An estimate of potential revenue verses potential service costs.**

As it is anticipated that the annexation area would be developed residentially, there will be little generated in terms of revenue for the City. Such a situation is common with residential development given that municipalities commonly use sales tax revenue to subsidize the provision of services to residential neighborhoods.

**9. Requirements imposed by state law.**

Staff is aware of no requirements imposed by State Law, aside from following the requisite procedure for annexation, that would impact the annexation area.

**SECTION 4**

In order to evaluate the City's ability to provide municipal services to the proposed annexation, the following information is provided:

**1. Conformity to Master Plans for public utilities and facilities.**

**Water**

The culinary water system will need to be extended into and through the proposed annexation. The minimum size of any culinary line is to be 8". There are larger lines that are needed in the following streets:

- 2550 East – 100 South to US-6 – 20"
- 2550 East – 100 South to 400 North – 16"
- 100 South – 2550 East to UPRR – 12"

As the area develops and final densities are established, the Engineering Department will evaluate the need for any additional 12" lines in the area. The City has adopted the policy that the City will cover the additional cost of water lines in excess of 12". This cost is funded through impact fees.

### **Sewer**

This annexation will be served by the existing Mapleton trunk line to the north of the area. There will need to be a new line constructed from the Mapleton trunk line to the south along Expressway Lane/2550 East that is 21" in size north of 100 South. This line will be constructed in 2550 East south of 400 North, but easements will be needed north of 400 North to the location of the Mapleton trunk line. These easements should follow the proposed alignment of Expressway Lane or possibly the Rocky Mountain Power high voltage corridor. These easements will need to be provided by the applicant/ developer in conjunction with the annexation. There will also be new lines in 2550 East and 750 South that are 12" in size. These lines will extend to the south and east to serve the remainder of the Northeast Bench. The City has adopted the policy that the City will cover the additional cost of sewer lines in excess of 12". This cost is funded through impact fees.

### **Storm Drain**

The storm drain system in the proposed annexation will need to follow the storm drain master plan for the northeast bench. That plan calls for a 24" storm drain line in Expressway Lane and an 18" storm drain line in 2550 East. These two lines are part of the impact fee projects. Other lines will need to be built in the area and should be sized appropriately for the development(s) the line will serve. The detention basins planned for the northeast bench area are not within the proposed annexation. In order for the proposed annexation to be developed, an alternate plan will need to be developed for this site. The detention requirements will need to be met by either providing the planned, off-site detention facilities, or by providing adequate detention facilities within the proposed annexation and development. This would require the construction and dedication of a retention basin (the minimum size accepted by the City is 3 acres) or providing additional landscaped retention areas adjacent to the streets. These areas will need to be of sufficient width and depth as to provide for the maintenance of the landscape and the requirements of the storm water. The construction of these facilities would not relieve the proposed development of this annexation from participating in the overall northeast bench storm drain master plan and paying the appropriate storm drain impact fees. Due to the fact that storm water flows downhill, the basin/ park areas will need to be placed in such locations as to allow for the storm water to enter the basin from the appropriate areas and also exit the basin into the storm drain outfall lines leading to Dry Creek.

The entire northeast bench area, not just this annexation, drains to the northwest. As the area continues to develop, there will be a point, at approximately the time when 50-55% of the land on the northeast bench is developed, that the lines that are outside of the northeast bench area will need to be constructed. This is similar to the scenario that took place on the southeast bench a few years ago. At that time, the developer and/or the City will need to construct the offsite lines to allow for the continued development of the area.

### **Pressurized Irrigation**

The pressurized irrigation system will need to be extended into and through the proposed annexation. The minimum size of any pressurized irrigation line is to be 6". There are larger lines that are needed in the following streets:

2550 East – 100 South to US-6 – 16"  
750 South – 2550 East to 3400 East – 10"

All other lines should be sized one size smaller than the culinary water lines.

### **Streets**

The streets in the Envision Annexation area that need to be addressed during the annexation process are 750 South (7200 South County) and 2550 East. These streets will be needed to provide adequate traffic capacity in the area.

### **750 South**

750 South is planned as Minor Collector (68' right-of-way w/40' of asphalt).

## **2550 East**

In the Spanish Fork City Street Master Plan, 2550 East is planned to be a 90-foot right-of-way with a trail (Major Collector). MAG would like to see the street be a 128-foot right-of-way (Arterial) between US-6 and connecting to US-89 in Mapleton. In my opinion, the 128-foot ROW is not needed as the traffic patterns are not likely to go from US-6 to US-89, but rather toward I-15. The only portion of 2550 East that is in the proposed annexation is the easterly side from approximately 400 South to 750 South, but the appropriate right-of-way should be dedicated for the widening of the street.

## **Surface Irrigation**

The East Bench Irrigation Company has existing ditches that run through the proposed annexation and continue beyond the proposed annexation and City boundary to existing users. These ditches will need to be piped through the annexation as the area develops. The other existing ditches in the area will need to be piped or abandoned as the area develops. This work will need to be coordinated with the canal company.

## **Parks and Trails**

The following improvements are required to meet the City's needs for parks and recreation facilities:

Parks needed: Neighborhood Park (this could be located in adjacent annexations)

Trails: Trail along power corridor, Trail along east side of 2550 East

## **Power**

This area is being serviced by SUVSD; the City has no power utilities in the area at this time. There will need to be a buy out of SUVSD line and customers in this area. There is a 46KV SUVPS line that runs through this area and easements and right of ways need to be addressed.

With the present loading of the City's current substations, the 600 amp line on 2550 East needs to be put in to service this area in 2008 to be able to service this area as it grows, the City also needs to put a new substation in this area by spring of 2009. Lastly, we need to obtain land and easements and right of ways for the power lines needed to feed power to this area.

## **Communications**

It is expected that all communications facilities will be installed at the time of development.

## **Gas**

Natural Gas is available in the immediate vicinity. Questar Gas is the service provider.

## **2. Presence of unique utility/facility needs or requirements.**

Aside from what has been noted in this report, there are no known unique facility needs or requirements.

## **3. Presence of irrigation or other ditches and related facilities.**

Aside from what has already been described in this report, there are no noteworthy ditches or irrigation facilities.

## **4. Public Safety evaluation.**

The City has a need for a substation in the immediate vicinity of this annexation. It is currently anticipated that the substation would house an ambulance and one fire engine. It is also anticipated that the development of this and other annexations in the area will generate the need for at least one additional police officer.

## **5. Presence of Sensitive Lands or Watershed Protection issues.**

Staff is aware of no sensitive lands or watershed protection issues relative to the proposed annexation.

## **6. Concept Plan's conformity with proposed zoning.**

To date, no concept plan has been formally reviewed for the proposed annexation.

**7. Annexation Agreement.**

A draft copy of the Annexation Agreement accompanies this report.





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**Tentative Minutes**  
**Spanish Fork City Council Meeting**  
**January 22, 2008**

Elected Officials Present: Mayor Joe L Thomas, Councilmember's Steven M. Leifson, G. Wayne Andersen, Rod Dart, Jens P. Nielson. Richard M. Davis was excused.

Staff Present: Dave Oyler, City Manager; Junior Baker, City Attorney; Dale Robinson, Parks and Recreation Director; John Bowcut, IS Director; Richard Nielson, Assistant Public Works Director; Dave Anderson, City Planner; Dee Rosenbaum, Public Safety Director; Kent Clark, Finance Director; Kimberly Robinson, Deputy Recorder

Citizens Present: Lana Creer Harris

**CALL TO ORDER, PLEDGE:**

Mayor Thomas called the meeting to order and led in the pledge of allegiance at 6:00 p.m.

**PUBLIC COMMENTS:**

There was no public comment given at this time.

**COUNCIL COMMENTS:**

Councilman Dart reported he attended meetings for senior citizens and everything is going ok, they went over some policies and have a Valentine dinner dance February 8, 2008. The South Utah Valley Animal Service Board will propose to go with the north valley animal service to unifying their licenses, so the numbers will be the same and they can tell where the animal came from. The library is in need of two new board members. The Chamber of Commerce is planning a retreat to plan for some of their events, also the business directory will be out soon. There are great things the citizens are doing around town and he recognized those involved with shop with a cop and also those that put on the breakfast for that activity. He commended the schools that are doing some great service projects. He encouraged all that can help their neighbors clear the snow to do so.

Councilman Leifson reported he met with UDOT and presented a proposal regarding freeway issues we have here.

Mayor Thomas invited at the last City Council meeting anyone that would like to serve on a board should send an e-mail to [council@spanishfork.org](mailto:council@spanishfork.org). The state has some great things for economic development, we are number one in the nation. Right now the outlook is very bright and they are looking forward to a number of things. The windmills will be delivered in February or March so we can look forward to that.

Councilman Leifson stated Councilman Richard Davis is stuck at the airport and is excused from the meeting tonight.

**CONSENT ITEMS:**

**Minutes of Spanish Fork City Council Meeting – January 8, 2008**

51  
52 Councilman Andersen made a **Motion** to approve the consent items. Councilman Dart **Seconded**  
53 and the motion **Passed** all in favor.

54  
55 **NEW BUSINESS:**

56  
57 **Amendment to Boards and Committees Ordinance**

58  
59 Mr. Baker explained the changes to the ordinance adjusting the personnel committee items,  
60 library board, Fiesta Days Committee, and in the last change the Utility Board is being repealed.

61  
62 Mayor Thomas asked if there is a way the ordinance for the library board could allow up to nine  
63 members, but they could function with less.

64  
65 Mr. Baker stated he felt the library director would like to keep it the way it is with a specific  
66 number.

67  
68 Councilman Leifson likes the idea of the three year commitment on the Fiesta Days Committee.

69  
70 Councilman Leifson made a **Motion** to adopt Ordinance 02-08 making amendments to the  
71 Boards and Committees. Councilman Andersen **Seconded** and the motion **Passed** all in favor.

72  
73 **Appointment of Boards and Committees**

74  
75 Mayor Thomas would like to appoint:

- 76  
77 Airport Board - Ron Crafts  
78 Parks and Recreation Committee - Treaci Tagg, Doug Brown, Jerry Huffman, and Betsy Redford  
79 Historic Committee - Richard Harris  
80 Youth Council Advisor - Rochelle Barber

81  
82 Councilman Leifson made a **Motion** to appoint the proposed members. Councilman Nielson  
83 **Seconded** and the motion **Passed** all in favor

84  
85 **Old Mill Estates Amended Preliminary Plat**

86  
87 Mr. Anderson explained the reason the plat is being requested for amendment. The proposed plat  
88 has one more dwelling unit in it than the plat that was earlier approved by the Council. This  
89 amendment has been instigated mainly by city staff. The city owns a property next to the  
90 development and suggested that the developer include the property into their project. They  
91 understand the canal will be piped and they will be responsible for the maintenance there of. In  
92 exchange for the land and piping of the canal they can receive another dwelling unit. The DRC  
93 and Planning Commission recommend approval for this preliminary plat amendment.

94  
95 Councilman Leifson asked about the easement for the canal company being a condition.

96  
97 Mr. Anderson explained in Planning Commission meeting it was required that all necessary  
98 piping will be performed in their first phase.

99

100 Councilman Andersen would like to see another condition added that there is a date specific for a  
101 completion time, before the irrigation season, if they cannot make that deadline that they wait  
102 until after the irrigation season is over.

103  
104 Councilman Nielson made a **Motion** to approve the proposed Amended Preliminary Plat for Old  
105 Mill Estates subject to the following Conditions:

106  
107 **Conditions**

- 108 1. That the applicant meet all the conditions of prior plat approval.
- 109 2. That lot 57 not be allowed direct access to Arrowhead Trail.
- 110 3. That any required piping of irrigation ditches be completed with the first phase.
- 111 4. That the easement discussed be shown on the plat
- 112 5. That there be a date specific on the water for piping before April 15 or after the irrigation  
113 season ends Oct 15.

114 Councilman Leifson **Seconded** and the motion **Passed** all in favor.

115  
116 **Davis Annexation**  
117 **Envision Annexation**

118  
119 Mr. Anderson explained that these items will be continued until the public hearing notice date of  
120 February 5, 2008.

121  
122 **ADJOURN:**

123  
124 Councilman Leifson made a **Motion** to adjourn. Councilman Andersen **Seconded** and the  
125 motion **Passed** all in favor at 6:26 p.m.

126  
127  
128 ADOPTED:

\_\_\_\_\_  
Kimberly Robinson, Deputy Recorder

129

## MEMO

To: Mayor and City Council  
From: S. Junior Baker  
Date: 30 January 2008  
Re: ALA Facilities Agreement Amendment Consent Item

The February 5 council agenda contains a consent item for the ALA Facilities Use Agreement Amendment. The Council, earlier, approved the Facilities Use Agreement with ALA. The State Risk Manager, who insures ALA wanted some minor changes in the indemnity and insurance provisions. We have looked those over and find them acceptable. Since the changes are very minor, this appears as a consent item. We made the same changes with the school district, which is also insured by the State Risk Manager. We have also finalized the exhibits.

**AMERICAN LEADERSHIP ACADEMY & SPANISH FORK CITY  
MASTER FACILITY USE AGREEMENT**

THIS AMERICAN LEADERSHIP ACADEMY & SPANISH FORK CITY - MASTER FACILITY USE AGREEMENT (the "Agreement"), is made and entered into by and between the BOARD OF DIRECTORS OF AMERICAN LEADERSHIP ACADEMY, a Utah Charter School ("School"), of 898 West 1100 South, Spanish Fork, Utah, 84660, and SPANISH FORK CITY ("City"), a political subdivision of the State of Utah, of 40 South Main, Spanish Fork, Utah, 84660.

**WITNESSETH**

WHEREAS, the School and City, through their respective governing bodies, have voluntarily determined that the interests and welfare of the public within their respective jurisdictions will best be served by this Agreement to provide for the shared use of the School's Facilities and the City's Facilities located in Spanish Fork, Utah, in conjunction with the School's classes, programs, activities, and events; and the City's classes, programs, activities, and events, as described herein; and

WHEREAS, the governing bodies of the School and the City have by resolution agreed to adopt this Agreement to provide for the joint and cooperative action contained herein; and

WHEREAS, this Agreement shall replace and supercede the American Leadership Academy & Spanish Fork City Master Facility Use Agreement executed February 2007 between the School and City;

NOW, THEREFORE, be it mutually covenanted and agreed as follows, each of the parties accepting as consideration for this Agreement the mutual promises and agreements of the other:

**SECTION ONE**  
**EFFECTIVE DATE AND DURATION**

This Agreement shall be effective on the date it is signed by the parties, and shall continue for a period of four (4) years, unless sooner terminated as provided herein. This agreement shall automatically renew for five (5) additional four year terms unless sooner terminated as provided herein.

**SECTION TWO**  
**ADMINISTRATIVE ENTITY**

The parties agree to establish a six (6) member Joint Governance Committee (the "Committee") comprised of the following individuals: (a) the School's Director, or his/her designee; (b) the School's Athletic Director, or his/her designee; (c) the School's Legal Counsel, or his/her designee; (d) the Spanish Fork City Manager, or his/her designee; (e) the Spanish Fork City Parks & Recreation Director, or his/her designee; and (f) the Spanish Fork City Attorney, or his/her designee. The School's Operations Director, or his/her designee, and the Spanish Fork City Parks & Recreation Director, or his/her designee, shall be the co-chairs of the Committee. This Committee shall meet as necessary and shall, in addition to any other duties and responsibilities set forth in this Agreement, establish usage guidelines and rules, scheduling procedures, supervision and security, custodial duties, and payment of expenses associated with the Facilities, as described herein, subject to the terms and conditions of this Agreement. Governance of the Committee shall be by majority rule. In the event of a deadlock when there is an even division among the members of the Committee with respect to a matter concerning this Agreement, and the Committee members are unable to break the deadlock, the School's chair of the Board of Directors and the City Manager shall mutually cast a final vote to break the deadlock.

**SECTION THREE**  
**PURPOSE**

This Agreement is established for the purpose of sharing the use and maintaining the School's Facilities and the City's Facilities located in or about Spanish Fork, Utah, in conjunction with the School's classes, programs, athletic teams, activities, and events, and the City's classes, programs, activities, and events, including city recreation teams and programs, and to set forth the respective duties and responsibilities of the School and the City in conjunction therewith. Exhibit "A" attached hereto contains a list of the various School Facilities along with the authorized uses, responsibilities, services and considerations of the City. Exhibit "B" attached hereto contains a list of the various City Facilities along with the authorized uses, responsibilities, services and considerations of the School.

**SECTION FOUR**  
**USE AND SCHEDULING OF FACILITIES**

**A. School Facilities:** The School shall have the exclusive use of its buildings, properties, and facilities (the "School Facilities") during school hours and during school related classes, programs, athletic teams, activities, and events, including community school classes and programs. At other times when the School Facilities are not being used by the School, the School may schedule the use of the School Facilities for appropriate City classes, programs, activities, and events, including city recreation teams and programs. The City acknowledges and agrees that the School may allow other individuals and entities to schedule up to six (6) months in advance for use of the School Facilities in accordance with School's Facility Use Policy. The specific City classes, programs, activities, and events shall be pre-approved by the Committee to assure that such activities are proper and compatible with the School Facilities, and in compliance with applicable School policies, procedures, and directives. All scheduling and access arrangements for the use of the School Facilities shall be coordinated through the respective school principals or assistant principals. The City may schedule dates and times for the use of the School Facilities up to one (1) year in advance by using a School form requesting use of School Facilities. To the extent legally and reasonably possible, the School shall give the City second priority in scheduling the use of the School Facilities (subsequent to the School who has first priority). However, as with any scheduling of the School Facilities, whether by the City or other individuals or entities, school related classes, programs, activities, and events will take precedence. Emergency or unforeseen circumstances that require the use of the School Facilities by the School, as determined to be in the best interests of the School, will take precedence over any prior scheduling by the City or any other individuals or entities. In the event the City disagrees with the School's determination that there is an "emergency or unforeseen circumstance" which has taken precedence over the City's prior scheduled use of the School Facilities, the City shall attempt to resolve the issue with the School at the lowest level possible beginning with the school principal and continuing up to the chair School Board of Directors. Use of the School Facilities by the City shall be in accordance with all the terms, conditions, rules, and regulations set forth in School's Facility Use Policy, which policy is incorporated fully herein and made a part of this Agreement. The City's use of the School Facilities shall also be in accordance with the reasonable rules, regulations, and directions imposed by the school administrators and/or custodians. Upon giving reasonable prior notice to the City, the School may prohibit the use of any of its Facilities in the event the Facility is in need of maintenance, repair, or restoration; the physical condition of the Facility is unsafe for the intended activity(ies); or for any other reason relating to the condition of the Facility deemed to be in the best interests of the School as determined in its sole and absolute discretion. In consideration of the services and expenditures provided by the City for the use of the School Facilities as set forth in Exhibit "A" hereto, there will be no rent charged for the City's use of the School Facilities. However, the City shall be responsible to pay any and all costs for the employment of school personnel, such as supervisors, custodians, technicians, and food service workers. The City shall be entitled to use the School Facilities subject to the following conditions:

1. The City shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations.
2. The City shall not commit or suffer to be committed any destruction or damage, beyond reasonable wear and tear.
3. The City shall not commit or suffer to be committed any public or private nuisance.
4. The City shall maintain the School Facilities in a reasonably clean and safe condition.

**B. City Facilities:** The City shall have the exclusive use of its buildings, properties, and facilities (the “City Facilities”) for city related classes, programs, activities, and events, including city recreation teams and programs. At other times when the City Facilities are not being used by the City, the City may schedule the use of the City Facilities for appropriate School classes, programs, athletic teams, activities, and events. The School acknowledges and agrees that the City may allow other individuals and entities to generally schedule up to six (6) months in advance for use of the City Facilities in accordance with its policies and procedures. The specific School classes, programs, athletic teams, activities, and events shall be pre-approved by the Committee to assure that such activities are proper and compatible with the City Facilities, and in compliance with applicable City policies, procedures, and directives. All scheduling and access arrangements for the use of the City Facilities shall be coordinated through the City Parks & Recreation Department. The School may schedule dates and times for the use of the City Facilities up to one (1) year in advance by using a City form requesting use of City Facilities. To the extent legally and reasonably possible, the City shall give the School third priority in scheduling the use of the City Facilities (subsequent to the City who has first priority and Nebo School District, who has second priority). However, as with any scheduling of the City Facilities, whether by the School or other individuals or entities, city related programs, activities, and events will take precedence. Emergency or unforeseen circumstances that require the use of the City Facilities by the City, as determined to be in the best interests of the City, will take precedence over any prior scheduling by the School or any other individuals or entities. In the event the School disagrees with the City’s determination that there is an “emergency or unforeseen circumstance” which has taken precedence over the School’s prior scheduled use of the City Facilities, the School shall attempt to resolve the issue with the City at the lowest level possible beginning with the Spanish Fork City Parks & Recreation Director and continuing up to the City Manager. Use of the City Facilities by the School shall be in accordance with all the terms, conditions, rules, and regulations set forth in City’s Facility Use Policy, which policy is incorporated fully herein and made a part of this Agreement. The School’s use of the City Facilities shall also be in accordance with the reasonable rules, regulations, and directions imposed by City supervisors. Upon giving reasonable prior notice to the School, the City may prohibit the use of any of its Facilities in the event the Facility is in need of maintenance, repair, or restoration; the physical condition of the Facility is unsafe for the intended activity(ies); or for any other reason relating to the condition of the Facility deemed to be in the best interests of the City as determined in its sole and absolute discretion. In consideration of the services and expenditures provided by the School for the use of the City Facilities as set forth in Exhibit “B” hereto, there will be no rent charged for the School’s use of the City Facilities. However, the School shall be responsible to pay any and all costs for the employment of City personnel, such as supervisors, custodians, and technicians. The School shall be entitled to use the City Facilities subject to the following conditions:

1. The School shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations.
2. The School shall not commit or suffer to be committed any destruction or damage, beyond reasonable wear and tear.

3. The School shall not commit or suffer to be committed any public or private nuisance.
4. The School shall maintain the City Facilities in a reasonably clean and safe condition.

**SECTION FIVE**  
**MANNER OF FINANCING**

This Agreement and the matters contemplated herein shall not receive separate financing, nor shall a separate budget be required. Each party shall be responsible for its own obligations under this Agreement, and shall follow any applicable rules and regulations adopted by the Committee.

**SECTION SIX**  
**CUSTODIAL & MAINTENANCE SERVICES**

**A. School Facilities:** The School shall be responsible to hire and pay for all custodial and maintenance services associated with the operation, maintenance, and repair of the School Facilities. In addition, the City shall, as necessary and appropriate, provide and pay for custodial and maintenance services as a result of the City's use of the School Facilities. In the event a City activity or event creates an extraordinary or excessive amount of Facility clean-up which then causes the School to incur additional custodial and maintenance costs above and beyond normal duties, the City agrees to be responsible to reimburse the School for said custodial and maintenance costs which are incurred as a direct result of the City's use of the School Facilities. Such additional custodial and maintenance costs shall be mutually determined by the City Recreation Supervisor or his/her designee and the School Maintenance Supervisor or his/her designee. In the event the foregoing individuals are unable to mutually agree upon the additional custodial and maintenance costs, the matter shall be presented to the Committee for a decision in accordance with the procedures set forth in Section Two of this Agreement. Any such reimbursement shall be due and payable by the City to the School within thirty (30) days following receipt of a written invoice therefore.

**B. City Facilities:** The City shall be responsible to hire and pay for all custodial and maintenance services associated with the operation, maintenance, and repair of the City Facilities. In addition, the School shall, as necessary and appropriate, provide and pay for custodial and maintenance services as a result of the School's use of the City Facilities. In the event a School activity or event creates an extraordinary or excessive amount of Facility clean-up which then causes the City to incur additional custodial and maintenance costs above and beyond normal duties, the School agrees to be responsible to reimburse the City for said custodial and maintenance costs which are incurred as a direct result of the School's use of the City Facilities. Such additional custodial and maintenance costs shall be mutually determined by the City Recreation Supervisor or his/her designee and the School Maintenance Supervisor or his/her designee. In the event the foregoing individuals are unable to mutually agree upon the additional custodial and maintenance costs, the matter shall be presented to the Committee for a decision in accordance with the procedures set forth in Section Two of this Agreement. Any such reimbursement shall be due and payable by the School to the City within thirty (30) days following receipt of a written invoice therefore.

**SECTION SEVEN**  
**SUPERVISION AND SECURITY**

**A. School Facilities:** The City shall be responsible to provide and pay for all necessary and appropriate supervision and security during the City's use of the School Facilities. The persons responsible for such supervision and security shall have undergone and been cleared through a criminal history check by the Utah Bureau of Criminal Identification or other equivalent service.

In the event the School has any concerns with a specific City supervisor, the School shall discuss and attempt to resolve said concerns with the City. In the event the concerns cannot be adequately resolved, the School may request the City to replace the individual with another City supervisor.

**B. City Facilities:** The School shall be responsible to provide and pay for all necessary and appropriate supervision and security during the School's use of the City Facilities. The persons responsible for such supervision and security shall have undergone and been cleared through a criminal history check by the Utah Bureau of Criminal Identification or other equivalent service.

In the event the City has any concerns with a specific School supervisor, the City shall discuss and attempt to resolve said concerns with the School. In the event the concerns cannot be adequately resolved, the City may request the School to replace the individual with another School supervisor.

### **SECTION EIGHT** **PERSONAL PROPERTY**

Each party shall be responsible to provide its own athletic equipment and other personal property (herein referred to as "Personal Property") to be used in conjunction with the use of the other party's Facilities. Each party shall be the owner of its respective items of Personal Property. Each party shall be responsible for any loss, damage, or destruction incurred to its respective items of Personal Property, and to maintain insurance on the same. Unless otherwise authorized in writing by the other party, no Personal Property owned by one party may be left or stored at the other party's Facilities, and in the event such Personal Property is left or stored at the other party's Facilities, the parties hereby acknowledge and agree that the other party shall not be liable for any loss or damage to said Personal Property from whatever cause. The parties acknowledge there may be items of Personal Property that are inherently connected with the use of a party's particular facility for which the other party may be authorized to use in connection therewith.

### **SECTION NINE** **ADMINISTRATION OF AGREEMENT**

The parties hereby agree that the Joint Governance Committee, as set forth in Section Two above, shall be responsible for administering this Agreement. This Agreement does not anticipate nor provide for any organizational changes in the School or the City.

### **SECTION TEN** **FILING OF AGREEMENT**

A copy of this American Leadership Academy & Spanish Fork City - Master Facility Use Agreement shall be placed on file in the Office of the City Recorder of the City and with the Director of the School and shall remain on file for public inspection during the term of this Agreement.

### **SECTION ELEVEN** **INSURANCE**

**A. City Insurance:** The City shall procure and maintain in force at its expense during the term of this Agreement public liability insurance providing insurance coverage for the City's use of the School Facilities. Such insurance shall provide for such coverages, protections, insurable amounts, etc. which would be standard and reasonable for the uses contemplated hereunder, and which are available through the Utah Risk Management Mutual Association ("URMMA").

**B. School Insurance:** The School shall procure and maintain in force at its expense during the term of this Agreement public liability insurance providing insurance coverage for the School's use of the City Facilities. Such insurance shall provide for such coverages, protections, insurable amounts, etc. which would be standard and reasonable for the uses contemplated hereunder, and which are available through the State of Utah Risk Management ("State Risk Management").

**C. Property Insurance:** Each party shall procure and maintain in force at its expense during the term of this Agreement property insurance for each party's Facilities.

**SECTION TWELVE**  
**NOTICE OF DEFAULT; CORRECTIVE ACTION**

The failure of either party to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. Either party shall have thirty (30) days after receipt of written notice from the other of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the thirty (30) day period, within a reasonable time if corrective action is commenced within ten (10) days after receipt of the notice.

**SECTION THIRTEEN**  
**RIGHTS AND REMEDIES**

In the event of any breach hereunder and after the lapse of the cure period as per Section Twelve above, the non-breaching party shall have all the rights and remedies available under the laws of the State of Utah in effect. The rights and remedies of the parties hereto shall not be mutually exclusive, but shall be cumulative in all effects. The respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

**SECTION FOURTEEN**  
**LIABILITY FOR INJURY, LOSS, OR DAMAGE**

**A. City Use:** The City shall, subject to the limits and caps set forth in the Governmental Immunity Act of Utah, defend, indemnify, and hold harmless the School for any death, personal injury, loss, or damage to persons or personal property (hereinafter "losses") arising out of the City's use of the School Facilities, except for losses arising out of the sole negligence of the School.

**B. School District Use:** The School shall, subject to the limits and caps set forth in the Governmental Immunity Act of Utah, defend, indemnify, and hold harmless the City for any death personal injury, loss, or damage to persons or personal property (hereinafter "losses") arising out of the School District's use of the City Facilities, except for losses arising out of the sole negligence of the City..

**SECTION FIFTEEN**  
**DAMAGE OR DESTRUCTION TO FACILITIES**

**A. City Use:** If the School Facilities are damaged or destroyed as a result of the use thereof by the City, repair or replacement costs up to Ten Thousand Dollars (\$10,000) will be determined and payable by the City as specified in the Joint Governance Committee guidelines and rules to be developed as stated in Section Two of this Agreement. Responsibility for and payment of damages or costs rising above that amount will be determined and payable through normal dispute resolution procedures, including, but not limited to,

mediation, arbitration, or lawsuits, dependent upon the fault of the parties or others, subject to subrogation principles.

**B. School Use:** If the City Facilities are damaged or destroyed as a result of the use thereof by the School, repair or replacement costs up to Ten Thousand Dollars (\$10,000) will be determined and payable by the School as specified in the Joint Governance Committee guidelines and rules to be developed as stated in Section Two of this Agreement. Responsibility for and payment of damages or costs rising above that amount will be determined and payable through normal dispute resolution procedures, including, but not limited to, mediation, arbitration, or lawsuits, dependent upon the fault of the parties or others, subject to subrogation principles.

**SECTION SIXTEEN**  
**GOVERNING LAW, JURISDICTION, AND VENUE**

All questions with respect to the construction of this Agreement and all rights and liability of the parties hereto shall be governed by the laws of the State of Utah. Jurisdiction and venue for the enforcement of this Agreement shall be found in the courts of Utah County, State of Utah.

**SECTION SEVENTEEN**  
**COSTS OF ENFORCEMENT**

In the event of a breach of this Agreement, the non-breaching party shall be entitled to recover from the breaching party all of the non-breaching party's costs (including, but not limited to, court fees and expert witness costs) and attorneys' fees associated with the enforcement of this Agreement.

**SECTION EIGHTEEN**  
**NOTICE**

Any written notice which must or may be given relating to this Agreement shall be sufficient if mailed postage prepaid, registered or certified mail, in the United States mail addressed to a party at the address given above. In the case of the School, notice shall be mailed to the attention of the chair, Board of Directors, at the above address. In the case of the City, notice shall be mailed to the attention of the City Manager at the above address. Either party may notify the other to designate a different address for mailing.

**SECTION NINETEEN**  
**ANNUAL REVIEW**

The Committee set forth in Section Two shall meet annually to review this Agreement. The Committee shall specifically review and assess the usage of the School Facilities and the City Facilities and the considerations given in exchange therefore as set forth in Exhibits "A" and "B" hereto. The objective of the Committee during their annual review is to make any necessary revisions or amendments to Exhibits "A" and "B" of this Agreement in order to achieve an acceptable level of "fundamental fairness" between the parties for the use of their respective Facilities.

**SECTION TWENTY**  
**TERMINATION**

Either party may terminate this Agreement at any time and for any or no reason by giving the other party at least one (1) year prior written notice of the same.

**SECTION TWENTY-ONE**  
**ACCEPTANCE OF FACILITY CONDITION**

- A. City Acceptance:** The City agrees to use the School Facilities in their “AS IS” condition. If repairs or maintenance are necessary or desirable, the city may request the School to make such repairs and maintenance, but the School is not under any obligation to do so. If the City makes repairs or conducts maintenance it shall be at its own cost.
- B. School Acceptance:** The School agrees to use the City Facilities in their “AS IS” condition. If repairs or maintenance are necessary or desirable, the School may request the City to make such repairs and maintenance, but the City is not under any obligation to do so. If the School makes repairs or conducts maintenance it shall be at its own cost.

**SECTION TWENTY-TWO**  
**GENERAL PROVISIONS**

- A. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- B. Entire Agreement.** This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties. All prior understandings, negotiations, or agreements are merged herein and superceded hereby.
- C. Amendments.** This Agreement may be modified only by a writing signed by each of the parties hereto.
- D. Not Assignable.** This Agreement is specific to the parties hereto and is therefore not assignable.
- E. Captions.** The captions to the various Sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.
- F. Exhibits.** The following Exhibits attached hereto, and any Exhibits subsequently attached hereto from time to time, shall be considered to be binding upon all parties.
- G. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- H. Gender and Number.** The singular number include the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, limited liability company, partnership, or other legal entity when the context so requires.
- I. Waiver or Forbearance.** No delay or omission in the exercise of any right or remedy by any party hereto shall impair such right or remedy or be construed as a waiver. Any waiver of any breach must be in writing and shall not be a waiver of any other breach concerning the same or any other provision of this Agreement.

**J. No Partnership, Joint Venture, or Third Party Rights.** Except as specifically set forth herein, nothing in this Agreement shall be construed as creating any partnership, joint venture, or business arrangement among the parties hereto, nor any rights or benefits to third parties.

**K. No Waiver of Governmental Immunity.** Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act of Utah.

**- SIGNATURES ON FOLLOWING PAGE -**

IN WITNESS WHEREOF, the parties have signed and executed this American Leadership Academy & Spanish Fork City - Master Facility Use Agreement, after resolutions duly and lawfully passed, on the dates listed below.

DATED this \_\_\_\_ day of February, 2008.

**SPANISH FORK CITY**

By: \_\_\_\_\_  
**JOE L THOMAS, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**KENT R. CLARK, City Recorder**

DATED this \_\_\_\_ day of February, 2008.

**BOARD OF DIRECTORS OF  
AMERICAN LEADERSHIP ACADEMY**

By: \_\_\_\_\_  
**ERIC M. HOGENSON, Chairman**

**ATTEST:**

By: \_\_\_\_\_  
**ROB MUHLSTEIN, Secretary**

I am sending you a memo explaining the contract with Peak Alarm. The snack shack at the Russell Swenson baseball complex has been broken into several times over the last few years. Two years ago we installed iron bars over the windows hoping to prevent people from breaking in, however the problem still exists. We now would like to install an alarm system in the snack shack. The alarm system would be installed and monitored by Peak Alarm Company. The details of the agreement is set forth in the contract.

Thanks,

Bart Morrill

ORDINANCE NO. \_\_\_\_\_

**ROLL CALL**

<b>VOTING</b>	<b>YES</b>	<b>NO</b>
<b>MAYOR JOE L THOMAS</b> <i>(votes only in case of tie)</i>		
<b>G. WAYNE ANDERSEN</b> <i>Councilmember</i>		
<b>ROD DART</b> <i>Councilmember</i>		
<b>RICHARD M. DAVIS</b> <i>Councilmember</i>		
<b>STEVE LEIFSON</b> <i>Councilmember</i>		
<b>JENS P. NIELSON</b> <i>Councilmember</i>		

I MOVE this ordinance be adopted: \_\_\_\_\_

I SECOND the foregoing motion: \_\_\_\_\_

**ORDINANCE No. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE COMPOSITION OF  
THE AIRPORT BOARD**

WHEREAS, Spanish Fork City and Springville City jointly operate a municipal airport;  
and

WHEREAS, an Airport Board has been established by ordinance to advise and make  
recommendations to both Cities regarding the needs and requirements of the airport and its  
facilities; and

WHEREAS, an Airport Manager has been established by ordinance to oversee and direct  
the daily management and control of the airport; and

WHEREAS, current ordinance mandates that the Airport Manager serve on the Airport Board; and

WHEREAS, for the purposes of efficient delegation of Airport duties, the Airport Manager would serve better reporting to the Airport Board rather than as a member of the Board;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

**I.**

Spanish Fork Municipal Code §7.12.040 is hereby amended to read as follows:

**7.12.040 Airport Board.**

A. Board Created-Members. There is hereby created and established the joint City Airport Board which shall consist of six members who shall be citizens of Spanish Fork and Springville, to include an elected official from both cities, and two citizens from each city.

This ordinance shall become effective twenty days after passage and publication.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JOE L THOMAS, Mayor

ATTEST:

\_\_\_\_\_  
KENT R. CLARK, City Recorder



# REPORT TO THE APPEAL AUTHORITY

## JAMIE EVANS APPEAL OF A STAFF DECISION

**Agenda Date:** February 5, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** Relative to this request, the City Council is functioning in their capacity as the Appeals Authority for land use decisions. The decision being appealed is a staff decision to not issue a building permit for a billboard.

**Zoning:** Light Industrial

**General Plan:** Light Industrial

**Project Size:** not applicable

**Number of lots:** not applicable

**Location:** Approximately 1900 North 300 East

### Background Discussion

Accompanying this report is a January 3, 2008 letter from Dave Anderson that explains the decision that is being appealed. Also accompanying this letter is the request provided by the appellant relative to the appeal.

Staff believes that Utah Code Ann. 10-9a-513 prohibits the issuance of a building permit for a billboard at this location, given that another billboard is entitled to be rebuilt within 500 feet of this location.

Mr. Evans also lacks a UDOT permit for this location. Mr. Evans claims the UDOT permit for the adjacent location is invalid. However, the City can't declare a UDOT action invalid. Only UDOT or a court can do that.

Accordingly, staff believes that the law requires that Mr. Evans request be denied.

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# SPANISH FORK

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January 3, 2008

Mr. Jamie Evans, Evans Grader and Paving Service  
2068 Mountain Vista Lane  
Provo, Utah  
84606

**RE: Application for Sign Permit**

Mr. Evans,

Attached to this application are the materials you provided with an applicant for a Sign Permit. The application is being denied for the following reasons:

- 1.) That the proposed sign would be located less than 500 feet from the billboard to the north. Spanish Fork City understands that according to Section 10-9a-513 Utah Code Ann., the owner is entitled to reconstruct said billboard located on the property to the north.
- 2.) That no UDOT permit was provided with the application. Section 5.36.060 of Spanish Fork City's Municipal Code requires that UDOT approval be obtained prior to the City issuing a permit for a billboard.

Please feel free to contact either myself or Junior Baker with any questions.

Sincerely,



Dave Anderson, AICP  
Planning Director

cc: Junior Baker, City Attorney

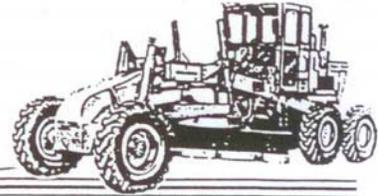
40 South Main Street, Spanish Fork, Utah  
Phone 801.798.5000 · facsimile 801.798.5005

**Evans Grader and Paving, Inc.**  
Excavating, Asphalt Paving, and Rock Products

RECEIVED

JAN 14 2008

3:06pm *[Signature]*



2068 South Mountain Vista Lane  
Provo, Utah 84606  
(801)377-9999 Fax 373-8988

January 14, 2008

RE: Sign/Building Permit Denied

Junior Baker  
Spanish Fork City  
40 S. Main Street  
Spanish Fork, UT 84660

Mr. Baker:

This letter is to appeal the City Planner's decision to deny the sign permit, applied for on December 7, 2007, and to take the problem to the City Council board. The application was denied based on a billboard being built 500' from the location on my application. Simmons/Spanish Fork City does not have the legal right to build a non-conforming billboard on the Spanish Fork property that is within 500'. The application was also denied stating we need prior approval from UDOT before applying at the city. I request the opportunity to state why my permit application should be approved. Please let me know what date will be scheduled for appeal with the City Council. Thank you.

Sincerely,

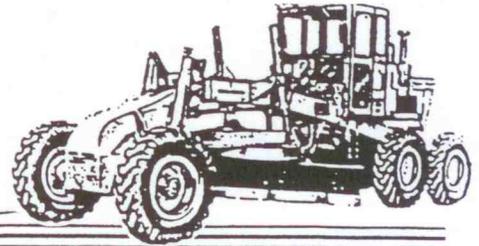
A handwritten signature in cursive script that reads "Jamie Evans".

Jamie Evans  
Evans Grader & Paving

RECEIVED

JAN 14 2008

3:06 pm *[Signature]*



**Evans Grader and Paving, Inc.**

Excavating, Asphalt Paving, and Rock Products

2068 South Mountain Vista Lane  
Provo, Utah 84606  
(801)377-9999 Fax 373-8988

January 14, 2008

RE: Sign/Building Permit Denied

Junior Baker  
Spanish Fork City  
40 S. Main Street  
Spanish Fork, UT 84660

Mr. Baker:

This letter is to appeal the City Planner's decision to deny the sign permit, applied for on December 7, 2007, and to take the problem to the City Council board. The application was denied based on a billboard being built 500' from the location on my application. Simmons/Spanish Fork City does not have the legal right to build a non-conforming billboard on the Spanish Fork property that is within 500'. The application was also denied stating we need prior approval from UDOT before applying at the city. I request the opportunity to state why my permit application should be approved. Please let me know what date will be scheduled for appeal with the City Council. Thank you.

Sincerely,

*Jamie Evans*

Jamie Evans  
Evans Grader & Paving



# REPORT TO THE APPEAL AUTHORITY TRACY PETERSON HOMES VARIANCE REQUEST

**Agenda Date:** February 5, 2008

**Staff Contacts:** Dave Anderson, Planning Director

**Reviewed By:** Development Review Committee

**Request:** Relative to this request, the City Council is functioning in their capacity as the Appeals Authority for land use decisions. The specific request before the Authority is a request to reduce the setback requirement for a twinhome in the R-1-6 Zone. The required setback is 10 feet and the applicant would like that setback reduced to some 7 feet so as to be able to subdivide an existing duplex into a twinhome.

**Zoning:** R-1-6

**General Plan:** Residential 5.5 to 8 Units Per Acre

**Project Size:** not applicable

**Number of lots:** not applicable

**Location:** 475 West Center Street

## Background Discussion

In 2007, a duplex was constructed at 475 West Center Street. The duplex was constructed approximately 7 feet from the southern property line. The owner of the property now desires to convert the newly constructed duplex into a twinhome. The conversion process is effectuated by having a Subdivision Waiver approved by the City.

The fact that the duplex was constructed 7 feet from the property line is a problem in that the setback requirement is 10 feet for both duplexes and twinhomes. In this case, adjusting the property line so as to establish a conforming setback is not an option. Therefore, the only option that exists to make the duplex legal or to allow the applicant to proceed with the conversion is the approval of a Variance from the setback standard. In this case the Variance is to reduce the setback requirement from 10 feet to some 7 feet.

Accompanying this report is a copy of the lot layout for the subject property.

## Development Review Committee

The Development Review Committee reviewed this request on January 9, 2008 and recommended that it be approved.

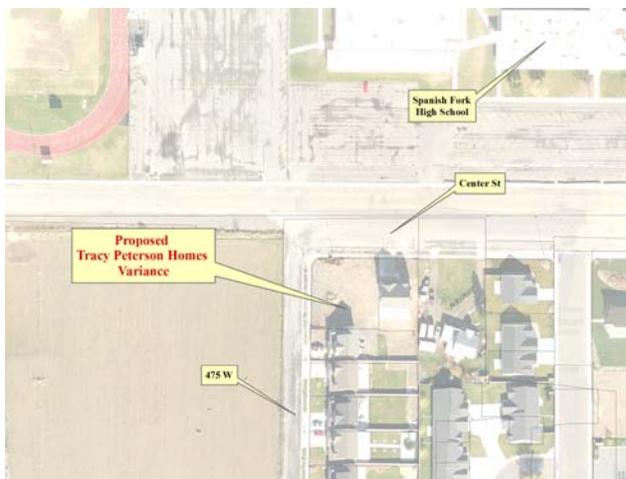
## Alternatives

The Appeals Authority has broad discretion in approving or denying requests for variances.

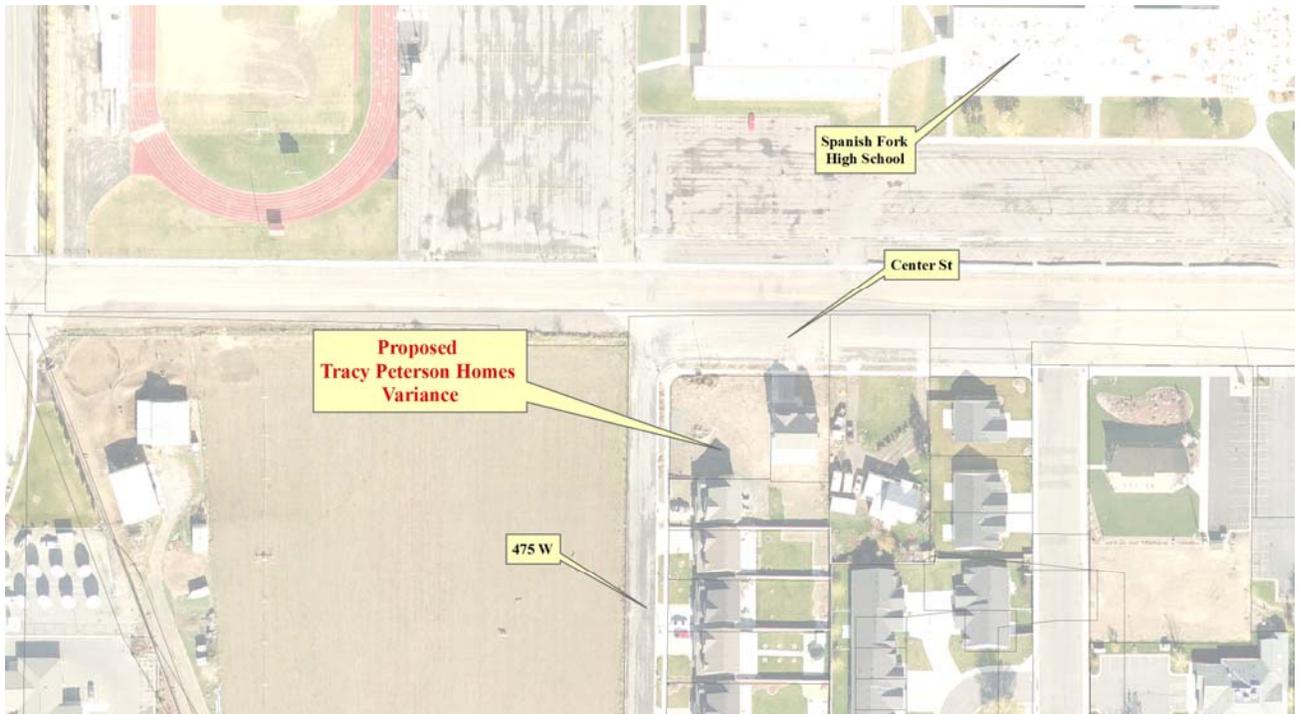
## Staff Recommendation

Staff recommends that the Variance request for Tracy Peterson homes be approved based on the following findings:

1. That the requested Variance meets the criteria provided in Section 15.3.08.040 C.







When Recorded, Return to:

Parsons Behle & Latimer  
One Utah Center  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898  
Attention: Shawn C. Ferrin

### **STORM WATER MAINTENANCE AND EASEMENT AGREEMENT**

THIS STORM WATER MAINTENANCE AND EASEMENT AGREEMENT (“Agreement”) is made and entered into as of January \_\_\_\_\_, 2008, between TENEDOR, L.L.C., a Utah limited liability company (“Tenedor”), HOME DEPOT U.S.A., Inc., a Delaware corporation (“Home Depot”), and SPANISH FORK, a municipal corporation of the State of Utah (“City”), with reference to the following:

A. WHEREAS, Home Depot is the owner of a certain tract of land legally described in Exhibit “A” attached hereto and identified as the “Home Depot Property” on Exhibit “B” (the “Site Plan”) attached hereto; and

B. WHEREAS, Tenedor is the owner of a certain tract of land legally described in Exhibit “C” attached hereto and identified as the “Tenedor Property” on the Site Plan; and

C. WHEREAS, the Home Depot Property and Tenedor Property (individually a “Parcel” and collectively the “Parcels”) are contiguous and adjacent as shown on the Site Plan; and

D. WHEREAS, Home Depot and Tenedor have constructed or will construct retail commercial building and related amenities within the Shopping Center in conjunction with each other as integral parts of a retail shopping complex; and

E. WHEREAS, Tenedor may acquire all or part of that real property which is shown on the Site Plan as “Phase 2” and legally described on Exhibit “D”, in which case such acquired areas shall automatically become encumbered and bound by this Agreement as more particularly provided in Article 4, but Phase 2 shall not be deemed part of the Shopping Center; and

F. WHEREAS, City has acquired that real property which is shown on the Site Plan as the “City Property” and legally described on Exhibit “E” which property is intended to be subject to this Agreement, but shall not be deemed to be a part of the Shopping Center; and

G. WHEREAS, City has agreed to control, manage, and detain, if necessary, all storm water flowing from the Shopping Center; and

H. WHEREAS, the City Property and the surface water collection, detention and distribution facilities located on the City Property (hereafter collectively referred to as the “Detention Facilities”) were designed and presently operate to provide storm water detention for

the Shopping Center and Phase 2 (at such time as all or part of Phase 2 is acquired by one of the Parties); and

I. WHEREAS, the Parties desire to provide for certain easements and other restrictions in connection with the collection, control and detention of the storm water from the Shopping Center; and

J. WHEREAS, the Parties do hereby desire to establish easements, covenants, restrictions (collectively, the “Restrictions”) as are hereinafter set forth pursuant to which the City Property shall be improved and maintained; and

K. WHEREAS, each of the Restrictions (i) is imposed upon the City Property, the Shopping Center and Phase 2 as a mutual equitable servitude, (ii) shall create reciprocal rights and obligations between and among each of the Parties; and (iii) shall create a privity of contract and estate between and among the Parties and their heirs, successors, and assigns; and

L. WHEREAS, each of the Restrictions are intended to and shall run with the land;

NOW THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

## **ARTICLE 1 PRELIMINARY**

1.1 Incorporation. The above Recitals are incorporated herein and made a part hereof.

1.2 Definitions.

(a) “Approving Party” shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing the Tenedor Property and one Approving Party representing the Home Depot Property. If Tenedor acquires all or any portion of Phase 2, such acquired property shall be deemed a part of the Tenedor Property. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Tenedor Property or the Home Depot Property, as the case may be, but if an assignment is not made, then such Approving Party’s position shall automatically be deemed assigned to the Party acquiring the last Parcel owned by the transferring Approving Party. Tenedor shall be the initial Approving Party for the Tenedor Property and Home Depot shall be the initial Approving Party for the Home Depot Property.

(b) “Environmental Law” shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(c) “Hazardous Materials” shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

(d) “Owner” shall mean Home Depot, Tenedor, City and any other person or entity having fee record to any Parcel within the Shopping Center, the City Property and Phase 2, their respective assigns, grantees, and successors in interest.

(e) “Party” shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become an Owner of any portion of the Tenedor Property or the Home Depot Property, or the City Property, as the case may be. Each Party shall be liable for the performance of all covenants obligations and undertakings set forth herein with respect to the portion of the Tenedor Property or the Home Depot Property or the City Property, as the case may be, owned by it which accrues during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this Agreement arising subsequent to the effective date of the transfer notice. A Party transferring all or any portion of its interest in the Tenedor Property or the Home Depot Property or the City Property, as the case may be, shall give notice to all other Parties of such transfer and shall include therein at least the following information:

(i) The name and address of the new Party;

(ii) A copy of the legal description of the portion of the Parcel transferred; and

(iii) If the transferee is the new designated Approving Party.

If a Parcel is owned by more than one person, the person or persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one of their number to represent all owners of the Parcel and such designated person shall be deemed the Party for such Parcel. Until the notice of transfer is given, the transferring Party shall (for the purpose of this Agreement only) be the transferee’s agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of a Parcel prior to the receipt of the notice.

(f) “Person” shall mean any individual, partnership, firm, association, corporation, trust, or other form of business or governmental entity.

(g) “Shopping Center” shall mean all of the Parcels.

1.3 Covenants Run With the Land. The terms of this Agreement and the Restrictions and Easement (as defined below) shall be a burden on the City Property, shall be appurtenant to and for the benefit of the Parcels and each part thereof, and shall run with the land.

**ARTICLE 2**  
**STORM DETENTION EASEMENT; MAINTENANCE**

2.1 Grant of Storm Water Easement.

(a) City hereby grants and conveys to Home Depot and Tenedor for the benefit of the Home Depot Property and Tenedor Property, respectively, and any future additions thereto, as grantees, a perpetual nonexclusive easement in, over, under, along and across the City Property to discharge and impound surface storm water drainage and/or runoff from the Home Depot Property and Tenedor Property (the “Easement”).

(b) Upon obtaining the prior written consent of the Approving Parties, which consent shall not be unreasonably withheld, conditioned or delayed, the City, at its sole cost and expense, may expand, relocate or make any other changes to the Detention Facilities as the City deems appropriate, including, without limitation, providing for underground piping of detained water to a location off-site of the Shopping Center or the City Property; provided, however, any expansion, relocation or other change shall not adversely impact the right or ability of the Owners of the Home Depot Property and Tenedor Property to discharge storm water from the Home Depot Property or Tenedor Property, as applicable, in compliance with applicable Environmental Law.

(c) City acknowledges and agrees that the City Property and the Detention Facilities shall be used for a public park and storm water detention for the Shopping Center and for no other purpose without the prior written consent of the Approving Parties. City further agrees that the City will not use (or hereafter grant to any other Person the right to use) any portion of the City Property for any purpose that will interfere with the rights granted hereunder without the prior written consent of the Approving Parties.

(d) City may not under any circumstances convey the City Property to any entity other than the Owner of the Tenedor Property without the express written consent of the Owner of the Tenedor Property.

2.2 Maintenance and Operation.

(a) City shall operate, maintain, repair and replace the Detention Facilities and the City Property so as to (i) keep the same in good condition and repair, (ii) accommodate all storm water runoff from the Shopping Center, and (iii) comply with applicable laws.

(b) City shall be solely responsible for all costs, expenses and charges associated with the operation, repair, maintenance and replacement of the Detention Facilities and City Property.

(c) City covenants to defend, protect, indemnify and hold harmless each Party and its respective directors, officers, agents, representatives and employees from and against all claims, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities (including reasonable attorneys’ fees and costs of suit)

asserted or incurred in connection with or arising as a result of the death of, or any injury, loss or damage whatsoever to any Person, or to the property of any Person, as shall occur due to the performance of or failure to perform its duties or obligations under this Agreement with respect to the maintenance and operation of the Detention Facilities or the City Property, except for claims caused by the sole negligence or by the willful act or omission of the indemnified Party or its directors, officers, contractors, licensees, concessionaires, agents, representatives or employees.

(d) City shall pay or cause to be paid before delinquency any and all taxes and assessments levied or assessed by any governmental authority against the City Property and the Detention Facilities.

### **ARTICLE 3 ENVIRONMENTAL**

No Party shall discharge or permit to be discharged from its respective Parcel Hazardous Materials onto the City Property. Each Party shall indemnify, protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to the costs of investigation, litigation and remedial response arising out of any Hazardous Material discharged by the indemnifying Party or permitted to be discharged from the indemnifying Party's Parcel onto the City Property. City shall be responsible for all clean-up and remediation costs and related expenses (incurred by any Party) in connection with the release of Hazardous Materials onto the City Property from any parcel discharging storm water into the Detention Facilities other than the Home Depot Property and the Tenedor Property.

### **ARTICLE 4 NON-APPLICABILITY; SUPPLEMENTATION**

4.1 Agreement Does Not Presently Bind Phase 2. This Agreement shall not encumber or bind Phase 2 or any part thereof, nor shall the owners or occupants thereof have any easement or other rights pursuant to this Agreement, on, over or across the City Property, until the date on which Tenedor acquires and records evidence of conveyance to Tenedor of fee title to Phase 2.

4.2 Automatic Encumbrance and Inclusion Upon Acquisition. Upon Tenedor's acquisition and recording of evidence of title to Phase 2, Phase 2 (or the part thereof acquired) shall automatically be subject to, encumbered and bound by this Agreement as well as benefited by this Agreement.

4.3 Notice of Encumbrance and Benefit. In order to confirm the subjection and encumbrance of Phase 2 (or any part thereof) to and by this Agreement, Tenedor shall promptly following such acquisition of title, execute, enter into and deliver to the other Parties for execution and recording in the official records of Utah County, a Notice of Encumbrance and Benefit which references this Agreement and any subsequent amendments hereto as binding to the property so acquired. Tenedor covenants and warrants that it will not record any lease,

mortgage, deed of trust, or other encumbrance against Phase 2 (or any part thereof) prior to the execution and recording of the Notice of Encumbrance and Benefit.

## **ARTICLE 5 MISCELLANEOUS**

5.1 Default. The failure to observe or timely perform any of the covenants, conditions, or obligations of this Agreement by any Party hereto shall constitute a default hereunder (“Default”). Any Party who commits a Default hereunder shall hereafter be referred to as “Defaulting Party”.

5.2 Notice of Default. In the event of a Default, an Approving Party shall as soon as is reasonably possible thereafter, and subject to the emergency conditions provision below, send notice (the “Default Notice”) of such suspected Default to all other Parties hereto, including the suspected Defaulting Party specifying the nature of the Default claimed.

5.3 Emergency Conditions.

(a) If any suspected Default hereunder shall in the opinion of an Approving Party hereto constitute an emergency condition (defined as any situation where there is an imminent threat of harm to persons or property), that Approving Party, acting in good faith, shall have the right to cure such suspected Default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter.

(b) To effectuate any such cure, the Approving Party shall have the right to enter upon the Parcel of the Defaulting Party (but not into any buildings) to perform any necessary work or furnish any necessary materials or services to cure the Default of the Defaulting Party. Each Owner shall be responsible for the Default of its occupants. In the event any Approving Party shall cure a Default, the Defaulting Party shall reimburse the curing Approving Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

5.4 Cure Period. In the event of a Default, the Defaulting Party shall have fifteen (15) days after receipt of the Default Notice to cure said Default; provided, however, that the Defaulting Party shall not be deemed to be in Default if such failure to perform cannot be rectified within said fifteen (15) day period and such the Defaulting Party is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed thirty (30) days.

5.5 Failure to Cure. If the Defaulting Party fails to cure within the time period specified herein, then an Approving Party may proceed to cure the Default. To effectuate any such cure, the Approving Party shall have the right to enter upon the Parcel of the Defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the Default of the Defaulting Party. In the event an Approving Party shall cure a Default, the Defaulting Party shall reimburse the Approving Party for all costs and expenses incurred in

connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

5.6 Other Remedies. Each Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other person, violating or attempting to violate or breach any of the provisions of this Agreement, and to recover damages for any such violation or breach. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

5.7 Waiver of Governmental Immunity. City does hereby expressly waive any right or claim of governmental immunity which it may have as a defense to a Default by it hereunder.

5.8 Interest. Any time a Party shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Wells Fargo Bank, National Association or its successor.

5.9 Lien Right. An Approving Party which properly enters upon the property of another Party to cure a Default hereunder shall have [\(to the extent permitted by applicable law\)](#) the right to place a lien upon the Defaulting Party's property which is benefited and burdened by this Agreement to secure payment of the cost of the curative action as provided herein.

5.10 Estoppel Certificate. Each Party agrees that upon written request (which shall not be more frequent than two (2) times during any calendar year) or any other Party, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating that to the best of the issuer's knowledge that as of such date:

- (a) Whether it knows of any Default under this Agreement by the requesting Person, and if there are known Defaults, specifying the nature thereof; and
- (b) Whether this Agreement has been assigned, modified or amended in any way, and if so, then stating the nature thereof;
- (c) Whether this Agreement is in full force and effect.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statements and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. This issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose

correct and/or relevant information (but it shall estop such Person from making assertions to the contrary to those set forth in the certificate for the period covered by the certificate), nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

5.11 Notices. All notices, demands and requests (collectively the “Notice”) required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such notice is:

- (a) Delivered to the Party intended;
- (b) Delivered to the then designated address of the Party intended;
- (c) Rejected at the then designated address of the Party intended; or
- (d) Sent via email or facsimile so long as the original copy is also sent via (A) or (B) above on the same day.

The initial addresses of the Parties shall be:

Tenedor: Tenedor, L.L.C.  
c/o Woodbury Corporation  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 84109  
Attention: Office of General Counsel

~~Fax No.~~ \_\_\_\_\_

With a copy to: Tenedor, L.L.C.  
c/o Westfield Properties  
2749 East Parleys Way, Suite ~~200~~310  
Salt Lake City, Utah 84109  
Attention: Richard Mendenhall

~~Fax No.~~ \_\_\_\_\_

Home Depot: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Atlanta, Georgia 30339-4024  
Attention: Vice President, Real Estate Law Group  
Store No. 4423

~~Fax No.~~ \_\_\_\_\_

With a copy to: Home Depot U.S.A., Inc.  
3800 West Chapman Avenue  
Orange, California 92868  
Attention: Corporate Counsel, Real Estate

Store No. 4423

~~Fax No. \_\_\_\_\_~~

With a copy to: Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Attention: Shawn C. Ferrin  
~~Fax No. 801.536.6111~~

City: Spanish Fork City  
40 S. Main  
Spanish Fork, Utah 84660  
Attention: Junior Baker  
~~Fax No. \_\_\_\_\_~~

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

#### 5.12 Construction and Interpretation.

(a) This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda, or agreements are superseded in total by this Agreement and the Exhibits hereto. This Agreement has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based upon the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(b) The captions associated with the text of each Article and Section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

(c) Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(d) This Agreement may be amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the official records of Utah County; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any

right of, a Party or its Parcel without the consent of such Party. No consent to the amendment of this Agreement shall ever be required of any occupant or Person other than the Parties, nor shall any occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Each Party may consider, approve or disapprove any proposed amendment to this Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

(e) This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

5.13 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so by a separate written instrument signed by the Party to be charged.

5.14 Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

5.15 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any person from the prompt payment of any monies required by this Agreement.

5.16 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall:

(a) Entitle any Party to cancel, rescind, or otherwise terminate this Agreement; or

(b) Defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center or City Property.

However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

5.17 Time. Time is of the essence of this Agreement.

5.18 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any such rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any Default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such Default. No express written waiver of any Default shall affect any other Default or cover any other period of time other than any Default and/or period of time specified in such express waiver. One (1) or more written waivers of any Default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent Default in the performance of the same provision or any other term or provision contained in this Agreement.

5.19 Term of this Agreement. This Agreement shall be in effect in perpetuity, unless terminated by the written agreement of City and the Approving Parties. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the day and date first above written.

[\[SIGNATURE PAGES FOLLOW\]](#)

TENEDOR L.L.C., a Utah limited liability company

By: WOODBURY CORPORATION, a Utah corporation, Its Manager

By: \_\_\_\_\_  
Jeffrey K. Woodbury, Vice President

By: \_\_\_\_\_  
O. Randall Woodbury, Secretary

By: \_\_\_\_\_  
Richard L.K. Mendenhall, Manager

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

On this day of \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me personally appeared JEFFREY K. WOODBURY and O. RANDALL WOODBURY, to me personally known, who being by me duly sworn did say that they are the Vice President and Secretary of WOODBURY CORPORATION, which is a Manager of TENEDOR L.L.C., the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

Notary Public

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

On this day of \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me personally appeared RICHARD L.K. MENDENHALL, to me personally known, who being by me duly sworn did say that he is the Manager of TENEDOR L.L.C., the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

Notary Public

HOME DEPOT U.S.A., Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA    )  
  : ss.  
COUNTY OF ORANGE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of Home Depot U.S.A., Inc.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_



**CONSENT, JOINDER AND SUBORDINATION  
OF LENDER**

The undersigned, WELLS FARGO BANK, NATIONAL ASSOCIATION (“Lender”), is the owner and holder of that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement Fixture Filing from TENEDOR, L.L.C., a Utah limited liability company dated September 14, 2007, which is recorded in the records of Utah County, Utah, as Entry No. 144776:2007, as the same may have been further amended by that certain Memorandum of Modification Agreement Amended Deed of Trust recorded as Entry No. 144777:2007 (collectively, the “Mortgage”).

Lender, as the owner and holder of the Mortgage, hereby joins in, consents to and subordinates the Mortgage to, that certain STORM WATER MAINTENANCE AND EASEMENT AGREEMENT (the “Agreement”) to which this Consent, Joinder and Subordination is attached, and Lender agrees that all of its right, title and interest in and to the real property described therein existing by virtue of the Mortgage shall be bound by, subject to and subordinate to the easements and other terms and provisions of the foregoing Agreement, and the Agreement shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Mortgage.

LENDER:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF UTAH \_\_\_\_\_ )

: ss.

COUNTY OF SALT LAKE \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the \_\_\_\_\_ of  
WELLS FARGO BANK, NATIONAL ASSOCIATION.

NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "A"**

**HOME DEPOT PROPERTY LEGAL DESCRIPTION**

**LOT 3, NORTH PARK SUBDIVISION - PHASE I, ACCORDING TO THE OFFICIAL PLAT  
THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY  
RECORDER.**

**EXHIBIT "B"**

**SITE PLAN**

**(See Attached.)**

**EXHIBIT "C"**

**TENEDOR PROPERTY LEGAL DESCRIPTION**

**LOTS 1, 2, 4 THROUGH 10, INCLUSIVE, NORTH PARK SUBDIVISION - PHASE I,  
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE  
OFFICE OF THE UTAH COUNTY RECORDER.**

## EXHIBIT "D"

### PHASE 2 PROPERTY LEGAL DESCRIPTION

A parcel of land located in the East Half of Section 18, Township 8 South, Range 3 East, Salt Lake Base and Meridian, Spanish Fork City, Utah County, more particularly described as follows:

BEGINNING at the intersection of the Southwesterly R/W and L/A Line of US-6 [I-15 to Moark Junction, Project No. F-028-1(3)] and the Southeasterly right-of-way and boundary of Chapel Drive, which is 157.00 feet North 00°17'53" West along the section line and 2238.90 feet South 89°42'07" West (the basis of bearings is North 00°17'53" West 2674.60 feet measured between the Utah County Survey monuments found marking the East Quarter corner and the Northeast corner of said Section 18) and running thence South 44°32'00" East 897.13 feet along said US-6 to the Northerly line of Block 127, Plat "A", Spanish Fork City Survey of Building Lots; thence North 89°50'16" West 382.24 feet along said line to the Northeast corner of Block 128, Plat "A", Spanish Fork City Survey of Building Lots; thence South 00°34'59" West 197.83 feet along the Easterly line of said Block 128 to the Northeast corner of Lot 1 of said Block 128; thence North 89°32'41" West 395.18 feet to the Easterly boundary line of 600 East Street; thence North 00°27'06" East 666.00 feet along said street to the Southwesterly right-of-way line of said Chapel Drive; thence North 40°56'29" East 221.25 feet along said road to the POINT OF BEGINNING.

Contains 8.26 acres.

**EXHIBIT "E"**

**CITY PROPERTY LEGAL DESCRIPTION**

**CITY PARCELS A AND B, NORTH PARK SUBDIVISION - PHASE I, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.**

Document comparison by Workshare Professional on Wednesday, January 30, 2008  
10:34:00 AM

<b>Input:</b>	
Document 1 ID	PowerDocs://PBL01/1024057/3
Description	PBL01-#1024057-v3-spanish_fork_-_storm_water_maintenance_and_easement_agreement
Document 2 ID	PowerDocs://PBL01/1024057/4
Description	PBL01-#1024057-v4-spanish_fork_-_storm_water_maintenance_and_easement_agreement
Rendering set	standard

<b>Legend:</b>	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
Moved to	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	38
Deletions	13
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	51

## **NORTH PARK EAST RETENTION POND**

BEGINNING AT A POINT WHICH IS LOCATED EAST 2123.34 FEET AND NORTH 978.79 FEET FROM THE WEST QUARTER CORNER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S79°17'13"W 16.32 FEET; THENCE ALONG THE ARC OF A 7.00 FOOT RADIUS CURVE TO THE RIGHT 14.38 FEET (CHORD BEARS: N41°50'47"W 11.98 FEET); THENCE N17°01'14"E 20.20 FEET; THENCE N05°11'40 E 6.85 FEET; THENCE ALONG THE ARC OF A 55.00 FOOT RADIUS CURVE TO THE LEFT 54.27 FEET (CHORD BEARS: N23°04'22"W 52.09 FEET); THENCE N51°20'25"W 16.00 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT 32.27 FEET (CHORD BEARS: N14°21'37"W 30.08 FEET); THENCE N22°37'12"E 17.33 FEET; THENCE N32°09'08"E 5.60 FEET; THENCE ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE LEFT 46.05 FEET (CHORD BEARS: N10°10'00"E 44.92 FEET); THENCE N11°49'08"W 35.12 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 38.22 FEET (CHORD BEARS: N61°10'42"E 28.69 FEET); THENCE S45°49'28"E 77.83 FEET; THENCE S41°35'29"E 79.70 FEET; THENCE ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT 38.92 FEET (CHORD BEARS: S04°25'41"E 36.25 FEET); THENCE S32°44'07"W 3.23 FEET; THENCE S41°31'54"W 18.41 FEET; THENCE S46°55'50"W 74.40 FEET; THENCE S51°10'13"W 20.73 FEET; THENCE S67°22'48"W 5.12 FEET TO THE POINT OF BEGINNING.

CONTAINING: 0.46 ACRES

## **NORTH PARK WEST RETENTION POND**

BEGINNING AT A POINT WHICH IS LOCATED EAST 1685.35 FEET AND NORTH 1445.59 FEET FROM THE WEST QUARTER CORNER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N48°02'19"W 10.63 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 37.21 FEET (CHORD BEARS: N23°02'06"E 28.38 FEET); THENCE ALONG THE ARC OF A 374.00 FOOT RADIUS CURVE TO THE RIGHT 242.48 FEET (CHORD BEARS: S67°19'05"E 238.26 FEET); THENCE ALONG THE ARC OF A 11.00 FOOT RADIUS CURVE TO THE RIGHT 28.50 FEET (CHORD BEARS: S25°28'26"W 21.17 FEET); THENCE N80°18'28"W 27.10 FEET; THENCE ALONG THE ARC OF A 46.00 FOOT RADIUS CURVE TO THE LEFT 44.69 FEET (CHORD BEARS: S71°51'38"W 42.95 FEET); THENCE S44°01'44"W 26.45 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT 55.25 FEET (CHORD BEARS: N72°39'32"W 44.67 FEET); THENCE ALONG THE ARC OF A 112.00 FOOT RADIUS CURVE TO THE LEFT 115.68 FEET (CHORD BEARS: N38°56'08"W 110.60 FEET); THENCE N68°31'28"W 17.05 FEET TO THE POINT OF BEGINNING.

CONTAINING: 0.35 ACRES