



Memorandum

To: Town Council
From: Thomas Dansie, Director of Community Development
Date: September 3, 2020
Re: September 9, 2020 Town Council Meeting
Interpretation of Ferber Development Agreement Regarding Camping Cabins

Executive Summary

The Town has a Development Agreement with Stew Ferber regarding the development of several of his properties in Town. The Agreement restricts the use of the back half of the Zion Canyon Campground property to a campground use only.

Mr. Ferber desires to place camping cabins on the back half of the property.

The Council needs to determine if camping cabins as proposed by Mr. Ferber are an allowable use under the Development Agreement.

Background and Analysis

In 2015 the Town entered into a Development Agreement with Stew Ferber. The Agreement allowed the transfer of development rights from a highly visual piece of property in the Central Commercial zone to several of Mr. Ferber's other properties in the Town. The Zion Canyon Campground property, owned by Mr. Ferber, did not receive any of the transferred development rights from the CC property. However, development regulations on the Campground property were included in the Agreement.

The Agreement limits development on the back half of the Campground property to a campground. The Agreement specifically prohibits transient lodging and other commercial uses on the back half of the property (see section 3(d)(ii) of the Agreement, attached).

Mr. Ferber would like to place camping cabins on the rear half of the property. The Council needs to determine if camping cabins are allowed under the Development Agreement restriction on the property.

The type of cabins Mr. Ferber is proposing are rustic accommodations with no amenities (other than electricity and air conditioning). The cabins have bunks for sleeping, but no plumbing for running water (thus no shower or bathroom facilities). Mr. Ferber has indicated camping cabins are a common feature in many campgrounds and has provided examples: [KOA](#), [Jellystone](#), and [Zion River Resort](#).

The main issue for the Council to consider is whether the cabins Mr. Ferber is proposing can be classified as part of a campground use (allowed by the Development Agreement), or are actually part of a transient lodging facility (prohibited by the Development Agreement). The Council may wish to reference the following definitions from Town Code to aid in making this determination.

CAMPGROUND: An area improved and used for camping on an ongoing basis.

CAMPING: A temporary establishment of living facilities such as tents, yurts, or recreational coaches as regulated by this title. This definition includes any overnight occupancy of any structure or facility

of any kind with the exception of an approved dwelling unit or transient lodging unit which has been issued a certificate of occupancy.

DWELLING UNIT: One or more rooms in a dwelling designed for living and sleeping purposes, and having not less than one kitchen and one bathroom.

TRANSIENT LODGING FACILITY: Any establishment that receives payment in any form of exchange for the use of any dwelling for thirty (30) consecutive days or less, including any hotel, motel, bed and breakfast, boarding house, hostel or the like.

Staff suggests the following key considerations for the Council:

- The definition of “camping” emphasizes the temporary nature of structures used in the camping use. Thus, for a camping cabin to be considered “camping” and part of a “campground” under the Town code it must be a temporary structure. If the structure is on a permanent foundation, permanently connected to utilities, etc. it would not qualify as a “temporary establishment” as emphasized in the definition of camping.
- The definition of “camping” excludes any dwelling unit. The definition of “transient lodging facility” is a dwelling used on short term basis. Thus, if the cabins are considered “dwelling units” they cannot be classified as camping and part of a campground. The definition of “dwelling unit” requires the unit to have bathroom and kitchen facilities. If the cabins lack these facilities they are not dwelling units and would not be considered transient lodging.

Summary

The Council needs to determine if camping cabins can be considered an allowed “campground” use. If the cabins are a campground use then the Development Agreement allows them to be placed on the rear portion of the Zion Canyon Campground property.

Staff suggests the following factors support a finding that the cabins are an allowed campground use:

- The cabins are temporary structures. They are not placed on a permanent foundation and are not permanently connected to utilities.
- The cabins do not contain plumbing, kitchen, or bathroom facilities. They are therefore not classified as a “dwelling unit” or a “transient lodging unit.”

If the Council determines the cabins are an approved campground use the above findings could be made conditions for any future cabin development on the property.

From: [stewart ferber](#)
To: [Tom Dansie](#); [Dave Greer](#)
Subject: Fwd: CABIN EXAMPLES
Date: Tuesday, August 18, 2020 11:55:48 AM

Tom,

Below I have sent you a couple of links to a couple of CAMPGROUND companies that have parks around the country, as well as a local RV Park in Virgin. Camping cabins are not a new concept, in fact the camping cabins I'm proposing are becoming dinosaurs because of the lack of amenities inside. But I'm not trying to build another hotel, just a step up from a tent site. There are advantages to both the camper and our park. For example, the camper who might come late after work from St. George, Salt Lake or Vegas could arrive late and have nothing more to do than unload their belongings from their vehicle. No more late night tent set up which brings noise, and light pollution, because it is typically their car that acts as the lights to get set up. Tents have always been a challenge, but there is a segment of die hard tenters who won't use a hotel and will not rent or buy an RV. For us, this would mean strategically replacing tent sites that are in our park that might be next to a neighboring property, a site difficult to navigate after dark, or an area of the campground that would be affected by the late night arrival. We feel that landscape and location of picnic tables and fire pits could also be permanently mounted in the best spot for all concerned.

With several new GLAMPING and campgrounds going in the surrounding areas, we would like to elevate our basic tenting experience, we would offer these units with no plumbing, nestled on skids set on rocks, plugged in to our campground utility box providing basic lighting, and an air conditioner. There would be no modern amenities in these units, no TVs, no bathrooms, no bedding, only to be cleaned upon departure by maintenance staff. People would obtain and bring their own bedding. During heavy rains in the area, or blasting heat, it would be a good alternative to the basic tenting experience. Below are just a few examples of what is the norm in most campgrounds.

<https://koa.com/ways-to-stay/cabins/>

<https://www.jellystonesiouxfalls.com/accommodations/cabin-photos/>

<https://zionriverresor.wpengine.com/camping-facilities-near-zion/>

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into as of the 10th day of November, 2015 (the “Effective Date”), by and between the **TOWN OF SPRINGDALE**, a Utah municipal corporation (the “Town”), on the one hand; and **STEWART FERBER**, an individual; **FERBER ENTERPRISES, L.L.C.**, a Utah limited liability company; **HALEY HARRISON HOSPITALITY, L.L.C.**, a Utah limited liability company; **STUMAR PROPERTIES, L.L.C.**, a Utah limited liability company; **ZION CANYON CAMPGROUND, L.L.C.**, a Utah limited liability company; and **THE ROBERT E. AND VIOLET B. RASLSTON TRUST, u/a/d March 18, 2002, and the Second Amendment to and Complete Restatement of The Robert E. and Violet B. Ralston Trust, dated May 15, 2008, and the Addendum to the Second Amendment to and Complete Restatement of The Robert E. and Violet B. Ralston Trust, dated April 4, 2014 (hereinafter “The Robert E. and Violet B. Ralston Trust”)**, along with their heirs, successors, and assigns, on the other hand. Stewart Ferber, Ferber Enterprises LLC, Haley Harrison Hospitality LLC, Stumar Properties LLC, Zion Canyon Campground LLC and The Robert E. and Violet B. Ralston Trust are sometimes referred to collectively as the “Ferber Parties.”

RECITALS OF FACTS.

1. The Town’s natural beauty and climate, combined with the Town’s proximity to Zion National Park, have increased the demand for the limited land within the Town’s boundaries.
2. The Ferber Parties own multiple improved and unimproved parcels of property (hereinafter sometimes collectively the “Properties”) within the Town. The Ferber Parties are willing to voluntarily and forever decrease and restrict by recorded covenant the lawful and permitted uses and development on certain of the Properties that may have negative aesthetic impact on other contiguous properties, their owners and the greater community in general in exchange for certain development incentives for other of the Properties.
3. The Properties are presently owned and identified as follows:
 - a. **Serial/Parcel S-78-A-1** (the “Montclair Property”) is owned by Stumar Properties, L.L.C. with Stewart Ferber as its managing member, which is legally described as follows:

S: 32 T: 41S R: 10W BEG S89*58'40 E 2495.52 FT ALG C/S/L & N 93.67 FT FM W1/4 COR SEC 32 T41S R10W; TH N40*29'15 W 394.54 FT; TH N50*0'05 E 20 FT; TH S40*29'15 E 41.30 FT; TH N50*0'05 E 101.50 FT; TH N19*01'23 W 207.49 FT; TH N82*31'15 E 5.32 FT; TH N82*29'30 E 20.29 FT; TH S61*16'30 E 52.03 FT; TH S58*05' E 32.58 FT; TH S88*21' E 153.60 FT; TH S50*50 E 38.85 FT; TH S51*26'34 E 36.88 FT; TH S67*01'46 E 138.91 FT TO PT R/W HWY 9 BEING ON CUR RGT RAD PT BEARS N59*55'21 W 950 FT; TH ALG R/W SWLY ALG ARC CUR THRU CTL ANG 2*45'06" DIST OF 45.62 FT; TH S23*19'16 W 102.91 FT; TH S32*49'45 W 314.71 FT TO POB.

b. **Serials/Parcels S-21-B and S-21-C** (the “West Temple Property”) are owned by The Robert E. and Violet B. Ralston Trust with Stewart Ferber as its successor trustee, which are legally described as follows:

S-21-B

SPRINGDALE CITY LOTS 21-30 (S) Lot: 21 BEG SW COR LOT 21
SPRINGDALE CITY SUR TH S79*30' W 232.82 FT TO W LN SE1/4 SE1/4
SEC 29 T41S R10W TH N 456.53 FT M/L TO W LN WINDER PRPTY; TH
S70* E 107.50 FT; TH S65*13' E 61.41 FT; TH N83*20' E 15 FT M/L TO W LN
JOHNSON PRPTY; TH S10*35' E 130 FT; TH S24*31' E 149.44 FT; TH
N78*42' E 143.65 FT; TH S10*35' E 55 FT; TH S78*42' W 179.65 FT M/L TO
POB. LESS: BEG NW COR LOT 21 STS TH S10*40'07 E 128.03 FT; TH
S22*41'09' E 150.20 FT; TH N79*47'24 E 130.88 FT TO POB; TH N79*47'24 E
30.02 FT; TH S12*08'08 E 55.02 FT; TH S79*42'07 W 30.02 FT TO POB.

S-21-C

S: 29 T: 41S R: 10W BEG AT PT N 699.35 FT & W 953.65 FT & S.65 FT & S
78* W 125.737 FT FM SE COR SEC 29 T41S R10W TH S 78* W 286.763 FT;
TH N 67.470 FT; TH N 78* E 257.729 FT; THS 24*48'35 E 67.68 FT TO POB.
LESS: EASTERLY 86.71 FT M/L.

c. **Serial/Parcel S-ELKR-1** (the “La Quinta Property”) is owned by Haley Harrison Hospitality, L.L.C. with Stewart Ferber as its managing member, which is legally described as follows:

All of LOT 1, ELK RANCH SUBDIVISION according to the Official Plat thereof on file in the Office of the Washington County Recorder.

d. **Serials/Parcels S-94-B-1, S-95, S-96, S-97-B and S-97-C** (the first part of the “Campground Property”) is owned by Zion Canyon Campground, L.L.C., which are legally described as follows:

S-94-B-1

S: 28 T: 41S R: 10W BEG AT PT S47*30'35 W 407.54 FT FM NE COR NE1/4
SW1/4 SEC 28 T41S R10W, SD PT BEING ON CTR/L VIRGIN RVR, TH
S61*35'25 W 177.86 FT; TH S43*47'55 W 415.87 FT; TH S2*49'43 W 148.59
FT; TH S49*34'30 E 106.22 FT; TO CTR/L VIRGIN RVR; TH ALG SD CTR/L

N31*50 E 65.73 FT; TH ALG SD CTR/L N51*35'40 E 82.93 FT; TH ALG SD CTR/L N30*06'05 E 437.48 FT; TH ALG SD CTR/L N35*14'19 E 98.75 FT; TH ALG SD CTR/L N07*18'04 W 35.38 FT TO POB.

ALSO: BEG AT PT S69*59'15 E 2028.33 FT FM W1/4 COR SEC 28, TH S2*49 43 W 125.69 FT; TH N49*34'30 W 78.34 FT; TH N41*22'41 E 99.60 FT TO POB.

S-95

S: 28 T: 41S R: 10W ALL LOT 2 O D GIFFORD'S SUR SEC 28 T41S R10W LESS THAT POR LOT 2 AS FOL: BEG AT PT S86*24' E 1303 FT FM 1/4 COR COMN TO SECS 28 & 29 T41S R10W; TH S13*10' W 87 FT TH S53*00' E 799 FT TH N44*00' E 40 FT; TH N50*30' W 840 FT TO POB.

S-96

S: 28 T: 41S R: 10W BEG S87*54' E 1294.4 FT FM W1/4 COR SEC 28 T41S R10W; TH S50*14' E 1056 FT; TH S39*46' W 103.5 FT; TH N50*14' W 276 FT; TH N49*12' W 586 FT; TH N50*50' W 144 FT; TH N11*52' E 107 FT TO POB. CONT 2.343 AC IN NW1/4 SW1/4 & NE1/4 SW1/4 SD SEC 28.

S-97-B

S: 28 T: 41S R: 10W BEG AT PT S69*59'15 E 2028.33 FT FM W1/4 COR SEC 28 T41S R10W, TH S41*22'41 W 99.60 FT TO NLY BDRY ZION SHADOW SUB; TH N49*34'30 W ALG BDRY 127.93 FT; TH N48*58' W ALG BDRY 190.30 FT; TH N49*11' W ALG BDRY 26.08 FT; TH N40*48'40 E 94.62 FT; TH S49*11'20 E 199.54 FT; TH S49*51' E 83 FT; TH S52*57'36 E 62.91 FT TO POB.

S-97-C

S: 28 T: 41S R: 10W BEG S73*56'39 E 1707.79 FT FM W1/4 COR SEC 28 T41S R10W; TH S40*48'40 W 94.62 FT TO NLY BDRY ZIONS SHADOWS SUB; TH N49*11' W ALG SD BDRY 240.40 FT; TH N40*48'40 E 94.60 FT; TH S49*11'20 E 240.40 FT TO POB.

e. **Serial/Parcel S-103-B-1** (the second part of the “Campground Property”) is owned by Ferber Enterprises, L.L.C. with Stewart Ferber as its managing member, which is legally described as follows:

S: 28 T: 41S R: 10W BEG N89*11'20 E 143.52 FT FM NW COR NE1/4 SW1/4 SEC 28 T41S R10W; TH N88*14'32 E 471.26 FT; S 109.33 FT TO S LN LOT 8 O D GIFFORD SUR; TH S88*14'32 W ALG S LN LOT 8 DIST OF 438.39 FT; TH N58*55'28 W 39.54 FT; TH N0*39'16 E 87.92 FT TO POB. ALSO: R/W.

4. The Properties are currently developed as follows:
 - a. Montclair Property: Hotel with thirty-four (34) units, one employee housing unit, office building, pool, and associated development;
 - b. West Temple Property: Unimproved (a prior single family development was recently removed), requiring extensive site grading associated with the previous development;
 - c. La Quinta Property: Hotel with one hundred forty (140) units, retail building (currently used as a guiding service), lobby building with restaurant, pool, and associated development; and
 - d. Campground Property: Hotel with forty-two (42) units, two (2) employee housing units, pool, campground, and associated development.
5. On April 21, 2015 the Planning Commission approved a Design/Development Review for a forty-four (44) unit hotel on the West Temple Property.
6. Although the approved forty-four (44) unit hotel development on the West Temple Property complies with all applicable Town standards, such a development has the potential to significantly impact neighboring properties and the community as a whole in at least the following ways:
 - a. The approved development included significant excavation and large retaining walls, resulting in visual scarring of the foothills and excessive truck traffic on town roads.
 - b. Access to the property is via a steep driveway coming off West Temple Drive. The configuration and geometry of the driveway access, combined with the position of other driveways is not conducive to large volumes of traffic.
 - c. The approved development had potential to add significant traffic to the intersection of West Temple Drive and Zion Park Boulevard, an already substandard intersection.
 - d. Residents near the approved development expressed concern over lighting, noise, and other aesthetic impacts typically associated with close proximity of residential dwelling units to a hotel. These aesthetic impacts are amplified by the West Temple property's elevated setting above the Town's downtown area.
7. As a result, the Town and the Ferber Parties desire to shift the approved development away from the West Temple Property and onto the other Properties. These other Properties are already commercially developed and are better suited to accommodate additional development.

8. In lieu of developing hotel units on the West Temple Property, the Ferber Parties desire to develop employee housing units on that property.

9. The Ferber Parties have agreed to allow public ingress and egress through and across the West Temple Property to access the Town's public trail adjacent to the West Temple Property from West Temple Drive.

10. Town Code section 10-1-13 allows the Town to enter into development agreements it considers necessary or appropriate for the use and development of land within the Town. This section allows the Town to offer development incentives to property owners who provide facilities, amenities, or improvements that help achieve the goals and objectives of the general plan, and that are not otherwise required by the Town Code.

11. The Planning Commission and Town Council have found that distributing the approved forty-four (44) unit hotel development away from the West Temple property to the other Properties will promote the goals and objectives of the Town's General Plan, specifically:

- a. Strategy 3.3.2.c that encourages access to open space through trails and trailheads;
- b. Strategy 5.3.1.a that allows development incentives for property owners who provide quality employee housing;
- c. Strategy 5.3.2.b that encourages employee housing units to remain as employee housing through legally enforceable means (such as deed restrictions or development agreements); and
- d. Objective 5.1.4 that encourages using commercially zoned land for housing uses.

12. On September 9, 2015, the Town Council, after considering the recommendations of the Planning Commission, held a properly noticed public hearing and outlined approved terms for this Development Agreement with the Ferber Parties.

13. Springdale Code 10-1-13 states that the Town may offer property owners certain development incentives in return for the construction and dedication of public facilities, the provision of public amenities, or the provision of physical improvements designed to help achieve the goals and objectives of the Town's General Plan, when such facilities, amenities or improvements are provided in addition to the improvements otherwise required for development.

14. After consideration of the Agreement as set forth herein, and the goals and objectives of the General Plan, the Town Council specifically finds that the Agreement will promote the goals and objectives of the General Plan.

15. The Town Council further finds that the incentives offered to the Ferber Parties as set forth in this Agreement are roughly proportionate to the public benefit which will be provided by the Ferber Parties and, when considered cumulatively, the net increases in building sizes and density standards will result in an incentive to the Ferber Parties of less than twenty percent (20%) as required by Town Code 10-1-13.B.1. Further, the Town Council finds that the public benefit justifies the development incentives contained in this Agreement.

16. On November 10, 2015, the Town Council approved this Development Agreement between the Town and the Ferber Parties at a public meeting.

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

AGREEMENT:

The parties make the following agreements:

1. Accuracy of the Recitals. The parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.

2. Term. This Agreement shall commence on the date set forth above and shall continue as set forth herein.

3. Restrictions on Development and Operation. The development of the Properties including, without limitation, type of use, maximum height and size of buildings, building setback requirements, parking requirements, landscaping requirements, and provisions for reservation or dedication of land for public purposes, shall be governed by the Town Code, except as it is modified by the following (collectively the “Development Criteria”) as they exist on the Effective Date:

(a) West Temple Property (**Exhibit 1**)

(i) Development shall be limited to ten (10) employee housing units consisting of five (5) duplexes and uses accessory to the ten (10) employee housing units, with the exception of improvements necessary for public access to the Town trail. Stewart Ferber, in his capacity as the successor trustee of The Robert E. and Violet B. Ralston Trust, which is the legal owner of the West Temple Property, will execute and record a restrictive covenant limiting future development on this property in the form attached hereto as **Exhibit 2**.

(ii) Stewart Ferber, in his capacity as the successor trustee of The Robert E. and Violet B. Ralston Trust, which is the legal owner of the West Temple Property, will grant a perpetual easement for public ingress and egress across the West Temple property to access the Town’s public trail system on the west side of the property from West Temple Drive in the form attached hereto as **Exhibit 3**.

(iii) The Ferber Parties will take necessary and appropriate steps to control storm runoff from the property (both in its current undeveloped state and in its future developed state) such that storm water, mud, debris, and other storm runoff are mitigated. Throughout the period of time this property remains developed as of the Effective Date, the Ferber Parties will use their best efforts and work in good faith with the Town to mitigate the impacts of storm runoff from the property. When the property is further developed as set forth in this Agreement, the installation of adequate facilities to collect and appropriately discharge storm runoff will be a condition of Design/Development review and approval.

(iv) A copy of this Agreement will be recorded in the Washington County Recorder's Office against the West Temple Property.

(b) La Quinta Property (**Exhibit 4**)

(i) The property shall be allowed a total of one hundred sixty-four (164) transient lodging units.

(ii) A copy of this Agreement will be recorded in the Washington County Recorder's Office against the La Quinta Property.

(c) Montclair Property (**Exhibit 5**)

(i) The property shall be allowed a total of fifty-eight (58) transient lodging units and one (1) employee housing unit.

(ii) All new development on the property must be contained within the portion of property zoned Village Commercial as of the Effective Date.

(iii) The hundred foot (100') setback for a building larger than 5,000 square feet (and up to 8,000 square feet) in the Village Commercial zoning standards as of the Effective Date shall not be measured from any portion of the Montclair Property that is zoned Valley Residential as of the Effective Date. However, this setback standard shall be measured from all adjacent residentially-zoned properties.

(iv) A copy of this Agreement will be recorded in the Washington County Recorder's Office against the Montclair Property.

(d) Campground Property (**Exhibit 6**)

(i) The front portion of the property (as shown in **Exhibit 6**) is currently developed with transient lodging. The current development on this property may be altered, modified or reconstructed with additional transient lodging. The number of transient lodging units allowed on the front portion of the property will be determined by building size, building height, setback, and parking regulations in place as of the Effective Date, and any future changes to the Town Code that would more restrictively regulate development on this property that the version of the Town Code in existence as of the Effective Date will not apply to this property. All parking to support the transient lodging must be located on the front portion of the property, not on the rear portion of the property.

(ii) The rear portion of the property will remain a campground and will not be developed with transient lodging or other commercial uses.

(iii) The required landscape (per Chapter 10-18 of the Town Code) will be calculated based on the entire property. The entire property is currently in compliance with the Town's landscape ordinances. The existing landscape in the rear portion of the property (campground) satisfies the Town's landscape requirements for the entire property.

(iv) The Ferber Parties will dedicate without cost to the Town or to UDOT the minimum necessary portion of the property adjacent to SR-9 to UDOT for right-of-way if and when it becomes necessary to make improvements to the SR-9 / Lion Boulevard intersection, if such improvements require additional right-of-way. In the case of such a dedication, the boundaries of the front portion of the property will be adjusted such that the area

of the front portion of the property is the same after the dedication as it was before the dedication.

(v) A copy of this Agreement will be recorded in the Washington County Recorder's Office against the Campground Property.

4. Development and Operation. On and after the Effective Date, and upon meeting the conditions contained in the Enacting Resolution/Ordinance, the Ferber Parties shall have the vested right to develop and operate the Properties identified herein in conformance with this Agreement. The parties understand and agree that the Ferber Parties have the sole and exclusive right to decide when or if to commence the development of the La Quinta Property, the Montclair Property and the Campground Property as set forth in this Agreement. However, the restrictive covenant and easement that will be recorded against the West Temple Property will take effect upon recordation immediately following the execution of this Agreement. Furthermore, the Ferber Parties agree to complete construction of two (2) of the five (5) total duplexes for employee housing on the West Temple Property before they apply for any permits to further develop the La Quinta Property, the Montclair Property or the Campground Property as provided by this Agreement. The Ferber Parties affirmatively represent that they are committed to constructing all of the employee housing units on the West Temple Property as authorized by this Agreement. The Ferber Parties acknowledge that their earnest construction of all employee housing units was a primary reason for the Town's willingness to enter into this Agreement.

5. Town's Representations and Warranties. The Town acknowledges that the Ferber Parties are entering into this Agreement and may at some future date expend considerable sums in design and engineering fees associated with the development of the Properties in reliance on the findings, agreements, representations and warranties of the Town contained in this Agreement. The Town represents, warrants and covenants to the Ferber Parties that all of the Town's representations, findings, warranties and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement. The Town further represents, warrants and covenants to Ferber as follows:

(a) The Town is a duly organized and validly existing municipal corporation in the State of Utah.

(b) The transactions contemplated by this Agreement, the execution of this Agreement and the Town's performance hereunder have been duly authorized by all requisite action of the Town and no other approval or consent is required for this Agreement to be binding upon the Town.

(c) The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the Town.

(d) The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or

provision of any applicable agreement, instrument, law, rule, regulation or official policy to which the Town is a party or by which the Town is bound.

6. The Ferber Parties' Representations and Warranties. The Ferber Parties, and each of them, represent, warrant and covenant to the Town that all of the Ferber Parties' representations, warranties and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement. The Ferber Parties further represent, warrant and covenant to the Town as follows:

(a) Each of the Ferber Parties' is the lawful owner of the Properties as set forth in the Recitals.

(b) The transactions contemplated by this Agreement, the execution of this Agreement and the Ferber Parties' performance hereunder have been duly authorized by all requisite actions or approvals necessary for each of the Ferber Parties, and no other approval or consent is required for this Agreement to be binding upon each of the Ferber Parties.

(c) The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, or regulation to which any of the Ferber Parties is a party or by which and of the Ferber Parties is bound.

7. Default. Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of ten (10) days (the "Cure Period") after written notice thereof from the other party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. If any party to this Agreement is in default under any provision of this Agreement, the non-defaulting party shall be entitled, without prejudice to any other right or remedy that it may have under this Agreement, at law or in equity, to specific performance by the defaulting party of this Agreement (and each party hereby waives the defense that the other party has an adequate remedy at law) and to receive reasonable attorney fees incurred in enforcing the terms of this Agreement. In the alternative, the non-defaulting party may terminate this Agreement and exercise any or all other remedies available to it at law or in equity.

8. Notices and Filings.

(a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, by overnight mail, or sent by registered or certified United States Mail, postage prepaid, if to:

The Town:	Town of Springdale 118 Lion Blvd. P.O. Box 187 Springdale, UT 84767 Attn: Town Manager
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The Ferber Parties: Stewart Ferber
1516 Zion Park Blvd.
PO Box 99
Springdale, UT 84767

Or to such other persons and addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

(b) Notices Effective. Notices shall be effective upon receipt or refusal.

9. Acknowledgement Regarding Legal Representation. The Ferber Parties expressly acknowledges that the law firm of Snow Jensen & Reece, P.C. has heretofore represented, and will hereafter continue to represent, only the Town in all aspects of this transaction, including the negotiation and drafting of this Agreement. The Ferber Parties further expressly acknowledge that they have not relied upon any representation, counsel or legal advice from Snow Jensen & Reece, P.C. or any of its attorneys in deciding whether to enter into this Agreement, and that the Ferber Parties have relied, and will continue to rely, solely upon the representations, counsel and legal advice of their own attorneys as deemed necessary by the Ferber Parties.

10. General.

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

(b) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

(c) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(d) Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(e) Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, the Town shall cooperate in good faith and process promptly any requests and applications for plans and specifications, plat or permit approvals or revisions, and other necessary approvals relating to the development of the Properties by Ferber and its successors.

(f) Time of the Essence. Time is of the essence in the performance of this Agreement, except that Ferber is not required to commence construction on the Project immediately.

(g) Successors. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereof. The Town may not assign any of its rights or obligations hereunder. It is expressly acknowledged and agreed that Ferber shall have the unrestricted right to assign, transfer and convey portions of the Properties to any one or more persons or entities without the approval of the Town upon, or concurrently with, the legal subdivision of any such portion of the Properties, from the remainder of the Properties. The Ferber Parties' rights and obligations hereunder may only be assigned by a written instrument.

(h) No Partnership and Third Parties. Nothing contained in this Agreement will create any partnership, joint venture or other similar arrangement between the Ferber Parties and the Town.

(i) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. Any modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by both parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

(j) Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of the State of Utah.

(k) Reformation. Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the parties shall reform this Agreement to conform as closely as possible to the original intent hereof.

(l) Excused Delay in Performance. In addition to specific provisions of this Agreement, for a period of time equal to the period of the force majeure delay, untimely performance by a party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection, strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restriction, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, severe weather, inability (when the party which is unable to perform is substantially without fault) of any contractor, subcontractor or supplier to perform acts of the other party, acts or the failure to act of any utility, public or governmental agent or entity and/or other causes beyond the reasonable control of said party. In the event that a party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said party shall be extended as necessary for a period of time up to the period of the force majeure delay.

(m) Attorney's Fees, Jurisdiction and Venue. The parties expressly agree that the prevailing party in any dispute (whether or not such dispute is resolved formally or informally, or by trial or alternative dispute resolution) shall be entitled to an award of all of its costs and attorney's fees. The parties agree that the Fifth Judicial District Court for Washington County, Utah shall have jurisdiction to resolve all legal disputes; and the proper venue for any and all dispute resolution shall be in the Fifth Judicial District Court in Washington County, Utah.

(n) Dispute Resolution. The parties agree to submit to formal, non-binding mediation before pursuing any other legal means of resolving any disputes over this Agreement or the Project.

THIS AGREEMENT shall be binding upon the parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

TOWN OF SPRINGDALE,
a Utah municipal corporation,

By: Stanley Smith
Its: Mayor

ATTEST:

Town Clerk

FERBER ENTERPRISES, L.L.C.

By: Stewart E. Ferber
Its: Managing Member

HALEY HARRISON HOSPITALITY, L.L.C.

By: Stewart E. Ferber
Its: Managing Member

STUMAR PROPERTIES, L.L.C.

By: Stewart E. Ferber
Its: Managing Member

ZION CANYON CAMPGROUND, L.L.C.

By: Stewart E. Ferber
Its: Managing Member

THE ROBERT E. AND VIOLET B. RALSTON
TRUST

By: Stewart E. Ferber
Its: Successor Trustee

By: Stewart E. Ferber, Individually

State of Utah)
 ss.
County of Washington)

The foregoing Development Agreement was acknowledged before me this _____ day of November, 2015, by Stewart E. Ferber as follows: individually; in his capacity as managing member of Ferber Enterprises, LLC; Haley Harrison Hospitality, LLC; Stumar Properties, LLC; and Zion Canyon Campground, LLC; and in his capacity as successor trustee of The Robert E. and Violet B. Ralston Trust; and representing that he has full legal authority from each of these entities to enter into this Development Agreement.

Notary Public

APPROVED AS TO FORM:
SNOW JENSEN & REECE, P.C.

J. Gregory Hardman
Town of Springdale Attorney