

WHEN RECORDED, RETURN TO:

Scot Hazard
3688 E. Campus Dr. #100
Eagle Mountain, UT 84005

**GRANTSVILLE CITY
PHASED DEVELOPMENT AGREEMENT
FOR
GRANTSVILLE PROFESSIONAL PARK (PHASE I)**

THIS MASTER DEVELOPMENT Agreement (“**Agreement**”) is made and entered as of the 4th day of September 2019, by and between Grantsville City, a municipal corporation of the State of Utah (“**City**”) and Envision Flow, LLC, a Utah limited liability company (“**Developer**”).

RECITALS

A. The capitalized terms used in this Agreement and in these Recitals are defined in Section 1.2, below.

B. Developer owns and is developing the Property as a commercial office building. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Preliminary Plan. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

C. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 (2005) *et seq.* This Agreement conforms with the intent of the City’s General Plan and the Zoning.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following:

TERMS

1. **Definitions.** As used in this Agreement, the words and phrases specified below shall have the following meanings:

1.1. **Agreement** means this Master Development Agreement including all of its Exhibits and Addendum No. 1.

1.2. **Applicant** means a person or entity submitting a Development Application.

- 1.3. **Buildout** means the completion of all of the development on the entire Project in accordance with this Agreement.
- 1.4. **City** means Grantsville City, a political subdivision of the State of Utah.
- 1.5. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of approval of the Preliminary Plan.
- 1.6. **Council** means the elected City Council of the City.
- 1.7. **Default** means a breach of this Agreement as specified herein.
- 1.8. **Developer** means Envision Flow, LLC and its successors/assignees as permitted by this Agreement.
- 1.9. **Development** means the development of a portion of the Property pursuant to an approved Development Application.
- 1.10. **Development Application** means an application to the City for development of a portion of the Project or any other permit, certificate or other authorization from the City required for development of the Project.
- 1.11. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603 (2019), and approved by the City, subdividing any portion of the Project.
- 1.12. **GLUDMC** means the Grantsville Land Use and Development Code.
- 1.13. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2005), *et seq.*
- 1.14. **Maximum Units** means the development on the Property of eight (8) attached Commercial Units.
- 1.15. **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another party.
- 1.16. **Party/Parties** means, in the singular, Developer or the City; in the plural Developer and the City.
- 1.17. **Preliminary Plan** means the preliminary plan for the development of the Project, which has been approved by the City and which is attached as Exhibit "B."
- 1.18. **Project** means the commercial building to be constructed on the Property pursuant to this Agreement with the associated Public Infrastructure and private facilities, and all of the other aspects approved as part of this Agreement.
- 1.19. **Property** means the real property owned by and to be developed by Developer more fully described in Exhibit A.
- 1.20. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City or other public entities as a condition of the approval of a Development Application.
- 1.21. **Zoning** means the CD zoning of the Property.

2. Development of the Project.

2.1. **Compliance with the Preliminary Plan and this Agreement.** Development of the Project shall be in accordance with LUDMA, GLUDMC, the City's Future Laws (to the extent they are applicable as specified in this Agreement), the Preliminary Plan and this Agreement.

2.2. **Maximum Commercial Units.** At Buildout, Developer shall be entitled to have

developed the Maximum Commercial Units of the type and in the general location as shown on the Preliminary Plan.

3. Vested Rights.

3.1. Vested Rights Granted by Approval of this Agreement. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, LUDMA, GLUDMC, the Zoning of the Property, and the Preliminary Plan except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the “vested rights” identified herein as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509 (2019).

3.2. Exceptions. The Developer’s vested rights as specified in Section 3.1 are subject to the following exceptions:

3.2.1. Codes. Developer shall be subject to updates or amendments to existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

3.2.2. Compelling, Countervailing Interest. Laws, rules or regulations that the City’s land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2019).

4. Term of Agreement. Unless earlier terminated as provided for herein, the term of this Agreement shall be until July 31, 2021. If Developer has not been declared to be currently in Default as of July 31, 2021 (and if any such Default is not being cured) then this Agreement may be extended by approval of the City Council to July 31, 2022. This Agreement shall also terminate automatically at Buildout.

5. Addendum No. 1. Addendum No. 1 contains the provisions of this Agreement that are specific to the development of the Project. If there is a conflict between this Agreement and Addendum No. 1, then Addendum No. 1 shall control.

6. Public Infrastructure.

6.1. Construction by Developer. Developer, at Developer’s cost and expense, shall have the right and the obligation to construct or cause to be constructed and install all Public Infrastructure reasonably and lawfully required as a condition of approval of a Development Application pursuant to GLUDMC. Such construction must meet all applicable standards and requirements and must be approved by the City’s engineer.

6.2. Responsibility Before Acceptance. Developer shall be responsible for all Public Infrastructure covered by this Agreement until final inspection of the same has been performed by the City, and a final acceptance and release has been issued by the City Council. The City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the Public Infrastructure, nor shall any officer or employee thereof, be liable for any persons or property injured by reason of said Public Infrastructure; all of such liabilities shall be assumed by the Developer.

6.3. Warranty. Developer shall repair any defect in the design, workmanship or materials in all Public Infrastructure which becomes evident during a period of one year following the acceptance of the improvements by the City Council (Durability Testing Period). If during the testing period, any Public Infrastructure shows unusual depreciation, or if it becomes evident that required work was not done, or that the material or workmanship used does not comply with accepted standards, said condition shall, within a reasonable time, be corrected.

6.4. Timing of Completion of Public Infrastructure. In accordance with the diligence requirements for the various types of approvals as described in the GLUDMC, construction of the required Public Infrastructure shall be completed prior to July 31, 2022. Upon a showing of good and sufficient cause by Developer the City shall, in accordance with the provisions of GLUDMC, extend the time of performance if requested prior to expiration of the completion date.

6.5. Bonding. In connection with any Development Application, Developer shall provide bonds or other development security, including warranty bonds, to the extent required by GLUDMC, unless otherwise provided by Utah Code § 10-9a-101, *et seq.* (2019), as amended. The Applicant shall provide such bonds or security in a form acceptable to the City or as specified in GLUDMC. Partial releases of any such required security shall be made as work progresses based on GLUDMC.

6.6. City Completion. The Developer agrees that in the event he does not: (a) complete all improvements within the time period specified under paragraph two above, or secure an extension of said completion date, (b) construct said improvements in accordance with City standards and as set forth in Paragraph one above, and (c) pay all claimants for material and labor used in the construction of said improvements, the City shall be entitled to declare the developer(s) in default, request and receive the funds held by the guarantor as surety and utilize the monies obtained to install or cause to be installed any uncompleted improvements and/or to pay any outstanding claims, as applicable. Provided however, that the City shall not be responsible for any work beyond the amount of funds so provided. Any funds remaining after completion of the improvements shall be returned to the Guarantor. The Developer agrees to provide the City with a bond equal to 110% of said improvements.

7. Upsizing/Reimbursements to Developer.

7.1. Upsizing. The City shall not require Developer to “upsized” any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Developer are made to compensate Developer for the incremental or additive costs of such upsizing to the extent required by law.

8. Default.

8.1. Notice. If Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

8.2. Contents of the Notice of Default. The Notice of Default shall:

8.2.1. Specific Claim. Specify the claimed event of Default;

8.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; and

8.2.3. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than ninety (90) days duration.

8.3. **Remedies.** Upon the occurrence of any Default, and after notice as required above, then the City may have the following remedies:

8.3.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

8.3.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

8.3.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developer until the Default has been cured.

8.4. **Public Meeting.** Before any remedy in Section 8.3 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

8.5. **Default of Assignee.** A default of any obligations expressly assumed by an assignee shall not be deemed a default of Developer.

8.6. **Limitation on Recovery for Default – No Damages against the City.** Anything in this Agreement notwithstanding Developer shall not be entitled to any claim for any monetary damages as a result of any breach of this Agreement and Developer waives any claims thereto. The sole remedy available to Developer and any assignee shall be that of specific performance.

9. **Notices.** All notices required or permitted under this Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Developer:

Envision Flow, LLC
3688 E. Campus Dr., #100
Eagle Mountain, Utah 84005

To the City:

Grantsville City
Attn: Mayor
429 East Main Street
Grantsville, Utah 84029

10. **Dispute Resolution.** Any disputes subject to mediation or arbitration shall be resolved pursuant to Addendum No. 2.

11. **Incorporation of Recitals and Exhibits.** The Recitals and Exhibits “A” - “C” are hereby incorporated into this Agreement.

12. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidences of intent.

13. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Except as specifically set forth herein, the parties do not intend this Agreement to create any third-party beneficiary rights.

14. **Assignability.** The rights and responsibilities of Master Developer under this Agreement may be assigned in whole or in part, respectively, by Developer as provided herein.

14.1. **Sale of Lots.** Developer's selling or conveying lots in any approved subdivision shall not be deemed to be an assignment.

14.2. **Related Entity.** Developer's transfer of all or any part of the Property to any entity "related" to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer's entry into a joint venture for the development of the Project or Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an assignment. Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

15. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

16. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

17. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

18. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

19. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City shall be the Mayor. The initial representative for Developer shall be Scott Hazard. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

20. **Applicable Law.** This Agreement is entered into in Tooele County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

21. **Venue.** Any action to enforce this Agreement shall be brought only in the Third District Court for the State of Utah.

22. **Entire Agreement.** This Agreement, and all Exhibits thereto, documents referenced herein, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

23. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against any Party based on which Party drafted any particular portion of this Agreement.

24. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

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

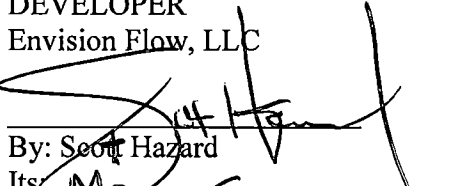
26. **Recordation and Running with the Land.** This Agreement shall be recorded in the chain of title for the Project. This Agreement shall be deemed to run with the land. The data disk of GLUDMC, **Exhibit C**, shall not be recorded in the chain of title. A secure copy of **Exhibit C** shall be filed with the City Recorder and each party shall also have an identical copy.

27. **Priority.** This Agreement shall be recorded against the Property senior to any respective covenants and any debt security instruments encumbering the Property.

28. **Authority.** The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to Resolution No. 2019-22 adopted by the City on 9/4, 2019.

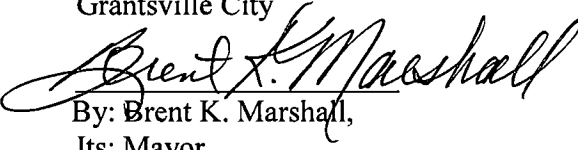
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

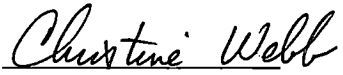
DEVELOPER
Envision Flow, LLC


By: Scott Hazard
Its: Manager
Approved as to form and legality:


Brett M. Coombs, City Attorney

CITY
Grantsville City


By: Brent K. Marshall,
Its: Mayor
Attest:


Christine Webb, City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
)
) :ss.
COUNTY OF TOOELE)

On the 5 day of September, 2019 personally appeared before me Brent Marshall who being by me duly sworn, did say that he is the Mayor of Grantsville City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.



Heri L. Anderson
NOTARY PUBLIC

My Commission Expires: 3/18/23

Residing at: Tooele, UT

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF Tooele)

On the 17th day of December, 2019, personally appeared before me Scott Hazard, who being by me duly sworn, did say that he is the manager of Envision Flow, LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

Christine Webb
NOTARY PUBLIC

My Commission Expires: 06/07/2021

Residing at: Grantsville, Utah

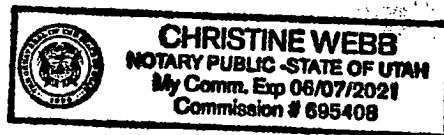


TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Preliminary Plan
Exhibit "C"	GLUDMC
Addendum No. 1	Specific Project Terms
Addendum No. 2	Dispute Resolution Procedures

Exhibit "A"
Legal Description of Property

Parcel Number 01-060-0-0010

Acres 8.72

Legal: Commencing 8.56 chains East of the Northwest corner of the Southwest quarter of the Southwest quarter Of Section33, Township 2 South, Range 5 West, Salt Lake Base and Meridian and running thence South 6.12 chains; thence East 8 chains; thence North10.80chains; thence West 8 chains; thence South 4.68 Chains to the point of beginning

Exhibit "B"
Preliminary Plan

Exhibit "C"
GLUDMC

Addendum No. 1
(Project-specific terms)

1. **Improvements.** The Developer agrees to install all improvements within said subdivision as are identified in Exhibit "B" except as provided below. Said improvements shall be constructed in accordance with City standards, as set forth in the Development Code, City Construction Standards and Specifications and typical details, as shown on those certain detail sheets contained in Exhibit "B". All improvements shall be constructed at the sole expense of the Developer unless stated otherwise within this agreement.
 - 1.1. **Exceptions.** Developer shall have discretion in determining whether to install the following improvements:
 - 1.1.1. Aesthetic roof screening; and
 - 1.1.2. Offsite landscaping on adjacent parcels not contemplated in this Project or Agreement.
2. The Developer agrees to comply with Utah Department of Transportation (UDOT) requirements and obtain the necessary permits to access and work within the SR 112 right-of-way. The Developer shall inform the City of applicable UDOT requirements and coordinate concurrently with the City when scheduling road closures, detours, or utility work.
3. Construction Coordination
 - a. The Developer shall provide the City 48 hours' notice to coordinate with the City prior to working on or around existing City water and sewer infrastructure.
 - b. All connections to City water and sewer infrastructure shall be inspected by the City prior to backfilling.
 - c. The Developer shall request inspections at least 48 hours prior to the day the Contractor desires the inspection to occur.
 - d. The Developer shall request disinfection testing at least 48 hours prior to the day the Contractor desires the testing to occur.
4. The City agrees to allow the Developer to comply with the amended language found in GLUDMC Section 12.1.1b adopted by the Grantsville City Council on April 17, 2019.

5. The City accepts the proposed open space as shown in Exhibit "A" to be owned and maintained by the Grantsville Professional Park Condominium Association as fulfilling the open space requirements found in Chapter 21.1.12 through 21.1.17.
6. The Developer shall construct a 5-foot-wide 6" thick concrete sidewalk, or trail, fronting the parcel along SR 112 and construct the ADA compliant sidewalk connecting the offsite pedestrian facilities to the structures as shown on the Architectural Site Plan, Sheet AS101 in Exhibit "B" as part of a future phase of the Grantsville Professional Park if the pedestrian facilities have been or are being constructed on adjacent parcels to the north and south to provide pedestrian interconnectivity.
7. The Developer shall contract with a third party to flow test the existing fire hydrant located on SR-112 across the street from the southwest corner of the Grantsville Professional Park parcel as directed by the City after the Main Street water line improvements have been placed in operation. The data from this fire flow test will be used to determine what physical improvements will be required in order for the Grantsville Professional Park to meet the current fire flow requirements of the City and the International Fire Code. The Developer agrees to make changes to the development improvements as necessary to meet fire flow requirements. These changes may include additional connections to the City water distribution system.

Addendum No. 2
(Dispute Resolution)

1. Meet and Confer. The City and Developer/Applicant shall meet within fifteen (15) business days of any dispute under this Agreement to resolve the dispute.

2. Mediation.

2.1. Disputes Subject to Mediation. Disputes that are not subject to arbitration provided in Section 3 shall be mediated.

2.2. Mediation Process. If the City and Developer/Applicant are unable to resolve a disagreement subject to mediation, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the Parties are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Developer/Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days from selection, or such other time as is reasonable under the circumstances, review the positions of the Parties regarding the mediation issue and promptly attempt to mediate the issue between the Parties. If the Parties are unable to reach an agreement, the Parties shall request that the mediator notify the Parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the Parties.

3. Arbitration of Disputes.

3.1. Disputes Subject to Arbitration. Disputes that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

3.2. Mediation Required Before Arbitration. Prior to any arbitration the Parties shall first attempt mediation as specified in Section 2.1.

3.3. Arbitration Process. If the City and Applicant are unable to resolve an arbitrable issue through mediation, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question or another experienced arbitrator with relevant expertise or experience. If the Parties are unable to agree on a single acceptable arbitrator, they shall each, within ten (10) business days, appoint their own proposed expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days from appointment, or such other time as is reasonable under the circumstances, review the positions of the Parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties.