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By WASHINGTON CITY

WHEN RECORDED, RETURN TO:

WASHINGTON CITY
Attn: Washington City Recorder
111 North 100 East
Washington, Utah 84780



**DEVELOPMENT AGREEMENT
FOR
BRILLO DEL SOL**

A Jack Fisher Homes Planned Community

THIS DEVELOPMENT AGREEMENT for Brillo del Sol (the "Agreement") is entered into and effective as of the 13th day of April, 2014, by and among Jack Fisher Homes of Southern Utah, LLC ("Developer"), a Utah limited liability company, and Washington City, a municipal corporation and political subdivision of the State of Utah ("City") (individually a "Party" and collectively the "Parties").

RECITALS:

A. Developer owns or controls by the terms of an option agreement approximately 193 acres of real property located within the municipal boundaries of Washington City, Washington County, State of Utah, as more particularly described in Exhibit "A" (the "Property") attached hereto and incorporated herein.

B. Developer desires and intends to develop the Property as a master-planned community currently known as Brillo del Sol (the "Project") as generally depicted on a conceptual site plan dated February 13, 2014 and prepared by Developer (the "Schematic Plan") attached hereto as Exhibit "B" and incorporated herein.

C. On April 7, 2014, Developer filed with City a complete application (Application # Z-14-04) to rezone the Property from the current OS Zone to the Planned Community Development Zone (the "PCD Zone") and approve the Schematic Plan to enable development of the Project, all as provided in City's Land Use Ordinance (the "PCD Application").

D. On May 7, 2014, City's Planning Commission recommended approval of the PCD Application subject to certain findings and conditions as set forth in Exhibit "C", attached hereto and incorporated herein, and forwarded them to City's City Council for consideration.

E. On May 28, 2014, City's City Council approved the PCD Application (the "PCD Zone Approval") subject to certain findings and conditions as set forth in Exhibit "D", attached hereto and incorporated herein, and subject to approval of this Agreement.

F. City finds the PCD Zone Approval and the Schematic Plan (i) do not conflict with any applicable policy of City's General Plan; (ii) meet the spirit and intent of City's Land Use Ordinance; (iii) will allow integrated planning and design of the Property and, on the whole, better development than would be possible under conventional zoning regulations; (iv) meet applicable use limitations and other requirements of the PCD Zone; and (v) meet the density limitations of the General Plan.

G. City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Property to ensure development of the Project will occur as approved; (ii) the financial capability to carry out the Project; and (iii) the capability to start construction within one (1) year of approval of this Agreement.

H. Developer desires to take all steps necessary to finalize approval of the Project and develop the Project as provided in this Agreement.

I. Each of the Parties is willing to enter into this Agreement in order to implement the purposes and conditions of both the PCD Zone Approval and the Schematic Plan for the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and City's Land Use Ordinance.

J. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, and after all required public notice and hearings, City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) City's Land Use Ordinance. As a result of such determination City (i) has elected to approve the Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

AGREEMENT

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

SECTION I. DEFINITIONS

Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by City's Land Use Ordinance in effect on the date of the Application for the PCD Zone or, if different, by this Agreement or applicable State statute (as provided in the 2013 amended Section 102, *Definitions*, of the Utah "Impact Fee Act", Utah Code Annotated, Chapter 36a), as the case may be. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

1.1 **"City's Construction Design Standards"** means the standards and specifications that City uses for construction of public improvements.

1.2 **"Commercial Uses"** means uses located as shown on the Schematic Plan as Commercial (Clinic) designation, and any other neighborhood convenience, sales, and other commercial uses, pedestrian oriented commercial uses, business and professional office uses, and commercial storage uses in the Project.

1.3 **"Culinary Water Master Plan"** means a comprehensive plan to provide culinary water within the Project as approved by City and in accordance with City's 2005 Culinary Water Master Plan.

1.4 **“Density”** means the number of dwelling units per acre as shown on the Schematic Plan and as authorized under this Agreement.

1.5 **“Density Transfer”** means the ability of Developer to transfer densities from areas within the Project to other areas within the Project including transferring such densities from one type of use to another type of use, for example, and not by way of limitation, transferring density from Multi-Family Uses to Single-Family Uses as provided in Paragraph 2.4.4 of this Agreement.

1.6 **“Design Guidelines”** means the design standards and guidelines (including the landscape plan) adopted by Developer and approved by City, as may be amended from time to time, applicable to the Project.

1.7 **“Developer”** means Jack Fisher Homes of Southern Utah, LLC, a Utah limited liability company, or its approved replacement developer, assigns and successors in interest, whether in whole or in part.

1.8 **“Development Activity”** as defined in U.C.A. § 11-36a-102(3) (2013) means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for Public Facilities.

1.9 **“Development Guidelines”** means collectively, the (a) Design Guidelines; (b) Master Declaration (and declarations developed and recorded against individual Phases); Culinary Water Master Plan; Secondary Water Plan; Sanitary Sewer Master Plan; Storm Water and Drainage Control Master Plan; Transportation Master Plan; and City’s Construction Design Standards.

1.10 **“Development Phase”** means a separately developed portion of the Project for which a Site Plan and one (1) or more corresponding subdivision applications are filed with City, and thereafter approved by City.

1.11 **“Final Plat”** means a final subdivision plat of property, located within an approved Development Phase, which is approved by City’s governing body and is recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

1.12 **“Land Use Application”** means any application for development within the Project submitted to City by Developer or any other person subsequent to the execution of this Agreement.

1.13 **“Land Use Ordinance”** means Washington City Zoning and Subdivision Ordinances.

1.14 **“Master Association”** means the Brillo del Sol Community Association a Utah corporation, its successors or assigns.

1.15 **“Master Declaration”** means that certain Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Project and which is recorded against portions of the Property corresponding to an approved Development Phase (as distinguished from various Phase or Neighborhood Declarations, which will be created and recorded with individual phases and subdivision plats throughout the Project).

1.16 **"Multi-Family Uses"** means all permitted attached residential uses located as shown on the Schematic Plan as Assisted Living/Multi-Family Residential designations.

1.17 **"Ordinances"** means the Washington City Municipal Ordinances, including City's Land Use Ordinance.

1.18 **"Planning Commission"** means the Washington City Planning Commission.

1.19 **"PCD Zone Approval"** means City's approval of the Schematic Plan and zone change request (Application # Z-14-04) for the Project on May 28, 2014, which was subject to certain findings and conditions set forth in Exhibit "D".

1.20 **"Primary Trail System"** mean the trails within the Project that coincide with City's master planned trails that may be accepted by City as public trails upon conveyance of developer.

1.21 **"Project"** means the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and City's Ordinances as generally depicted on the Schematic Plan.

1.22 **"Project Improvements"** means as defined in U.C.A. § 11-36a-102(14) (2013).

1.23 **"Project Master Plan"** means collectively the Development Guidelines and PCD Zone Approval.

1.24 **"Proportionate Share"** as defined in U.C.A. § 11-36a-102(15) (2013) means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

1.25 **"Public Facilities"** means as defined in U.C.A. § 11-36a-102(16) (2013).

1.26 **"Sanitary Sewer Master Plan"** means a comprehensive plan to provide sanitary sewer within the Project as approved by City and in accordance with City's 2009 Wastewater Collection System Master Plan.

1.27 **"Schematic Plan"** means the conceptual site plan map attached hereto as Exhibit "B", dated October 15, 2013, and presented to, and reviewed by, the Washington City Planning Commission on November 20, 2013, as part of Developer's PCD Application.

1.28 **"Secondary Water Master Plan"** means the secondary water system to be developed and used by Developer for irrigation purposes and not for culinary use.

1.29 **"Single-Family Uses"** means all permitted detached single-family residential uses located as shown on the Schematic Plan as SFD Residential, SFD Patio Residential, and SFA Townhomes designations.

1.30 **"Site Plan"** means a site plan submitted for a Development Phase as provided in City's Land Use Ordinance.

1.31 **“Storm Water and Drainage Control Master Plan”** means a comprehensive plan to provide storm water and drainage control within the Project as approved by City and in accordance with City’s Storm Water Master Plan.

1.32 **“SWPPP Permit”** means an approved storm water pollution prevention plan.

1.33 **“System Improvements”** as defined in U.C.A. § 11-36a-102(21) (2013).

1.34 **“Transportation Master Plan”** means the City’s 2010 Transportation Master Plan.

1.35 **“Utility Master Plan”** means a comprehensive plan to provide electrical power, natural gas, telephone, and cable/fiber optic service within the Project.

1.36 **“Washington City Power”** means the City’s Power Department, which is the electrical power provider to the area where the Project is located.

SECTION II. PLANNED COMMUNITY DEVELOPMENT ZONE

2.1 **Designation as a Planned Community Development.** In compliance with the requirements of Utah Code Ann. § 10-9a-501 *et seq.*, applicable provisions of City’s Land Use Ordinance, and following a public hearing on May 28, 2014, City, pursuant to its legislative authority, approved the PCD Zone and the Schematic Plan. City agrees development of the Project may proceed as provided in this Agreement and acknowledges the Schematic Plan and Design Guidelines are consistent with City’s Land Use Ordinance and General Plan. Developer acknowledges that development of the Project is subject to all normally-applicable City processes as set forth in Paragraph 2.2 and the following:

2.1.1 Design Guidelines;

2.1.2 Master Declaration (and various Phase or Neighborhood Declarations, which will be created and recorded with each development phase throughout the Project);

2.1.3 Culinary Water Master Plan;

2.1.4 Sanitary Sewer Master Plan;

2.1.5 Storm Water and Drainage Control Master Plan;

2.1.6 City’s Construction Design Standards;

2.1.7 Secondary Water Master Plan;

2.1.8 Transportation Master Plan; and

2.1.9 Utility Master Plan.

2.2. **Applicable Laws and Regulations.** Except as otherwise set forth in this Agreement, all development and improvements of any sort, on-site or off-site, relating to the Project shall comply with City’s Ordinances, regulations, requirements, and procedures established by and for City.

2.2.1 PCD Approval. The PCD Zone and the Schematic Plan shall not be affected by any inconsistent or contrary moratorium, ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the total number of residential dwelling units, land uses, and site improvements shown on the Schematic Plan.

2.2.2 Local Roads. City acknowledges and agrees it has approved the cross section design of certain local roads in the Project as more particularly described and depicted in Figure 3.11, page 43, of the Project Plan (dated April 23, 2014), which roads are specifically designed as 36 foot wide right-of-way residential streets. Such Figure 3.11 roads shall be private roads only and shall be constructed according to City's Construction Design Standards except as otherwise provided in Figure 3.11.,

2.2.3 Land Use Applications. Except as otherwise provided in Paragraphs 2.2.1 and 2.2.2 above, any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of City's Land Use Ordinance in effect when a complete application is submitted, or to the extent approved with each Development Phase and/or subdivision plat submittal.

2.2.4 Building Permits. Any person or entity applying for a building permit within the Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances relating to the construction of any structure in effect when such person or entity files with City a complete application for such building permit.

2.2.5 Later Enacted State or Federal Law. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent corresponding with local ordinance enacted consequent to such state and federal laws.

2.3 Design Guidelines. Developer has established Design Guidelines for each Development Phase. Developer and Master Association shall be solely responsible to enforce the Design Guidelines to the extent such guidelines exceed City Ordinance requirements. Nevertheless, as a courtesy to Developer and the Master Association, City, prior to issuing any building permit for property within the Project, may request the building permit applicant to produce a letter from Developer or the Master Association indicating the building plans which are the subject of the permit application have been approved by Developer or the Master Association.

2.4 Zoning. The zoning for the Project is the PCD Zone and shall be shown on City's zoning map. The following development standards shall apply to the Project:

2.4.1 Maximum Development Area. The entire area of the Project shall be contained within the land described on Exhibit "A". Notwithstanding this Paragraph 2.4.1, the Parties acknowledge that the owners of other land adjacent to or surrounded by the Property may request to be included in the Project at a later date if approved by Developer. Such requests shall be made pursuant to City's then applicable Ordinances and considered in City's usual course of such business. Any change in the maximum development area of the Project shall be accomplished only pursuant to City's then-applicable Ordinances and an amendment to this Agreement as provided in Paragraph 6.28 herein.

2.4.2 Residential Units. The total number of residential units permitted within the Project shall not exceed nine hundred twenty-eight (928). As shown on the Schematic

Plan, residential dwelling units are dispersed throughout the Project at varying densities, which may be modified pursuant to the Density Transfer provision set forth in Paragraph 2.4.4 of this Agreement. The final density identified for each Development Phase is not yet specifically authorized by this Agreement and the Parties acknowledge that the density allowed in each Development Phase will be determined upon review and approval of a Site Plan for each such Development Phase.

2.4.3 Phasing. City acknowledges that Developer intends to submit multiple Land Use Applications from time to time, in Developer's sole discretion, to develop and/or construct portions of the Project in Development Phases. However, to coordinate City-provided services and facilities and services and facilities provided by other public agencies with the demand for public services and facilities generated by uses and activities within the Project, development sequencing of the Project shall provide for the logical extension, as reasonably determined by City, of all required infrastructure and the provision of all reasonably related municipal services, including but not limited to, adequate fire protection and necessary ingress and egress.

2.4.4 Density Transfers. Developer's transfer of density units from one Development Phase or more to others within the Project shall be approved provided that (a) the total number of residential units does not exceed the number of residential units authorized for the Project; (b) the proposed transfer does not assign any density to park or open spaces shown on the Schematic Plan; (c) any compatibility standards for uses on adjoining parcels as set forth in City's Land Use Ordinance are satisfied; and (d) infrastructure is sufficient and available to meet the demands created by such transfer, as reasonably determined by City. Density transfers shall be initiated by notice to City from Developer, which describes the Development Phase from which density is to be transferred, describes the Development Phase to which density is to be transferred and summarizes the impact of such transfer on infrastructure improvements. The Density Transfer shall be considered approved and complete when a subdivision application submitted by Developer, including the extension or expansion of required infrastructure improvements, is approved by City.

2.4.5 Development Applications. Each residential development application submitted by Developer and/or its assignees who have purchased portions of the Project shall, in addition to those items required by City's Land Use Ordinance, or any other City Ordinance, include a statement of (a) the total number of residential dwelling units allowed in the Project under this Agreement; (b) the cumulative total number of residential dwelling units previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; (c) the number of dwelling units and densities for which a permit is sought under the particular Development Phase application; and (d) the balance of residential dwelling units remaining allowable to the Project. Each commercial development application submitted by Developer and/or its assignees who have purchased portions of the Project shall include, in addition to those items required by City's Land Use Ordinance, or any other City Ordinance, a statement of (a) the total number of square feet of gross floor area of Commercial Uses for which a permit is sought under the particular Development Phase application; (b) the cumulative total number of square feet of gross floor area of Commercial Uses previously approved for all of the properties within the Project from the date of approval of this Agreement to the date of the application; and (c) the types of Commercial Uses that are being proposed.

2.5 Recordation of First Final Plat. Developer shall record the approved Final Plat for the first Development Phase within one (1) year of approval of this Agreement, and as required by City's Land Use Ordinance, subject to any authorized extension.

SECTION III. GENERAL RIGHTS AND RESPONSIBILITIES

3.1 General Rights and Responsibilities of Developer.

3.1.1 **Development Fees.** With respect to the development of the Project, Developer accepts and agrees to comply with the application, plan examination, building and similar fees (excluding impact and connection fees) of City in effect at the time a person or entity files with City a complete application for a subdivision or a building permit, and City agrees and represents that any such fee schedule will be applied uniformly within City or any service area of City, as applicable. Developer acknowledges the Project requires infrastructure supported by impact and connection fees and finds such fees to be a reasonable monetary expression of public facility improvements required to support the Project. Developer 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 comply with Utah law, are applied uniformly within City or service area, as applicable, and Developer receives all credits and offsets against such fees as provided in Paragraphs 3.2.2 and 3.2.4 below, or a Reimbursement Agreement as provided in Paragraph 3.2.3 below.

3.1.2 **Reliance.** City acknowledges that Developer is relying on the execution and continuing validity of this Agreement and City's faithful performance of City's obligations under this Agreement in Developer's existing and continued expenditure of substantial funds in connection with the Project. Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement in continuing to perform the obligations of City hereunder.

3.1.3 **Vested Rights Granted by Approval of the PCD and Project.** To the fullest extent permissible under the law, this Agreement grants and vests in Developer all rights, consistent with the PCD Zone Approval, the Schematic Plan, and City's Land Use Ordinance, to develop the Project according to the Schematic Plan under applicable law as provided in Paragraph 2.2 of this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by City that Developer may assign all or portions of its rights under this Agreement and the PCD Zone Approval provided such assignment conforms with the requirements of, and assignees agree to be bound by the terms of, this Agreement as provided in Paragraph 5.2, below.

3.1.4 **Statement Regarding "Compelling, Countervailing Public Interests".** City and Developer acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah. City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, City is presently unaware of any material facts under which a desire of City to modify Developer's rights under this Agreement or the Schematic Plan would be justified by a "compelling, countervailing public interest." City shall immediately notify Developer if any such facts come to City's attention after the execution of this Agreement, and shall take all reasonable steps to maintain Developer's vested rights as set forth in this Agreement or the Schematic Plan.

3.1.5 **Construction Mitigation.** Developer shall provide the following measures, all to the reasonable satisfaction of City's Public Works Director, to mitigate the impact of construction within the Project. Developer 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 approval of a Site Plan for any Development Phase:

3.1.5.1 Limits of disturbance, vegetation protection and the revegetation plan for all construction, including construction of public improvements (an SWPPP permit being required on any construction involving a parcel in excess of one [1] acre in size).

3.1.5.2 Construction staging, temporary Project-related on-site batch plants, and materials stockpiling and recycling to keep all excavated materials on one (1) or more sites during infrastructure and construction of any Development Phase of the Project. The location of such areas shall be approved by City prior to construction of a Development Phase.

3.1.5.3 Construction traffic routing plan to minimize traffic impacts on City roads and residential areas by requiring construction traffic to use roads approved by City.

3.1.5.4 Mitigation of dust throughout construction, pursuant to Rule R-307-203 of the Utah Administrative Code, applicable City Ordinances, and any other applicable statute or regulation.

3.1.5.5 Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

3.1.6 **Demonstration of Ability.** Developer shall demonstrate that Developer possesses or is reasonably certain to receive the financial resources (money, equity, loans, and the like) necessary to undertake and complete the Project's development. If and at any time Developer fails to perform its obligations under this Agreement, City may request, and Developer shall provide, reasonable evidence that it still possesses or is reasonably certain to receive the financial resources necessary to continue the contemplated development within the Project.

3.1.7 **Dedication of Infrastructure Improvements.** Unless otherwise specifically provided herein, Developer shall dedicate, subject to the cost sharing, reimbursement, and impact fee credit obligations of the City as set forth in Paragraphs 3.2.2, 3.2.3, and 3.2.4 below, any System Improvements in the Project to City when such improvements are accepted by City.

3.1.8 **Developer's Employees and Agents.** Developer shall cause its employees and agents to act in accordance with the terms of this Agreement.

3.2 **General Rights and Responsibilities of City.**

3.2.1 **Reserved Legislative Powers.** This Agreement shall not limit the future exercise of the police powers of City to enact ordinances, standards, or rules regulating development. City acknowledges, however, that any exercise of its legislative or police powers which alters or modifies this Agreement to Developer's legal detriment may render City liable to such remedies as may be available to Developer under such circumstances. Notwithstanding the foregoing, after the date of this Agreement, City shall not enact any temporary zoning regulation that prohibits or regulates the erection, construction, reconstruction, or alteration of any building or structure in the Project which is inconsistent with the terms of the Schematic Plan and the PCD Zone Approval unless the temporary zoning regulation:

- (a) complies in all respects with applicable state law;

(b) was enacted to reasonably alleviate or otherwise reasonably respond to a legitimate, bona fide threat to public health and safety for which application to the Property is determined by City to be necessary and cannot be sufficiently addressed by application only to other development in the City; and

(c) has a period of effectiveness not to exceed six (6) months with no renewal provisions.

3.2.2 Project and System Improvements – Cost Sharing. Developer shall bear the entire cost of constructing Project Improvements needed to service the Project. Developer shall also bear the initial cost of constructing System Improvements (and/or Public Facilities when such is applicable) required as a result of the Project but shall be entitled to be reimbursed or credited for the cost of such System Improvements (and/or Public Facilities when such is applicable) except for Developer's Proportionate Share of System Improvements costs.

3.2.3 Reimbursement Agreement. Prior to constructing any System Improvements (and/or Public Facilities when such is applicable) required for the Project authorized by approval of a Site Plan, Final Plat, or other Land Use Application, Developer and City shall prepare, approve and execute an agreement whereby Developer shall be reimbursed by City for the cost of constructing such System Improvements (and/or Public Facilities when such is applicable) less Developer's Proportionate Share thereof. Developer shall furnish an estimate of the cost of constructing such System Improvements (and/or Public Facilities when such is applicable) prepared by an engineer registered to practice in the State of Utah and approved by City. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective Proportionate Share of the cost of System Improvements and shall take into consideration the provisions of Paragraph 3.2.4 below, and shall comply with any then-applicable provisions of the Utah Code.

3.2.4 Impact Fee Credits. If, prior to the date an impact fee would be payable as provided under City's Ordinances, Developer constructs System Improvements (and/or Public Facilities when such is applicable) for which an impact fee is normally collected, Developer's cost of constructing such System Improvements (and/or Public Facilities when such is applicable) shall be credited against the impact fees otherwise due. Developer shall also be given an impact fee credit for land dedicated to and accepted by City for System Improvements (and/or Public Facilities when such is applicable). In each instance, Developer shall submit to City invoices, or other reasonably acceptable documentation, as determined by City, demonstrating the reasonable and verified costs incurred for such System Improvements (and/or Public Facilities when such is applicable) or, in the case of land, appraisals indicating the fair market value of the dedicated land. The amount of the credit shall be equal to the lesser of (i) the total amount of impact fees otherwise required, or (ii) the reasonable and verified costs of the System Improvements (and/or Public Facilities when such is applicable) paid by Developer and the fair market value of land at the time of dedication. If an impact fee credit for dedicated land is calculated using the fair market value at the time of dedication, such credit shall be based on the amount of the impact fee payable at the time of dedication. In applying the foregoing provisions, any impact fee which is payable shall be charged as provided under City's Ordinances and any impact fee credit shall be used to offset the amount of the impact fee due.

3.2.5 Compliance with City Requirements and Standards. Except as otherwise provided in Paragraphs 2.2 and 3.1.3 of this Agreement, Developer acknowledges it shall comply with applicable laws and regulations, as set forth in Paragraph 2.2 of this

Agreement, necessary for approval of a Land Use Application to develop property within the Project.

3.2.6 Power of Eminent Domain. City may, in its sole and absolute discretion, and only in the event Developer needs to obtain easements or rights-of-way for the purpose of constructing infrastructure improvements for the Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights-of-way, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights-of-way, the cost of which shall be borne by Developer. Developer shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees (or the reasonable value of what would have been charged for such legal services by a private law firm or private attorney, if the City Attorney provides such services to obtain the such property rights) and costs.

3.2.7 Project a Part of City. The Project shall remain, for all purposes, including government, taxation, municipal services and protection, and consideration in all municipal matters, a part of City. Except as otherwise provided herein, Development within the Project, and the residents and occupants thereof, shall be treated in all respects as any other development, resident, or occupant of City is treated.

SECTION IV. SPECIFIC RIGHTS AND RESPONSIBILITIES

4.1 Water.

4.1.1 Developer's Obligations.

4.1.1.1 Water System. Developer shall, consistent with governmental requirements as of the date hereof, except as otherwise provided in Paragraph 2.2.5 of this Agreement, design, build, and dedicate to City culinary water facilities of sufficient size to serve the Project, according to City specifications and standards, including all distribution lines, fire flow, and irrigation needs for the Project. The facilities required to provide culinary water within a subdivision or Site Plan area shall be constructed and installed concurrent with the construction of other improvements in such subdivision or Site Plan area. All facilities necessary to provide a culinary water system installed by Developer within the Project, upon acceptance by City, shall be owned, operated, and maintained by City.

4.1.1.2 Easements. As part of the preparation of a water storage and delivery system for the culinary water system, the Parties shall cooperate in granting such easements, rights-of-way, rights of entry, or other servitudes as may be reasonably necessary for Parties to introduce into, store in, and remove water from such ponds, streams, well sites, connections onto existing City water lines, and the like, as may exist or be constructed on the Project for both Project and System water delivery system(s).

4.1.1.3 Off-site Water Trunk Line. Developer recognizes and acknowledges that the entire Project cannot be constructed unless the currently-existing off-site water trunk line from the City water tank to the northeast of the Project is either replaced and upsized, or an additional, new, water trunk line is constructed. Developer agrees that, as a condition of approval of the final plat for the Project's third phase of development (currently entitled Phase 1C), Developer shall either: (a) construct an additional new, water trunk line between the water tank and the Project, which new water trunk line shall be at the least sixteen inches (16") in diameter; or (b) replace the currently-existing twelve inch (12") water trunk line

by constructing a new water trunk line, which replacement new water trunk line shall be at least twenty inches (20") in diameter. The City agrees to allow Developer to defer installation of the additional, new 16" water trunk line, or install the replacement 20" water trunk line (depending on which installation is chosen), PROVIDED THAT (conditioned upon) the number of units in Developer's first two phases of development (currently designated Phases 1A and 1B, respectively), do not exceed sixty (60) units in the aggregate. For purposes of this Agreement, the water trunk line improvements required by this Paragraph 4.1.1.3 shall be considered a Project Improvement, and any upsizing beyond these requirements (i.e. installation of an additional 16" water line or installation of a replacement 20" water trunk line), which are determined to be for the benefit of the City's water system in general shall be considered System Improvements.

4.1.2 City's Obligations. Upon dedication, acquisition and/or acceptance by City of the water delivery system, City shall provide all use areas served by such infrastructure within the Project with culinary water service at a level generally provided to other areas of City.

4.1.2.1 Reimbursement and Impact Fee Credits. Developer shall be reimbursed or credited for water System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.1.3 Anticipated Upsizing of Water Facilities. Both Parties acknowledge that additional upsizing by Developer of water lines and related improvements greater than the water trunk line improvements required by Paragraph 4.1.1.3 above (including water lines and related improvements other than those provided in Paragraph 4.1.1.3 above), which qualify as System Improvements, shall be subject to reimbursements (or credits, as applicable) by the City to Developer.

4.2 Sanitary Sewer Service and Facilities.

4.2.1 Developer's Obligations. The Project is located within the service boundaries of City. Developer shall design, fund, and construct sewer and waste water collection systems to service the Project in compliance with all regulations and specifications of City.

4.2.2 City's Obligations. City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the sewer and waste water collection systems.

4.2.2.1 Reimbursement and Impact Fee Credits. Developer shall be reimbursed or credited for sanitary sewer System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.1.3 Anticipated Upsizing of Sanitary Sewer Facilities. It is anticipated that upsizing of sanitary sewer lines and related improvements, qualifying as System Improvements to be reimbursed by the City, shall include and may not be limited to upsizing of particular sewer lines in the Project. Said upsizing may also include the participation of the Utah School and Institutional Trust Lands Administration ("SITLA"), to provide capacity for land to be sold or developed by SITLA outside of the Project. City and Developer shall work together in good faith to secure the participation of SITLA where appropriate; however, third party participation shall not be a condition of this Agreement.

4.3. Storm Water.

4.3.1 Developer's Obligations. The Project is located within the service boundaries of City. Developer shall design, fund, and construct storm water collection systems to service the Project in compliance with all regulations and specifications of City.

4.3.2 City's Obligations. City shall require Developer to adhere, where applicable, to such standards and requirements with respect to the storm water collection systems.

4.3.2.1 Reimbursement and Impact Fee Credits. Developer shall be reimbursed or credited for storm water System Improvements costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.3.2.2 Dedication. City shall accept the dedication of and thereafter maintain all qualifying storm water collection and conveyance facilities or improvements in the Project, including but not limited to all within public roadways, so long as such roads are constructed in accordance with section 4.3.1 and are dedicated free and clear of liens and encumbrances. City shall accept dedication of other facilities and improvements so long as: (a) such facilities or improvements are not used for Project detention; (b) such facilities or improvements are designed and constructed to require minimal maintenance, as approved by City; and (c) such facilities and improvements are not used to satisfy any minimum open space requirement which may be applicable to the Project.

4.4 Transportation, Traffic Mitigation, and Landscaping.

4.4.1 Developer's Obligations. Developer agrees to provide the following transportation and traffic mitigation measures:

4.4.1.1 Roads and Intersection Improvements. The Site Plan for each Development Phase shall show all road and intersection improvements and shall identify which improvements Developer will construct at no cost to City. Said improvements shall include all interior public roads, and half-width improvements of Washington Parkway and Main Street where such roads adjoin or are within the Project, and also include the remaining half-width (of 85' right of way cross section) of Buena Vista Boulevard. Road and intersection improvements may be located differently than shown on the Schematic Plan so long as any such road connects to an existing or planned road which intersects with or abuts the exterior boundary of the Project shown on the Schematic Plan. Road and intersection improvements shall be constructed according to City's Construction Design Standards, except as otherwise set forth in this Agreement and in the Development Guidelines, in phases according to a schedule determined by Developer and approved by City, which approval shall not be unreasonably withheld, conditioned, or delayed, consistent with the actual construction schedule for a particular Development Phase. Road cross-sections shall generally only be required to be improved to half-width when the opposite side of the road in question remains undeveloped. When road construction (specifications/cross sections) and layout are subject to discretionary design decisions by City, Developer shall have the opportunity to provide data and information to support the inclusion, exclusion, or modification of any such design prior to approval by City. City shall reasonably review and approve or reject Developer's suggested design changes. Subject to reimbursement by City of its Proportionate Share of System Improvements, Developer shall dedicate such improvements to City upon completion and acceptance by City.

4.4.1.2 **Reimbursement and Impact Fee Credits.** Developer, in partnership with successors, assignees, adjoining landowners or acting alone, shall construct all roads required for the Project.

4.4.1.3 **Landscaping.** Upon City's approval of each Development Phase, Developer agrees to construct and create, at Developer's sole cost and expense, the landscape improvements as set forth in the Design Guidelines for such Development Phase. The timing and/or sequencing of the installation of such landscaping improvements shall be during the time that adjacent portions of the Project within its associated Development Phase are being developed and prior to the occupancy of the buildings within said adjacent portions, and so long as all landscaping in a Development Phase is completed in conjunction with such phase. Except as otherwise agreed between City and Developer pursuant to an approved Development Phase (and as then accordingly reflected in the Master and Phase Declarations), the Master Declaration shall include provisions which obligate the Master Association to provide continuous maintenance of any such landscaping provided in a public right-of-way pursuant to an agreement with City. Such agreement shall also include a provision requiring the Master Association to maintain the lower canopy of mature trees within or abutting a public or private right of way at a minimum height of thirteen feet six inches (13' 6") or more to preserve access for fire prevention apparatus. Developer acknowledges that such landscaping shall be deemed a Project Improvement and that but for Developer's desire to provide such landscaping, City would not otherwise establish landscaping in a public right-of-way.

4.4.2 **City's Obligations.**

4.4.2.1 **Road Design.** City accepts the road design, as contained and provided in the Development Guidelines, as the specifications and standards for road design for parkway, arterial, collector, and local roads within the Project, with the exception that certain road designs have been modified from the Design Guidelines and said modifications are as shown on Figure 3.11. All roads in the Project shall conform to City's Construction Design Standards except as otherwise shown on Figure 3.11 attached hereto and made a part hereof. City acknowledges the road cross section designs shown on Figure 3.11 vary from City's Construction Design Standards and that such roads may be constructed as shown thereon.

4.4.2.2 **Dedication.** City shall accept the dedication of and thereafter maintain all arterial, parkway and collector roads in the Project so long as such roads are constructed in accordance with section 4.4.2.1 and are dedicated free and clear of liens and encumbrances.

4.4.2.3 **Reimbursement and Impact Fee Credits.** Developer shall be reimbursed or credited for road System Improvement costs as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.4.3 **Anticipated Additional Road Improvements.** In the event that City requests off-site roadway dedications or improvements to be made, such as additional width improvements to Washington Parkway or Main Street, the participation of SITLA or other neighboring property owners may be required. City and Developer shall work together in good faith to secure the participation of SITLA or other third parties for such improvements where appropriate; however, third party participation shall not be a condition of this Agreement.

4.5 **Police and Fire Protection.**

4.5.1 City shall provide to all residential and nonresidential areas in the Project, police and fire services.

4.5.2 Developer shall install fire hydrants within the Project in conformance with City's Construction Design Standards.

4.6 Park, Trail and Open Space Areas.

4.6.1 **Developer's Obligations.** As part of its development of the Project, Developer shall provide, install and/or improve parks, trails, open spaces, streetscapes and other recreational amenities within the Project and which are more specifically described as follows:

4.6.1.1 **Parks, Trails, Community Center, Streetscape, and Open Space Areas.** Developer shall provide and improve approximately forty-one point seven (41.7) acres of open space areas within the Project, including, but not limited to, six point seven (6.7) acres for regional trail connections, four (4) acres for streetscaped parkways, one point four (1.4) acres for neighborhood parks, eight point two (8.2) acres for a community center, and twenty-one point four (21.4) acres of native open space areas as generally shown on the Exhibit "B" Schematic Plan attached hereto. With the exception of Developer's installation of trail improvements onto the City's master-planned trail (which is part of a regional trail system and referred to hereinafter as the "Brillo del Sol Regional Trail Improvements"), all other parks, trails, open spaces, streetscapes and other recreational amenities within the Project shall be considered Project Improvements.

4.6.1.2 **Conveyance to City.** Upon installation of the Brillo del Sol Regional Trail Improvements to City's satisfaction, Developer shall convey to City clean and unencumbered fee title to the Brillo del Sol Regional Trail Improvements, which Brillo del Sol Regional Trail Improvements shall be considered to be System Improvements. The Brillo del Sol Regional Trail Improvement shall be constructed according to AASHTO design guidelines and shall be shown on the construction drawings of each plat or site plan where all, or a portion of, the Brillo del Sol Regional Trail Improvement is located. All other parks, trails, open spaces, streetscapes and other recreational amenities within the Project shall be deemed Project Improvements. Notwithstanding the immediately preceding sentence--and conditioned upon compliance with any applicable amendment requirements of this Agreement and then applicable public facility standards and criteria--Developer and City may (at each party's sole discretion) discuss and negotiate future construction and dedication by Developer to City of parks or other recreational amenities.

4.6.1.3 **Private Parks and Open Space - Timing of Construction.** Parks and open space are planned and intended throughout the Project of varying types and sizes as generally shown on the Schematic Plan. Private parks and open space shall be completely developed by Developer primarily for use by Project residents. Each private park and open space area shall be developed and available for use upon occupancy of seventy-five percent (75%) of the dwelling units in a Development Phase, which includes the park and open space area. The acreage of such private parks shall be included in open space requirements applicable to the Project. Park land acreage shall be identified on the Site Plan for each Development Phase.

4.6.1.4 **[Reserved.]**

4.6.1.5 **Trails Plan.** Trails are planned for the Project as generally shown on the Schematic Plan. A trails implementation plan, along with a schedule for improvements, shall be provided prior to the first Development Phase of the Project, which

preliminary trails plan shall be subject to revisions and changes and thereafter finalized for each Development Phase as each such phase is approved by City. The trails plan shall differentiate between public and private trails.

4.6.2 City's Obligations.

4.6.2.1 Park and Trail Facilities. Upon dedication and acceptance by City of the Brillo del Sol Regional Trail Improvement areas, after installation of improvements by Developer to City's satisfaction, City shall maintain the Brillo del Sol Regional Trail Improvement at a level generally provided to other portions of the regional trail system within the City, and at a level of service which maintains the area in at least the same condition as at the time of dedication to the City, subject to Developer's obligations as set forth herein.

4.6.2.2 Use of Park and Recreation Impact Fees. As permitted by applicable Utah law and City Ordinances, and as practical as determined by City, City shall use park and recreation impact fees received as a result of the Project to improve public parks and trails located within or reasonably near the Project. Said impact fees shall be collected as provided in City's Ordinances. Upon dedication and acceptance by City, City acknowledges that Developer shall receive a park impact fee credit for the Brillo del Sol Regional Trail Improvement as provided in Paragraphs 3.2.2, 3.2.3, and 3.2.4 above.

4.7 [Reserved.]

4.8 Maintenance of Common Areas, Trails, Detention Ponds and Road Landscaping. Developer shall create a homeowners association for the Project, which shall have the responsibility to maintain all common areas, private trails, detention or retention ponds, and road landscaping on collector and arterial roads, which are not otherwise dedicated to and/or maintained by the City pursuant to this Agreement.

4.9 Additional Miscellaneous Requirements. Developer is responsible for the following miscellaneous requirements:

4.9.1 Signage Plan. A Signage Plan for each Development Phase shall be submitted to City for review and approval prior to the submittal of any Land Use Application for its associated Development Phase. The Signage Plan shall include sign types, locations, lighting, dimensions, heights, materials and colors, and shall include provisions for temporary signs as well as permanent signs.

4.9.2 Lighting Plan. A Lighting Plan for each Development Phase shall be submitted to City for review and approval prior to the submittal of any Land Use Application for its associated Development Phase. The Lighting Plan shall include lighting for streets, parking lots, pedestrian ways, park and open space areas, building accents, etc.

4.9.3 Grading Plan. A grading plan for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.4 Landscape Plan. A landscape plan for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.5 Cultural Resource Study. A cultural resource study for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.6 **Traffic Study.** A traffic study for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.7 **Noise Impact Study.** A noise impact study for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.8 **Site Drainage Plan.** A site drainage plan for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.9 **Water Models.** A water model for the Project has been submitted to City for review and approved as part of the PCD Zone Approval. An irrigation water model for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.10 **Sewer Model.** A sanitary sewer model for the Project has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.11 **Geology and Soils Report.** A geology and soils report has been submitted to City for review and approved as part of the PCD Zone Approval.

4.9.12 **Access to Adjoining Properties.** Developer is responsible for providing access to the adjoining properties that would otherwise be prevented from having access due to Project design and development, as well as utility stubbing to adjacent properties. Access shall be as approved by City and in conformance with City's Construction Design Standards.

SECTION V. GENERAL PROVISIONS

5.1 **Binding Effect.** The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties hereto and their successors in interest.

5.2 **Change in Developer.** Developer acknowledges that its qualifications and identity are of particular concern to City, and that it is because of such qualifications and identity that City is entering into this Agreement. Accordingly, Developer agrees for itself and any successor in interest of itself that during the term of this Agreement Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2. Any replacement developer shall have financing and skill reasonably satisfactory to City to develop the Project and shall provide City with documentation of the expertise and financial capability of its principals. In the event of a Transfer of the Project, or any portion thereof, Developer and the transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such Transfer, Developer shall obtain from the transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the transferee, notarized, and delivered to City in connection with the Transfer. In such event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred. Notwithstanding the foregoing, a Transfer by Developer of individual subdivision lots within an approved

Development Phase to a builder, individual, or other developer shall not be deemed to be a Transfer subject to the above requirement for approval.

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

5.4 Consent. In the event this Agreement provides for consent from City or Developer, 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, conditioned, or delayed.

5.5 Process for Modifying the PCD.

5.5.1 Intent. City acknowledges that the PCD Zone Approval and Schematic Plan are a generalized depiction of the proposed development of the Project with specific land uses permitted as shown on the Schematic Plan. This Agreement contemplates that Developer may modify the Schematic Plan so long as the total number of units allowed and land uses permitted depicted and described in the Schematic Plan are not changed or increased. Subject to this limitation, and as provided in this Paragraph, Paragraph 2.4.4 and other related provisions throughout this Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Phases shown on the Schematic Plan, or any amendment approved pursuant to this paragraph, and subject to an area limitation of + or - two (2) acres for each Development Phase as shown on the Schematic Plan. The purpose of this provision is to allow Developer the opportunity to change the configuration of uses shown on the Schematic Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of public improvements which have been constructed or which materially and adversely impact other public improvements depicted and planned on the Schematic Plan, as reasonably determined by City. Any proposed modification of the Schematic Plan which increases the total density allowed or adds other land uses or property not depicted or described in the Schematic Plan shall be accomplished only as provided in PCD Ordinance and other related provisions of City's Land Use Ordinance, as amended.

5.5.2 Submittal of Proposal. If Developer or its successors and assigns, desire to modify the Schematic Plan as described in Paragraph 5.5.1 above, Developer shall submit a Schematic Plan Modification proposal together with any required fee to City. Any modifications which, after consultation with City's staff, are deemed to be within the scope of modifications permitted by Paragraph 5.5.1, as reasonably determined by City, may be modified by Developer by providing City with a modified Schematic Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Schematic Plan. Said modifications shall be deemed effective upon City approval of a modified Schematic Plan and the supplemental summary.

5.5.3 City Acceptance of Schematic Plan Modification Proposal. City shall have fifteen (15) calendar days after receiving a Schematic Plan Modification proposal to inform Developer whether City considers the Schematic Plan Modification proposal to be complete. If

City does not notify Developer in writing of any additional information required to complete the proposal, the Schematic Plan Modification proposal shall thereafter be deemed complete. If City determines the Schematic Plan Modification proposal is not complete as submitted, City shall notify Developer in writing within the fifteen (15) days specifying in detail any incomplete or missing information. Upon receipt of additional information, if City does not notify Developer in writing within fifteen (15) days after receiving the additional information requested, the Schematic Plan Modification proposal shall be deemed complete. If City determines that the required additional information for the Schematic Plan Modification Application is not complete as submitted, City shall notify Developer in writing within fifteen (15) days thereafter and shall specifically identify the additional information required to complete the Schematic Plan Modification Application.

5.5.4 City Review. City shall have forty five (45) calendar days to review the changes in the Schematic Plan Modification proposal after said proposal is accepted as complete or deemed complete. If City does not object within forty five (45) days, the final completed Schematic Plan Modification proposal shall be deemed accepted by City and shall constitute a modification of the PCD Zone Approval and Schematic Plan, provided that any such modification conforms to applicable law set forth in Paragraph 2.2 of this Agreement.

5.5.5 City's Objections. If City objects to the Schematic Plan Modification proposal, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City's General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement.

5.5.6 Mediation. City and Developer shall meet within fifteen (15) calendar days ("Mediation Deadline"), after receiving an objection asserted by City pursuant to the preceding paragraphs, to mediate and resolve all outstanding issues.

5.5.7 Arbitration. If City and Developer are unable to resolve the issues via mediation pursuant to the preceding paragraphs, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Schematic Plan Modification proposal. The Party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Schematic Plan Modification Application and issue 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, after consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties and shall constitute an approved modification of the PCD Zone Approval and the Schematic Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each Party's position in the arbitration.

5.6 No Obligation to Undertake Development. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall impose on Developer an obligation or affirmative requirement to develop the Project or any portion thereof. If Developer undertakes to develop all or any portion of the Project pursuant to the Schematic Plan and this

Agreement, Developer agrees to abide by the terms and conditions of this Agreement and the Schematic Plan.

SECTION VI. MISCELLANEOUS

6.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

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

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

6.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Developer and City, 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 Party hereto 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 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by Developer to any other party, individual or entity (except an approved replacement developer) without assigning the rights as well as the obligations under this Agreement and complying with Paragraph 5.2 above and any other provision herein concerning assignment. The rights of City under this Agreement shall not be assigned, but City is authorized to enter into a contract with a third party to perform obligations of City to operate and maintain any infrastructure improvement so long as such Party adequately and reasonably maintains and operates such facility or improvement.

6.7 **Recording.** No later than ten (10) days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, together with all exhibits cited in Paragraph 6.11, at Developer's expense, in the Official Records of Washington County, Utah.

6.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

6.9 **Notices.** Any notice or communication required hereunder between the Parties shall be in writing, and may be given either personally, by overnight courier, by hand delivery or by registered or certified mail, return receipt requested or by facsimile. If given by overnight courier or registered or 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 registered or 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. 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 address set forth below:

If to Developer: Jack Fisher Homes of Southern Utah, LLC
Attn: Ben Willits, Project Manager
2250 N. Coral Canyon Blvd., Suite #200
Washington, UT 84780

With a copy to: Snow Jensen & Reece
Attn: Matthew J. Ence
912 West 1600 South, Suite B200
St. George, Utah 84770

If to City: Washington City
Attn: Roger Carter, City Manager
111 North 100 East
Washington, Utah 84780

With a copy to: Washington City Attorney
Attn: Jeffrey N. Starkey
111 North 100 East
Washington, Utah 84780

6.10 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their assigns. No other Party shall have any right of action based upon any provision of this Agreement whether as third party beneficiary or otherwise.

6.11 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original. This Agreement consists of twenty-five (25) pages, and the five (5) (A through E) exhibits identified below, which together constitute the entire understanding and agreement of the Parties to this Agreement.

Exhibit "A"	Legal Description of Project
Exhibit "B"	Schematic Plan
Exhibit "C"	Planning Commission Recommendation of Approval, Application # Z-14-04
Exhibit "D"	City Council Approval, Application #
Figure 3.11	Road Cross Section Design

6.12 Duration. This Agreement shall continue in force and effect for a term of fifteen (15) years from the date of execution by both parties. Notwithstanding the foregoing, this Agreement shall become null and void if (i) initial construction of the infrastructure in a Development Phase does not begin within five (5) years of the date of this Agreement, or (ii) construction and development cease for a period of ten (10) consecutive years during the term of the Agreement. Upon the happening of either of such events, all approvals or development rights and obligations of City shall lapse unless extended by City's City Council. Upon the termination of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided for herein.

6.13 **No Further Exactions.** Subject to the obligations of Developer hereunder, no further exactions shall be required of Developer by City. Notwithstanding the foregoing, this paragraph shall not be construed to relieve Developer from any dedications or other requirements required by applicable law or ordinance in effect when this Agreement is executed unless otherwise provided in this Agreement.

6.14 **Good-Standing Authority.** The Parties warrant and represent as follows:

6.14.1 **Developer.** Developer hereby represents and warrants to City: (a) Developer is a registered business entity in good standing with the State of Utah; (b) the individual executing this Agreement on behalf of Developer is duly authorized and empowered to bind Developer; and (c) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

6.14.2 **City.** City hereby represents and warrants to Developer that: (a) City is a Utah municipal corporation; (b) City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 *et seq.*), and City's Land Use Ordinances to enter into and be bound by this Agreement; (c) the individual executing this Agreement on behalf of City is duly authorized and empowered to bind City; and (d) this Agreement is valid, binding, and enforceable against City in accordance with its terms.

6.15 **Failure to Execute.** The failure of any Party named above to execute this Agreement shall not invalidate the Agreement with respect to any of the remaining Parties or the property owned by such Parties at the time of execution; provided the total density and Schematic Plan shall be modified to remove that parcel and the applicable density and infrastructure.

6.16 **Concurrency.** City desires that the resources, services and facilities needed to support development are available when a Land Use Application is approved. Notwithstanding any provision in this Agreement, City shall not be obligated to approve a Land Use Application if infrastructure and services will not be available in a reasonable time to serve the development contemplated under such application.

6.17 **Indemnification.** Developer and City each agree to defend and hold each other and their respective officers, employees and consultants harmless for any and all claims, liability, and damages arising out of or related to any work or activity connected with the Project, including approval of the Project; performed by a Party, its agents or employees except for willful misconduct or negligent acts or omissions of Developer or City, as the case may be, or their respective officers, agents, employees or consultants.

6.18 **Default.** Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "Cure Period") after written notice thereof from the other Party shall constitute a default ("Default") by such failing Party under this Agreement, provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this

Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

6.18.1 Termination. If City elects to consider terminating this Agreement due to an uncured Default by Developer, then City shall give to Developer written notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly-noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. City may thereafter pursue any and all remedies at law or equity.

6.18.2 No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In the event specific performance is not available as a remedy to Developer for the City's breach hereof, then Developer shall be entitled to pursue any and all remedies at law or equity.

6.19 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer for 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.

6.20 Enforcement. The Parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

6.21 Severability; Invalidity. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void. If any provision of this Agreement shall be held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the Parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited or, if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part hereof.

6.22 Force Majeure. Developer shall not be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to causes beyond the control and without the fault or negligence of the

Party affected, including, acts of God, acts of the United States Government or the State of Utah, fires, floods, strikes, embargoes, wars, terrorist acts or unusually adverse weather conditions. Upon the occurrence of any such cause, Developer shall notify City and shall promptly resume the keeping and performance of the affected obligations after such cause has come to an end.

6.23 **Nondiscrimination.** Neither City nor Developer nor the agents, employees, or representatives of any of them, shall discriminate against, segregate, persecute, oppress, or harass one another's agents, employees, or representatives; other developers (including any potential replacement developer); contractor or subcontractor; or the agents, employees, or representatives of any of the foregoing; tenants, owners, occupants or residents, whether actual or potential, or any other person or entity.

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

6.25 **Institution of Legal Action.** In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

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

6.27 **Annual Review.** City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 6.18 of this Agreement. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a Default under this Agreement.

6.28 **Amendment of Agreement.** This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the Parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City's City Council taken with the same formality as the vote approving this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by Developer, by persons duly authorized to execute the same, and by City, acting by and through its City Council by duly authorized persons.

CITY:

Attest:



Washington City,
a Utah Municipality

Tara Pentz
Tara Pentz, Deputy City Recorder

Kenneth F. Neilson
Kenneth F. Neilson, Mayor

DEVELOPER:

Jack Fisher Homes of Southern Utah, LLC

By:

Tyler Meyers

Its:

PRESIDENT

STATE OF UTAH)

ss.

COUNTY OF WASHINGTON)



On this 3rd day of October 2014, before me personally appeared KENNETH F. NEILSON and TARA PENTZ whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Deputy Recorder of WASHINGTON CITY, and that the foregoing document was signed by them by authority, and they acknowledged before me that Washington City executed the document and that the document was the act of Washington City for its stated purpose.

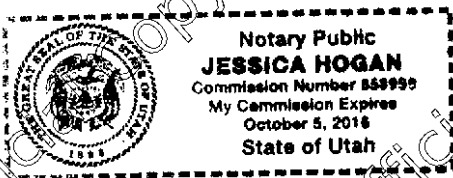
Jamie Fledsoe
Notary Public
Residing at: Washington City

STATE OF UTAH)

ss.

COUNTY OF Washington)

On the 3 day of October 2014, personally appeared before me TYLER MEYERS whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the PRESIDENT of JACK FISHER HOMES OF SOUTHERN UTAH, LLC, and did duly acknowledge to me that the foregoing document was entered into on behalf of such entity by authority of its organizational documents and that the document was the act of JACK FISHER HOMES OF SOUTHERN UTAH, LLC, for its stated purpose.



Jessica Hogan
Notary Public
Residing at: Washington, UT

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT

BEGINNING AT A POINT N0°46'14"E 534.65 FEET ALONG THE SECTION LINE FROM THE WEST 1/4 CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE CENTERLINE OF A PROPOSED FUTURE 110.00 FOOT WIDE ROADWAY, SAID POINT ALSO BEING ON THE ARC OF A 1750.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N25°36'33"E; THENCE EASTERLY 753.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°39'17"; THENCE S89°02'44"E 507.13 FEET ALONG SAID PROPOSED FUTURE ROADWAY CENTERLINE TO THE CENTERLINE OF THE PROPOSED EXTENSION OF MAIN STREET; THENCE ALONG SAID PROPOSED MAIN STREET CENTERLINE THE FOLLOWING THREE COURSES: S0°57'16"W 1864.19 FEET TO THE POINT OF CURVATURE OF A 2500.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHERLY 116.04 FEET THROUGH A CENTRAL ANGLE OF 2°39'34"; THENCE S3°36'50"W 11.85 FEET TO A POINT ON THE NORTH LINE OF "OASIS LEISURE HOMES PHASE 1" SUBDIVISION AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS ENTRY #483351; THENCE S89°59'57"W 40.08 FEET ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID SUBDIVISION, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF MAIN STREET AS DEDICATED ON SAID SUBDIVISION PLAT; THENCE S3°36'56"W 348.81 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE N89°59'23"E 29.04 FEET TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED IN DOCUMENT NO. 20090009623 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG SAID PROPERTY THE FOLLOWING THREE (3) COURSES: S3°36'56"W 69.54 FEET TO THE POINT OF CURVATURE OF A 2011.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY 74.54 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°07'25"; THENCE S1°28'08"W 508.79 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF "BUENA VISTA BOULEVARD" ROADWAY DEDICATION AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS ENTRY #634748; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWO (2) COURSES: N88°31'52"W 525.61 FEET TO THE POINT OF CURVATURE OF A 840.00 FOOT RADIUS CURVE TO THE LEFT; THENCE WESTERLY 218.01 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°52'12" TO A POINT ON THE SOUTH LINE OF SAID SECTION 11; THENCE S89°59'23"W 169.19 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF WASHINGTON CITY PROPERTY DESCRIBED IN DOCUMENT NO. 20070059801 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG SAID WASHINGTON CITY PROPERTY BOUNDARY THE FOLLOWING SIX (6) COURSES: NORTH 4.89 FEET; THENCE N17°51'09"W 49.99 FEET; THENCE N85°19'29"W 75.43 FEET; THENCE N78°17'22"W 128.44 FEET; THENCE S84°37'41"W 39.58 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 11; THENCE S0°20'30"W 81.03 FEET ALONG THE SECTION LINE TO THE SOUTHWEST CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N89°45'58"W 1327.47 FEET ALONG THE SOUTH LINE OF SECTION 10, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN TO THE 1/16 CORNER (SOUTHWEST CORNER OF THE SE 1/4 OF THE SE 1/4 OF SECTION 10), SAID POINT BEING THE SOUTHEAST CORNER OF PROPERTY DESCRIBED IN DOCUMENT NO. 174473, PARCEL 1, AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0°28'24"E 2661.39 FEET ALONG THE 1/16 LINE (EAST LINE OF PROPERTY DESCRIBED IN SAID DOCUMENT NO. 174473 AND THE EAST LINE OF PROPERTY DESCRIBED IN DOCUMENT NO. 20080006560 AS FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER) TO THE 1/16 CORNER (NORTHWEST CORNER OF THE NE 1/4 OF THE SE 1/4 OF SECTION 10); THENCE S89°08'42"E 100.00 FEET ALONG THE 1/16 LINE; THENCE N0°41'13"E 336.31 FEET; THENCE N57°32'01"E 89.60 FEET; THENCE N0°41'09"E 268.43 FEET; THENCE N5°41'25"W 675.34 FEET; THENCE N68°38'58"E 363.99 FEET TO A POINT ON THE CENTERLINE OF SAID FUTURE 110.00 FOOT WIDE ROADWAY, SAID POINT BEING ON THE ARC OF A 1750.00 FOOT RADIUS CURVE TO THE LEFT, RADIUS POINT BEARS N68°38'58"E; THENCE SOUTHEASTERLY 1314.59 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 43°02'25" TO THE POINT OF BEGINNING.

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EXHIBIT "B"

SCHEMATIC PLAN

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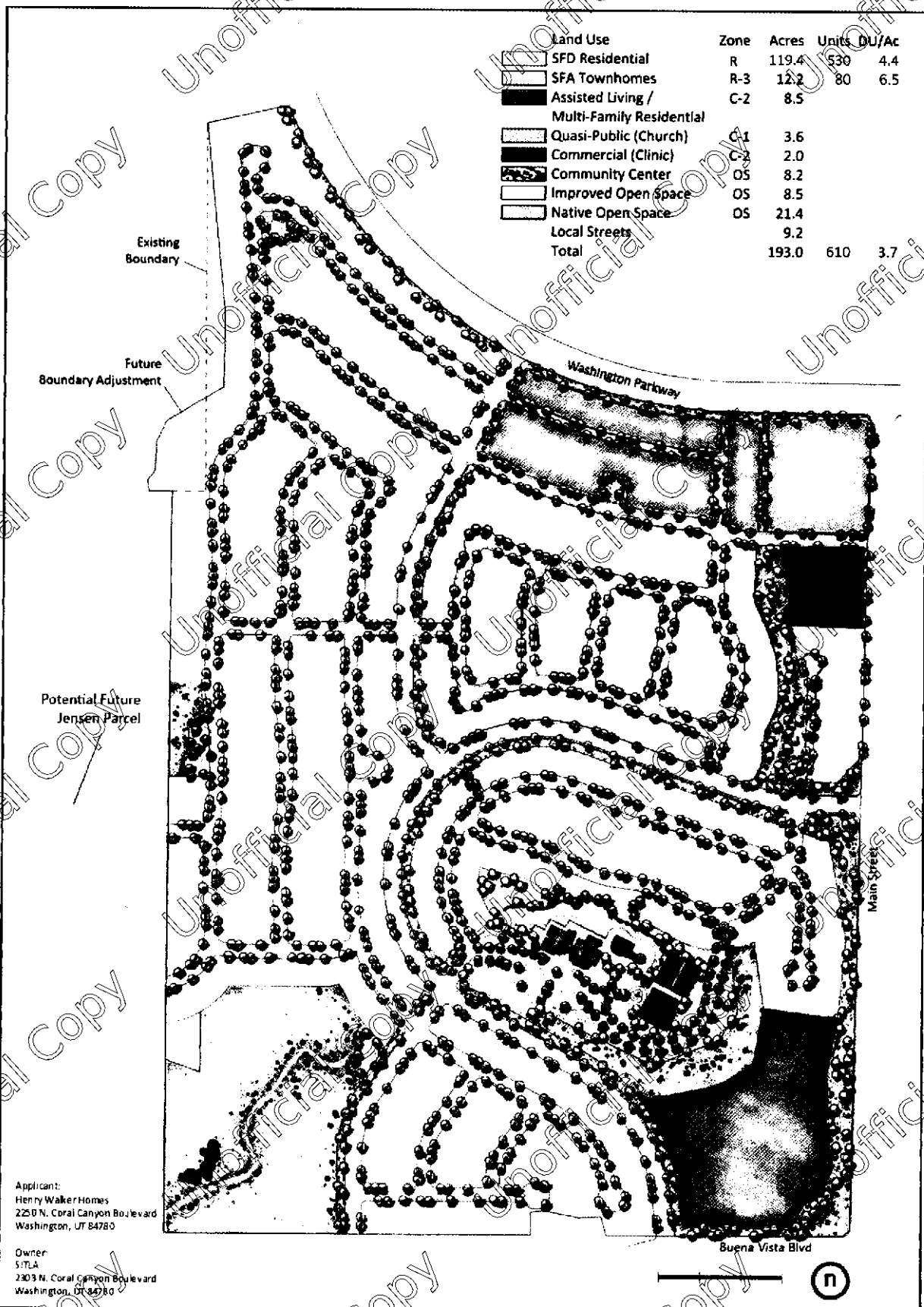
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Applicant:
Henry Walker Homes
2250 N. Coral Canyon Boulevard
Washington, UT 84780

Owner:
S:TLA
2303 N. Coral Canyon Boulevard
Washington, UT 84780

EXHIBIT 2.1	BRILLO DEL SOL RESIDENTIAL DEVELOPMENT CONCEPTUAL SITE PLAN	SCALE NTS
		DATE: 2/13/2014

EXHIBIT "C"

**PLANNING COMMISSION RECOMMENDATION OF APPROVAL,
APPLICATION # Z-14-04**



Community Development Department
111 North 100 East
Washington City, UT 84780
Phone (435) 656-6325
Fax (435) 656-6371
www.washingtoncity.org

Minutes

WASHINGTON CITY PLANNING COMMISSION

May 7, 2014, 2014

Present: Commissioner Schofield, Commissioner Smith, Commissioner Shepherd, Commissioner Williams. Commissioner Papa, Commissioner Martinsen, Attorney Jeff Starkey, Councilman Nisson, Drew Ellerman, Lester Dalton, Kathy Spring, Douglas Hardy, Jeanne Hardy, Renee Christensen, Holly Richards, Gene Sturzenegger, Calvin Tanner, Aaron Langston, Tom Evans, Sydni Dennett, Doug Dennett, Karl Rasmussen, Ben Willits, Scott Duffin.

Meeting called to order: 5:33 P.M.

Invocation: Commissioner Papa

Pledge of Allegiance: Commissioner Schofield

1. APPROVAL OF AGENDA

A. Approval of the agenda for May 7, 2014.

Commissioner Shepherd motioned to approve the agenda for May 7, 2014.

Commissioner Smith seconded the motion.

Motion passed unanimously.

2. APPROVAL OF MINUTES

A. Approval of the minutes from April 16, 2014.

Commissioner Shepherd motioned to approve the minutes from April 16, 2014.

Commissioner Williams seconded the motion.

Motion passed unanimously.

3. DECLARATION OF ABSTENTIONS & CONFLICTS

None

4. MINOR SUBDIVISION

A. Consideration of approval for the Washington Vista 2 lot Minor Subdivision located at approximately corner of Wiltshire and Green Springs Drive. Applicant: Old Course Development, Craig Sullivan

Background

The applicant is requesting approval for the Washington Vista 2 Lot Minor Subdivision, located at approximately both west corners of Wiltshire Street and Green Spring Drive. The applicant is wishing to split the present 1.284 acre parcel into two lots. This is a remnant piece of property left over from the Silverstone Phase 4 development that was split by Green Spring Drive. Also, the Washington Vista at Green Spring Phase 4 subdivision (along with the city park) surround

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Background

The applicant is requesting approval of a Vacation of the Final Plat for the Washington City Green Spring Minor subdivision, located at approximately 2000 North Green Spring Drive. Recently, the final plat for the Washington Vista at Green Springs Phase 4 subdivision was approved by the Planning Commission and City Council. When the developer went to record the plat, the county found that an existing subdivision was already platted in the same place. That subdivision was the subdivision the city created when it sold this area of land to Matt Lowe some 7 seven years ago, which is the Washington City Green Spring Minor subdivision.

With that said, it is necessary for the city to have this older plat vacated so that the Washington Vista at Green Springs project can be recorded in place for the lots to be sold. Staff is therefore recommending that the old Washington City Green Spring Minor subdivision be vacated as soon as possible.

Recommendation

Staff recommends that the Planning Commission recommend approval of the Vacation of the Final Plat for the Washington City Green Spring Minor subdivision to the City Council based on the following findings:

Findings

1. The vacated final plat is necessary for the recording of a new project within the city.
2. That the vacated final plat is in conformance of the Subdivision Ordinance as outlined.

Commissioner Schofield asked what the status is on the substation.

Mr. Ellerman stated the substation is going to be in this area. The city has looked at the cost of moving it and it would not be cost affective to move it. Also the other areas the people had the same opposition to having it in their area.

Commissioner Williams motioned to recommend approval to City Council with the findings of staff.

Commissioner Shepherd seconded the motion.

Motion passed unanimously.

ZONE CHANGE

- A. Public Hearing for consideration and recommendation to City Council a Zone Change request Z-14-04 to change from OS Open Space and R-1-6 Single Family 6,000 sq foot lots to PCD Planned Community Development located at approximately Buena Vista and Main Street to Washington Parkway. Applicant: Henry Walker Homes

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Background

The applicant is requesting approval to change the zoning of approximately 193 acres, located approximately at Buena Vista Blvd. and Main Street and northward to the expansion of Washington Parkway. The requested change is from the current zoning of Open Space (OS) and Single-Family Residential - 6,000 Sq. Ft. min. (R-1-6), to a proposed Planned Community Development (PCD) zoning designation.

The General Plan Land Use Designation for this location is Low Density Residential (LD), High Density Residential (HD), Civic (CV) and Neighborhood Commercial (NC).

The surrounding General Plan Land Use Designations are Low Density Residential (LD), Medium Density Residential (MD) and Medium High Density Residential (MHD) to north and west, Community Commercial (CCOM), High Density Residential (HD) and Medium High Density Residential (MHD) to the east, and Community Commercial (CCOM) and Medium High Density Residential (MHD) to the south.

The surrounding zoning designations are Open Space (OS) to the north and west, Planned Community Development (PUD) and Service Commercial (C-2) to the south, Service Commercial (C-2), Multiple-Family Residential (R-3) and Single-Family Residential - 6,000 Sq. Ft. min. (R-1-6) to the east.

The PCD project name being proposed is Brillo del Sol. The project is being proposed as an adult community that will consist of single family residential homes, townhomes, and a commercial assisted living facility as well. A large community center, church site, and future medical clinic/offices are also being proposed within the project boundary.

The project will have several types of residential units. The single family home sites will be broken into two (2) different types, one being standard 8,000 square foot lots (470 units), and the other being 6,000 square foot lots for a patio home design (164 units). The total of single family home lots will be 634. There will also be an area for townhomes (or multiple-family units), this area will consist of 84 units, thus bringing the total of all single family units to 718. An assisted living facility will also be a major part of the PCD, being located in the southeast corner of the project at the crossroads of Buena Vista Blvd. and Main Street. The assisted living facility will house some 200 possible residents.

With this PCD, Main Street will be extended north, along with a portion of the expansion Washington Parkway along the northern boundary of the project. Several acres within this proposed area will be left in a native state for open space amenities and trail systems.

Staff has reviewed the requested zone change and finds it to conform to the General Plan, the Zoning Ordinance and surrounding proposed development.

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Recommendation

Staff recommends that the Planning Commission recommend approval of Z-14-04, for the zone change request from Open Space (OS) and Single-family Residential - 6,000 square feet min. (R-1-6) to the proposed Planned Community Development (PCD), to the City Council, based on the following findings and subject to the conditions below:

Findings

1. That the requested zoning conforms to the intent of the land use designation of the General Plan.
2. That the requested zoning will be compatible with surrounding developments.
3. The utilities that will be necessary for this type of development will be readily accessible to the site.

Conditions

1. A Development Agreement would be required to be approved by the City Council to go along with this proposed Planned Community Development (PCD).

Commissioner Shepherd asked if Henry Walker would be building the Main Street out to the Washington Parkway.

Mr. Ellerman stated just half of the road and the northern part of the Washington Parkway; the south of the Parkway is what this project would be responsible for.

Mr. Dalton stated Washington Parkway would be stubbed on both ends. It will be built as the development comes in.

Mr. Ellerman stated they would be required to build 40 feet of the 80-foot road.

Commissioner Schofield asked who owns the property to the east of this project.

Mr. Ellerman stated SITLA. He stated he likes PCD because for the most part they are a clean well planned out development.

Commissioner Schofield asked about access points.

Mr. Ellerman answered one off of Buena Vista, one off of Millcreek Drive and 2 off of Main Street then one off of the Washington Parkway for a total of 5 accesses.

Commissioner Papa asked for clarification of the piping for the water line shown on the plan. Would this waterline stay in use until the development comes in and would there be a concern with building on top of a waterline?

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Mr. Dalton stated regarding the existing water line they would have to relocate the waterline with new lines down Main Street and within the development. The current waterline feeds from the water tank on Red Cliffs through to Buena Vista.

Commissioner Papa asked if the developer would be doing the new lines at their expense.

Mr. Dalton stated yes.

Commissioner Papa asked about the sewer line.

Mr. Dalton explained that 2/3 would flow down Main Street. The remainder will go down Buena Vista. There will have to be some upsizing but the Capitol Facilities Plan called for it anyway. One note on the water system is the line to the tank will have to be upsized and they will have to do that. This will be covered in the development agreement. It is necessary for this development and other development that comes in.

Commissioner Papa asked about the secondary water system for all of landscaping.

Mr. Dalton stated there would be a requirement for a dry irrigation system. They are working on this and some of the requirements will be in the Development Agreement. He stated one item with this development is that they want one sided sidewalks. The city likes to see sidewalks on both sides.

Commissioner Schofield asked Aaron Langston when they developed Sienna Hills how they planned for the roadway, and why, when there wasn't development there at the time.

Aaron Langston stated in 2006 there was a plan for the major roads Grapevine Crossing, Red Stone Road, Ridgeview, Redstone Road and Sandy Talus the reason they did the parkway in Sienna Hill was a type of trial for SITLA. They became a partner to the developers: example is Coral Canyon and Sun River. The management at that time was concerned and discussed if they would work as part of the developer. There has been a lot of questions internally and externally. He stated they are a quasi-public use. They are not going to build more of the major parkways.

Commissioner Schofield asked Mr. Langston if SITLA partnered with the City on building the roads.

Mr. Langston stated no.

Commissioner Schofield asked if there is a master plan for the Green Springs Buena Vista area and what is the build out time frame.

Mr. Langston stated they don't have a number. They have worked with the city and anything they have plans for. He stated this is for a 55 and older community. Henry Walker was the one that choose to do this in the area. During the advertising time frame they can look at other offers. They felt there is a need for something similar to Sun River.

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Commissioner Schofield asked Mr. Langston about the Southern Parkway and how much involvement did SITLA have in doing that project.

Mr. Langston stated they did very little. They have to be careful on the benefit of the land. The city typically needs land and SITLA isn't in a position to give land away but at times they find that the cities need land and they determine that by virtue of utility and access is equal to the value of the land. They need to have the benefit in lieu of the money.

Commissioner Schofield asked if a property owner would be responsible for building the Washington Parkway.

Mr. Langston stated yes.

Commissioner Schofield stated the main concern is traffic. He stated this is a well drawn out plan but the access is concerning. He would like to see the Washington Parkway built because it is a main arterial road and with the coming developments he would like for it to be built completely out sooner than later than just a half road width. The proposed Washington Parkway is the main road north of 15 and connects to projects coming in and should be built out to help with the congestion. He stated it is their job as commissioners to look at things as they come in with what affect it will have 15 to 20 years from now. Water is a concern as well as traffic in the Green Springs and Buena Vista area. He asked Mr. Langston what SITLA could do to help with building roads and help the commissioners understand the concern about traffic with 1400 to 1500 more residents.

Mr. Langston stated with the Sienna Hill project they decided to do the heavy lifting to see how they did in the market place and what type of profitability was there. They didn't know the market would fall and doubt they would have done what they did now it is rebounding. He stated they know they have to have utilities and access. Green Spring north of exit 15 wasn't intended to be an experiment like the Sienna Hills project. On the Green Springs side they can just do it. Sienna Hills at the time it came in the board member felt it was a good idea to build out the parkway but they didn't know the market would fall and so now they don't want to be the one to build out the Washington Parkway. The developers will have to build it out as the projects come in. They have had meetings with the city but aren't going to expose that conversation at this time.

Ben Willits from Henry Walker Homes stated staff has done a great job. The sidewalk issue was part of a study they did on 55 and older adult communities and they came to the conclusion that a sidewalk wouldn't be necessary due to less traffic and the rate of speed of the traffic. All the communities they went to didn't have sidewalks on both sides. They have a trail system and it softened the look and feel of the community to not have sidewalks on both sides but instead put in more trails. Traffic most likely will go south to exit 10 or down Main Street.

Commissioner Schofield asked if Mr. Willits had gone to Sun River.

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Mr. Willits stated yes. Sun River has a mixed use for sidewalks. He stated traffic is always an issue and the impact will be less due to 55 and older community and they have been working with Lester in Public Works. He stated it is hard to determine what direction people will travel.

Commissioner Schofield asked about the phasing.

Mr. Willits stated everything in light blue will come in first then to the community center then to the Millcreek area, 96 homes broken up into two subsections.

Commissioner Schofield asked about build out time.

Mr. Willits stated they want to begin by early Fall and have a Parade Home. They want to have the community center built with the first phase.

Commissioner Schofield asked Mr. Willits about the merger of Henry Walker Homes.

Mr. Willits stated last fall Oakwood Homes joined together with Henry Walker Homes. Oakwood Homes wanted to stay in the Wasatch front area using the Henry Walker name and Henry Walker Homes in southern Utah would use another name.

Commissioner Schofield asked if it is still about 10 years build out time frame.

Mr. Willits stated yes.

Commissioner Schofield stated the developer did a good job on the design.

Mr. Willits stated Scott from Horrocks Engineer did a great job and they have worked with staff.

Commissioner Schofield stated traffic would always be an issue with any development. He stated he appreciated Mr. Langston candor.

Commissioner Smith asked if there was any frontage on the main spine roads.

Mr. Willits stated no. It will be similar to Snow Canyon Parkway with landscaping.

Commissioner Smith stated he likes sidewalks and would rather they be considered a 5-foot than 4-feet.

Mr. Willits stated they just looked at the standard 4 foot but would consider the 5-foot. With 55 and older the people usually use the trail system.

Commissioner Shepherd asked about the access to the golf course with golf carts.

Mr. Willits stated in the conversation with Barry Blake they would provide a shared access with the city for the citizens to access the golf course near the bridge.

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Commissioner Schofield opened the public hearing.

Tim Montgomery stated he lives at the end of Main Street, his concern is water and if it will affect the water pressure.

Mr. Dalton stated they did a water model and the need for the 20-inch line and that is the reason for the upsize of the water line. That will be covered in the development agreement.

Mr. Montgomery stated the ditch carries a lot of rain and would like to know about the drainage.

Mr. Dalton stated there is a drainage channel that comes in and their drainage plan for SITLA that calls out for detention basins, the development agreement will address the issue of detention. Drainage comes down Main Street and Buena Vista along I-15 to the boilers. They have worked with UDOT to clean the sediment out of the storm drain.

Mr. Montgomery asked about the gate and if there will be access because people use it for horses and ATVs and parking on Main Street.

Mr. Langston stated they don't restrict their land unless they need to. They don't have a use for the parking lot at the fenced area at this time.

Chris Car stated he lives in New Warm Springs and his concern is access and if there is enough water.

Commissioner Schofield stated there is adequate water for this project.

Mr. Car asked about the drainage on Main Street.

Mr. Dalton stated it would go under Main into a channel. There will be adjustment on Buena Vista to handle the drainage.

Commissioner Schofield stated there would be storm drains through out the development. With open land drainage will be a problem but development will have more control.

Mr. Dalton stated the developer is responsible to accommodate the pass through flows from their development. He stated there are different soils that will affect how the drainage will flow. He stated there would be a large culvert under Main Street down the natural flow path.

Mr. Car asked about the access to the trails that exist now to ride and recreate on.

Attorney Starkey stated SITLA owns the property and riding on their property isn't something they appreciate. Drainage issues are something that takes time.

Commissioner Schofield stated it is trespassing when entering another persons property to recreate without permission.

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Mr. Car asked if this is a 55 and older community.

Commissioner Schofield answered yes.

Commissioner Smith motioned to close the public hearing.

Commissioner Papa seconded the motion.

Motion passed unanimously.

Commissioner Schofield stated he reviewed the PCD plan and he feels it is a nice PCD development and traffic is still a big issue with everything north of the interstate. Most of the property is owned by SITLA and hopes that City Council will work out the secondary access out of Green Springs. He likes PCD and PUD developments because of the requirements and likes that this is 55 and older community. He does not have a problem with the sidewalks. There are golf cart options within this project.

Commissioner Shepherd asked about traffic out of Green Spring and Red Hills, what do they do with St George to deal with issues.

Mr. Dalton stated it isn't just St George, is it UDOT and interchange 10 they are responsible for this area and the signaling is their problem and the timing. There is funding on a 3rd turn north of I-15 with Green Springs and the 3050 intersection. Currently they are talking to UDOT and federal highways to see if they can get another interchange off of I-15.

Attorney Starkey stated they are competing for limited funds. People should contact by email UDOT and elected officials on the hill (legislators) and explain what their issue is with problems on Green Springs.

Commissioner Shepherd asked about Mall Bridge and who funded that.

Mr. Dalton stated St George, UDOT and government funding.

Commissioner Schofield asked what the difference on traffic count with Bloomington and exit 10.

Mr. Dalton stated exist 10 is the busiest exist in Washington County.

Commissioner Schofield asked what is the distance from Main Street and I-15.

Mr. Dalton stated about 1 and half miles.

Chris Car asked about Washington Parkway and where will it come out. He asked why isn't it getting developed.

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Commissioner Schofield stated they don't know where in Green Springs it will come out. It is a good question and there will be more conversation on the development of the Washington Parkway.

Commissioner Williams motioned to recommend approval to City Council with the finding and conditions of staff.

**Commissioner Shepherd seconded the motion.
Motion passed unanimously**

9. DISCUSSION ITEMS

A. Discussion of Planning Commission training.

Discussion and follow up on status of projects previously approved.

Commissioner Smith motioned to adjourn the Planning Commissioner meeting.
Commissioner Papa seconded the motion.
Motion passed unanimously.

Meeting adjourned: 8:17 PM

Washington City

Signed by:


Rick Schofield, Chairman

Attested to:


Kathy Spring, Zoning Technician

EXHIBIT "D"

CITY COUNCIL APPROVAL, APPLICATION #Z-14-4

**Washington City Council**

111 North 100 East
 Washington City, UT 84780
 Phone (435) 656-6300
 Fax (435) 656-6370
 www.washingtoncity.org

Minutes
 Regular Meeting
 May 28, 2014

Attendance: Mayor Kenneth Neilson, Councilmen Garth Nisson, Kress Staheli, Ronald Truman, Jeff Turek, City Manager Roger Carter, City Attorney Jeff Starkey, Community Development Director Drew Ellerman, Public Works Director Mike Shaw, Police Chief Jim Keith, Finance Supervisor Brian Brown, Administrative Services Manager Kimberly Ruesch, City Recorder Danice Bulloch; Audience: Niki Warner, Samantha Sadlier, GL Bower, Brian Brown

Meeting commenced at 6:03 P.M.

Invocation: Councilman Staheli

Pledge of Allegiance: Councilman Nisson

1. APPROVAL OF THE AGENDA

Councilman Staheli made a motion to approve the agenda. Councilman Turek seconded the motion; which passed with the following roll call vote.

Councilman Nisson	Aye
Councilman Staheli	Aye
Councilman Truman	Aye
Councilman Turek	Aye

2. ANNOUNCEMENTS

Councilman Truman stated he has received a lot of positive feedback from the events held throughout the County for Memorial Day.

3. DECLARATION OF ABSTENTIONS & CONFLICTS

None

4. CONSENT AGENDA

APPROVAL OF MINUTES: Consideration to approve the minutes from the City Council Meetings of 05/13/2014 and 05/14/2014.

Councilman Nisson asked how much the budget increased from the previous year.

City Manager Carter explained the increase in expenditure was 5% and the revenue was a 4% increase. The reason for the increase in expenses was due to the amount of funds allowed in the fund balance. With the increase in revenue, they money had to be used.

Councilman Truman noted there was much time spent on the budget, and he is happy with the extra money being allocated to roads within Washington City.

No public comments were made.

Councilman Turek made a motion to close the Public Hearing. Councilman Truman seconded the motion; which passed with the following roll call vote:

*Councilman Nisson Aye
Councilman Staheli Aye
Councilman Truman Aye
Councilman Turek Aye*

B. Public Hearing for the consideration to approve a Zone Change Application Z-14-04, requesting to change the present zone from OS (Open Space) and R-1-6 (Single Family 6,000 sq foot lots) to PCD (Planned Community Development) zone, to be known at Brillo del Sol, the property is located from Buena Vista Boulevard north to approximately 1250 North and from Main Street west to approximately 600 West (Millcreek Wash). Applicant: Henry Walker Homes

Community Development Director Drew Ellerman reviewed:

The applicant is requesting approval to change the zoning of approximately 193 acres, located approximately at Buena Vista Blvd. and Main Street and northward to the expansion of Washington Parkway. The requested change is from the current zoning of Open Space (OS) and Single-Family Residential - 6,000 Sq. Ft. min. (R-1-6), to a proposed Planned Community Development (PCD) zoning designation.

The General Plan Land Use Designation for this location is Low Density Residential (LD), High Density Residential (HD), Civic (CV) and Neighborhood Commercial (NC). The surrounding General Plan Land Use Designations are Low Density Residential (LD), Medium Density Residential (MD) and Medium High Density Residential (MHD) to north and west, Community Commercial (CCOM), High Density Residential (HD) and Medium High Density Residential (MHD) to the east, and Community Commercial (CCOM) and Medium High Density Residential (MHD) to the south.

The surrounding zoning designations are Open Space (OS) to the north and west, Planned Community Development (PUD) and Service Commercial (C-2) to the south, Service Commercial (C-2), Multiple-Family Residential (R-3) and Single-Family Residential - 6,000 Sq. Ft. min. (R-1-6) to the east.

The PCD project name being proposed is Brillo del Sol. The project is being proposed as an

adult community that will consist of single family residential homes, townhomes, and a commercial assisted living facility as well. A large community center, church site, and future medical clinic/offices are also being proposed within the project boundary.

The project will have several types of residential units. The single family home sites will be broken into two (2) different types, one being standard 8,000 square foot lots (470 units), and the other being 6,000 square foot lots for a patio home design (164 units). The total of single family home lots will be 634. There will also be an area for townhomes (or multiple-family units), this area will consist of 84 units, thus bringing the total of all single family units to 718. An assisted living facility will also be a major part of the PCD, being located in the southeast corner of the project at the crossroads of Buena Vista Blvd. and Main Street. The assisted living facility will house some 200 possible residents.

With this PCD, Main Street will be extended north, along with a portion of the expansion Washington Parkway along the northern boundary of the project. Several acres within this proposed area will be left in a native state for open space amenities and trail systems.

Staff has reviewed the requested zone change and finds it to conform to the General Plan, the Zoning Ordinance and surrounding proposed development.

The Planning Commission unanimously recommended approval of Z-14-04, for the zone change request from Open Space (OS) and Single-family Residential - 6,000 square feet min. (R-1-6) to the proposed Planned Community Development (PCD), to the City Council, based on the following findings and such to the conditions below:

Findings

1. That the requested zoning conforms to the intent of the land use designation of the General Plan.
2. That the requested zoning will be compatible with surrounding developments.
3. The the utilities that will be necessary for this type of development will be readily accessible to the site.

Conditions

1. A Development Agreement will be required to be approved by the City Council to go along with this proposed Planned Community Development (PCD), and must be approved prior to the recording of any plat within the PCD.

Community Development Director Ellerman then stated if the proposed zone change were to be approved, the motions should reflect it being based on the proposed map. The book of details will be done at a later date.

Councilman Staheli stated the General Plan shows this area as low density residential. He would like to know if there is a current zoning on this parcel.

Community Development Director Ellerman stated the land is mostly open space at this time. The low density designation is 3.0 - 4.0 units per acre. The overall density with this development would not exceed 3.7 units, which is within the General Plan.

Councilman Staheli asked if Millcreek Springs Drive is public or private.

Community Development Director Ellerman stated Millcreek Springs Drive is public.

Councilman Staheli asked if all of the streets are private in this development.

Community Development Director Ellerman stated the developer does plan to have as many of the streets public as possible.

Councilman Nisson asked if the development would help to move the parkway along.

Community Development Director Ellerman stated with the development, the hope is the road development will move along at a faster pace.

No public comments were made.

Councilman Truman made a motion to close the public hearing. Council Turek second the motion; which passed with the following roll call vote.

*Councilman Nisson Aye
Councilman Staheli Aye
Councilman Truman Aye
Councilman Turek Aye*

C. Consideration to approve an ordinance adopting Zone Change request Z-14-04, to change present zone from OS and R-1-6 to PCD.

Ben Willits reviewed a map with Council and explained the shared access to the north across the existing bridge.

Councilman Staheli asked if the roads are sized adequately and will accommodate golf carts.

Mr. Willits stated he has been working with Public Works in order to make certain they will be able to accommodate golf carts.

Councilman Staheli asked what the purpose would be of only having a sidewalk on one side of the road.

Mr. Willits stated they are proposing single load sidewalks because they are not applicable for this type of development. The type of clientele they will have in this area are more interested in trail systems.

Public Works Director Mike Shaw commented one of the issues they have with this development is the lack of two sidewalks. There are currently two roads within Washington City, which do not have a sidewalk on both sides, and they get many complaints.

Councilman Truman asked if this is something Staff can work with the developer on at the point of the preliminary plat.

Public Works Director Shaw stated they would.

Councilman Staheli made a motion to approve the ordinance adopting Zone Change request Z-14-04, to change present zone from OS and R-1-6 to PCD with the findings and conditions of Staff and as recommended by the Planning Commission. Councilman Turek second the motion; which passed with the following roll call vote.

*Councilman Nisson Aye
Councilman Staheli Aye
Councilman Truman Aye
Councilman Turek Aye*

8. REPORT OF OFFICERS FROM ASSIGNED COMMITTEE

Councilman Staheli stated they held their Downtown Committee Meeting. They did not have as good of a turnout as they had hoped, but they do have some great citizens on the committee. They would like to look at getting some money for the Committee in order to get some drawings in the future.

9. CITY MANAGER REPORT

City Manager Roger Carter stated he and the Mayor attended an Economic Development Show in Las Vegas. They partnered with EDC Utah, which helped them to make a number of contacts. They have had a fairly large organization make contact with them already, and are quite hopeful of the outcome. The trail project anticipated completion is for July. The majority of slurry seal is complete, aside from a couple of items to be fixed. They are still working on the completion of either 3650 South or 3090 South to help with the traffic once Merrill Road is complete. Horrocks Engineering will be attending the Workshop Meeting on the 8th of July, which will include a very preliminary design on Exit 11. Suntran will also be in attendance at this meeting with regard to routing and budgeting. The cemetery expansion is nearly complete and the contractor is doing a fantastic job. There are some very nice areas for trees, and there will be the ability to place additional landscaping if so desired. The generation plant is nearly complete. It will take some time to get everything moved over, but once the Power Department has moved, the Parks Department will then move to their building on 300 East.

10. CLOSED SESSION

- A. To discuss pending or potential litigation; and/or**
- B. Discussion regarding deployment of security personnel, devices, or systems.**

Councilman Truman made a motion to move into Closed Session to discuss pending or potential litigation and deployment of security personnel, devices, or systems. Councilman Nisson seconded the motion; which passed with the following roll call vote:

Councilman Nisson	Aye
Councilman Staheli	Aye
Councilman Truman	Aye
Councilman Turek	Aye

Council left the Council Chamber to move into the Closed Session at 7:00 P.M.

Council left the Closed Session and returned to adjourn the Regular Meeting at 7:56 P.M.

11. ADJOURNMENT

Councilman Turek made a motion to adjourn the meeting. Councilman Nisson seconded the motion; which passed with the following roll call vote:

Councilman Nisson	Aye
Councilman Staheli	Aye
Councilman Truman	Aye
Councilman Turek	Aye

Meeting adjourned at 7:56 P.M.

Passed and approved this 9th day of July 2014.



Washington City

Attest by:

Danice B. Bulloch
 Danice B. Bulloch, CMC
 City Recorder

Kenneth F. Neilson
 Kenneth F. Neilson, Mayor

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FIGURE 3.11

ROAD CROSS SECTION DESIGN

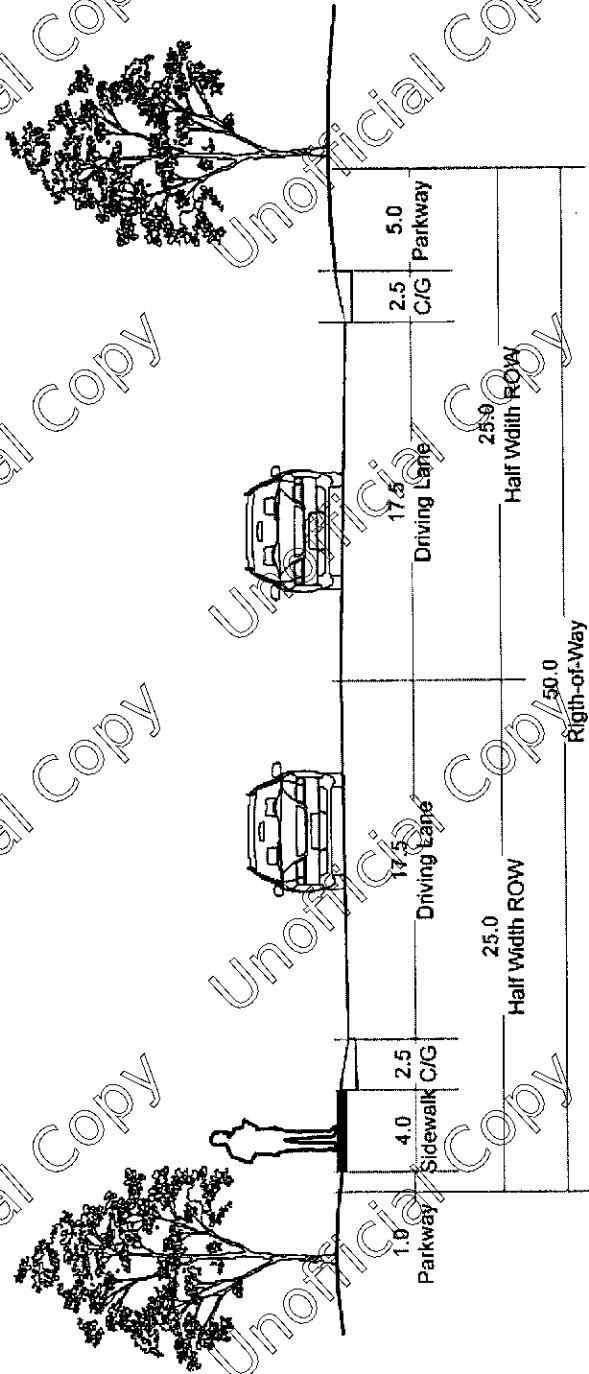


Figure 3.10: 50' Residential Street

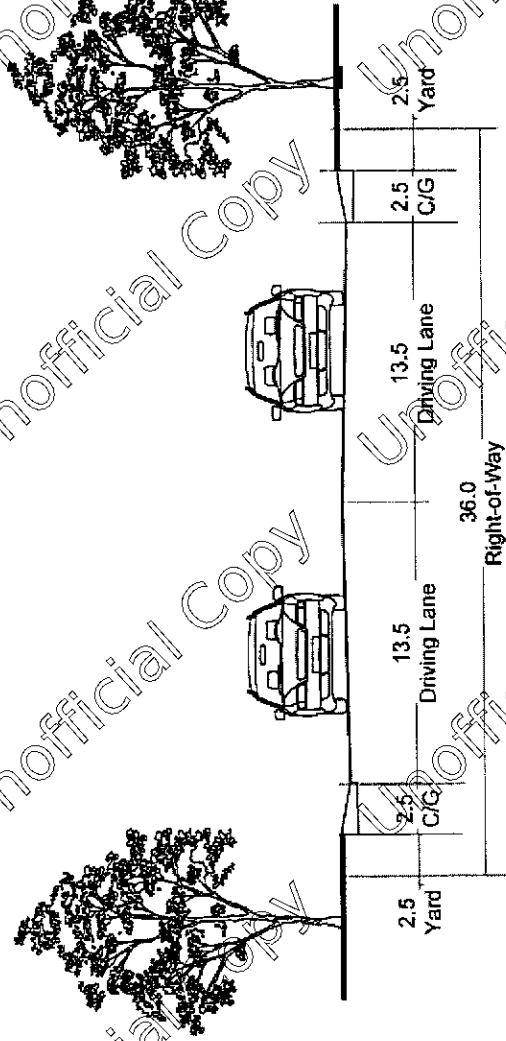


Figure 3.11: 36' Residential Street