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OF UTAH SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

DEVELOPMENT LEASE

NUMBER 1100

between

**THE STATE OF UTAH, acting through
the School and Institutional
Trust Lands Administration
as Lessor**

and

**Desert Color St. George, LLC
A Utah Limited Partnership
as Lessee**

DEVELOPMENT LEASE AGREEMENT NO. 1100

THIS DEVELOPMENT LEASE AGREEMENT NO. 1100 (“Lease”) is entered into effective as of September 11, 2017 (the “Effective Date”), by and between the State of Utah, acting by and through the School and Institutional Trust Lands Administration, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (“Lessor”) and Desert Color St. George, LLC, a Utah limited liability company, 730 N. 1500 West, Orem, UT 84057 (“Lessee”).

RECITALS

A. Lessor owns the Premises located in St. George City, Washington County, State of Utah, which Lessor desires to lease to Lessee, and which Lessee desires to lease from Lessor. As of the Effective Date, the Premises includes the Initial Parcel only. Additional lands may be added to the Premises through the exercise of options, as set forth in **Section 13.1**.

B. Lessor and Lessee desire that Lessee subdivide and develop the Premises for residential, commercial, recreational, and related purposes, and that Lessee sell lots or parcels (as applicable) and sell or dedicate parcels for public use as provided in this Lease. Lessee shall have the option of purchasing the Premises in a variety of ways, subject to the terms and conditions of this Lease.

C. The Premises have been designated as Development Property, as defined in Utah Administrative Code R850-140, *et seq.*, and this Lease is entered into pursuant to such rule.

AGREEMENT

IN CONSIDERATION of the foregoing recitals, the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, the following terms shall have the meanings respectively indicated:

1.1. “Additional Rent” - See **Section 4.2**.

1.2. “Affiliate” as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be “controlled by” a Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities or interests having ordinary voting power for the election of directors or manager(s) of such Person.

1.3. **“Annual Rent” - See Section 4.1.A.**

1.4. **“Applicable Environmental Law”** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26, as such acts have been or are hereafter amended from time to time; any so-called superfund or superlien law; and any other federal, state and local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as of now or any time hereafter in effect.

1.5. **“Appraiser”** means an independent, third-party appraiser that is a member of the Appraisal Institute and has not less than ten (10) years’ experience in appraising commercial real property and/or residential real property, as applicable, located in Washington County, Utah. In no event shall any Appraiser be (a) an Affiliate of Lessor or Lessee or (b) a former or current employee of Lessor, Lessee or any affiliate of Lessor or Lessee.

1.6. **“Atkinville and Lizard Wash Bridges” – See Section 13.3.**

1.7. **“Atkinville Interchange Commercial Lots”** means those lots generally depicted in Exhibit A, that have been designated as suitable for commercial use on a Final Plat as of the Effective Date. These lots are located in the vicinity of the Atkinville Interchange, have been graded and have other improvements on or associated with such lots as of the Effective Date.

1.8. **“Atkinville Interchange Commercial Lot Payment” –See Section 9.3.**

1.9. **“Base Payment”** means the Initial Parcel Base Payment and/or the Option Parcel Base Payments, as applicable.

1.10. **“Basic Onsite Infrastructure Improvements”** means:

A. For Lot with Homes and Multi-Family Units:

i. all utilities necessary to use a Lot with Home or a Multi-Family Unit for its designated purpose, including, without limitation, sanitary sewer lines, culinary water lines, natural gas lines, electrical power lines, fiber optic lines and storm sewer lines or channels shall have been installed upon the Premises and within or beneath a Lot with Home or Multi-Family Unit as applicable, fully operable and functioning and available for use upon payment of customary hook-up fees;

ii. all curb and gutter which shall have been installed along the common boundary of a lot and any street or cul-de-sac, including appropriate curb cuts

providing access to a lot from any street or cul-de-sac having a common boundary with a lot;

iii. all streets providing access to a lot which shall have been paved so that each lot has paved access to a paved public right-of-way;

iv. all other improvements required by the CC&Rs and any other applicable covenants, conditions and restrictions agreed to by Lessee with respect to a Lot with Home or Multi-Family Unit prior to its sale; and

v. all other improvements required by the City with respect to a Lot with Home or Multi-Family Unit prior to its sale.

B. For Improved Non-Residential Lots and Improved Residential Lots:

i. all utilities necessary to use the lot for its designated purposes, including, without limitation, sanitary sewer lines, culinary water lines, natural gas lines, electrical power lines, fiber optic lines, and storm sewer lines or channels shall have been installed to the boundaries of the lot, available for use upon payment of customary hook-up fees;

ii. curb and gutter shall have been installed along the common boundary of the lot and any street or cul-de-sac, including appropriate curb cuts providing access to the lot from any street or cul-de-sac having a common boundary with the lot;

iii. rough grading, including material import and export, shall have been completed;

iv. streets providing access to the lot shall have been paved such that the lot has paved access to a paved public right-of-way; and

v. all other improvements required by the City, and any other applicable covenants, conditions and restrictions with respect to the lot prior to its sale shall have been completed.

1.11. **“Certificate of Sale”** – See Section 11.1.

1.12. **“City”** means the City of St. George, a Utah municipality.

1.13. **“Closing Costs”** - See Section 11.1.

1.14. **“Closing Gross Revenue”** – See Section 6.8.A.i.

1.15. **“Condemning Authority”** – See Section 21.1.

1.16. “**Covenants, Conditions and Restrictions**” or “**CC&Rs**” means a Declaration of Covenants, Conditions, and Restrictions to be prepared and recorded by Lessee, with Lessor’s written approval, which Lessor approval shall not be unreasonably withheld, conditioned or delayed. CC&Rs shall include and incorporate the Design Guidelines as well as other design plans for the applicable area. Lessee may record CC&Rs for residential lots that are separate from the CC&Rs recorded against non-residential lots.

1.17. “**CPI Index**” means the All Urban Consumers Price Index, Western Area, published by the United States Department of Labor, Bureau of Labor Statistics.

1.18. “**Default Rate**” - See Section 4.2.

1.19. “**Design Guidelines**” means those aesthetic and other guidelines for the Project, as such may be amended from time to time with the written approval of Lessor. The Design Guidelines are available in Lessor’s offices located in Washington County, Utah, for review. The first page of the Design Guidelines is attached as **Exhibit B**.

1.20. “**Development Parcel**” means all portions of the Premises included in a Preliminary Plat, including but not limited to land designated and intended for: (a) residential lots; (b) roadways; and (c) utilities. Portions of the land within a Development Parcel may subsequently be sold by Lessee as Lots with Homes, Multi-Family Units, Improved Residential Lots, or for other purposes. Open Space, Park and Amenity Lands, and Undevelopable Lands may be included in the Preliminary Plat or Final Plat of a Development Parcel, but are not considered part of the Development Parcel for purposes of this Lease.

1.21. “**Development Plan**” means the final plan for the development of the Premises as between Lessor and Lessee, as specifically set forth in **Section 14.1.A.** of this Lease. It is anticipated that multiple Development Plans will be created for the Premises, and each shall be approved in writing by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. This term does not refer to and is not intended to be confused with proposals, plans, plats or other information submitted to the City for purposes of approving development of the Premises.

1.22. “**Development Schedule**” means the schedule for construction of improvements on the Premises and the sale of Development Parcels, Lots with Homes, Multi-Family Units, Improved Residential Lots, Improved Non-Residential Lots and Atkinville Interchange Commercial Lots. The Development Schedule is included in the Development Plan, and is described in **Section 14.1.A.**

1.23. “**Dispute**” - See Section 26.25.

1.24. “**East Option Parcel**” means: (a) those approximately 1,152 acres of land situated in St. George, Washington County, State of Utah, which are near the Initial Parcel and are generally depicted in **Exhibit J** to this Lease, RESERVING, HOWEVER, to Lessor and its successors and assigns any and all oil, gas, coal and other minerals underlying such land; and (b) all other rights and easements which are appurtenant to such parcel of land, other than the

reserved mineral estate or as otherwise agreed or set forth herein.

1.25. **“East Option Parcel Term”** – See Section 3.1.B.

1.26. **“Escrow Agent”** - See Section 6.2.D.

1.27. **“Event of Default”** - See Section 25.1.

1.28. **“Exclusive Possession Addendum”** – See Section 2.4.

1.29. **“Final Plat”** means a final, fully approved and recorded subdivision plat.

1.30. **“First Closing”** – See Section 11.1.

1.31. **“Hazardous Substance”** means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Utah, or the United States Government, including, without limitation: (a) any substance, chemical or waste that is or shall be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law; (B) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state or local governmental authority pursuant to any environmental, health and safety or similar law, code, ordinance, rule, regulation, order or decree and which may or could pose a hazard to the health and safety of occupants or users of the Premises, any part thereof or any adjoining property, which may or could cause damage to the environment; (C) any petroleum products; (D) PCBs; (E) lead-based paint; and (F) asbestos.

1.32. **“Home Owner’s Association”** or **“HOA”** - See Section 14.5.

1.33. **“Improved Commercial Lot”** means a parcel designated as a lot suitable for commercial use or mixed use (when at least one of such uses is commercial) on a Final Plat. Applicable Basic Onsite Infrastructure Improvements shall be completed to such lot. Improved Commercial Lots do not include those lots designated as Atkinville Interchange Commercial Lots.

1.34. **“Improved Institutional Lot”** means a parcel designated as a lot suitable for use as a church, school, or for some other institutional use on a recorded Final Plat. Applicable Basic Onsite Infrastructure Improvements shall be completed to such lot.

1.35. **“Improved Non-Residential Lot”** means an Improved Commercial Lot and/or an Improved Institutional Lot.

1.36. **“Improved Non-Residential Lot Payment”** – See Section 9.2.

1.37. **“Improved Residential Lot”** means a parcel designated as a lot suitable for construction of a Residential Unit on a Final Plat. Applicable Basic Onsite Infrastructure Improvements shall be completed to such lot prior to the First Closing, but a Residential Unit will not be constructed on such lot until after the Second Closing.

1.38. **“Improved Residential Lot Payment”** – See Section 7.3.

1.39. **“Improvement Documents”** means the Zone Plan, Master Plan, subdivision plats, construction plans, site plan(s) and such other documents as local laws, ordinances, rules and regulations or governmental entities may require from time to time in connection with the improvement of the Premises.

1.40. **“Initial Parcel Base Payment”** – See Section 6.5.A.

1.41. **“Initial Parcel”** means: (a) the parcels of land situated in St. George, Washington County, State of Utah, which are more particularly described on Exhibit C and generally depicted in Exhibit D to this Lease, RESERVING, HOWEVER, to Lessor and its successors and assigns any and all oil, gas, coal and other minerals underlying such land; and (b) all other rights and easements which are appurtenant to such parcel of land, other than the reserved mineral estate or as otherwise agreed or set forth herein. The Initial Parcel is included in the Premises as of the Effective Date and throughout the Initial Parcel Term.

1.42. **“Initial Parcel Term”** – See Section 3.1.A.

1.43. **“Lease Term”** - See Section 3.1.D.

1.44. **“Leasehold Mortgage”** - See Section 24.1.

1.45. **“Lessee Improvements”** means the amenities, Basic Onsite Infrastructure Improvements, and Offsite Project Improvements to be constructed in accordance with the Zone Plan, the Master Plan, the Improvement Documents, all applicable City requirements, and this Lease, which shall include, without limitation, those improvements required for a residence to qualify as a Lot with Home or Multi-Family Unit, or for a lot to qualify as an Improved Residential Lot, or Improved Non-Residential Lot, as applicable.

1.46. **“Lessee’s Parties”** - See Section 15.4.B.

1.47. **“Lessor Indemnitees”** means Lessor, its officers, directors, employees, agents, and elected and appointed officials of the State of Utah.

1.48. **“Lessor Payment for Initial Infrastructure”** – See Section 14.6.

1.49. **“Lot with Home”** means a single family Residential Unit and the subdivided lot on which it was constructed and completed. The Residential Unit shall be constructed and completed in substantial compliance with plans and specifications reviewed by appropriate City authorities, including but not limited to completion of the applicable Basic Onsite Infrastructure Improvements. The term **“completed,”** as used herein when referring to a Lot with Home, shall mean a Residential Unit that has received final inspection and acceptance by the appropriate City authority and for which a certificate of occupancy has been issued.

1.50. **“Lot with Home Payment” - See Section 8.3.**

1.51. **“Marketing Plan”** means the plan for marketing the developed portions of the Premises, to be set forth in the initial Development Plan. Subsequent Development Plans may alter the Marketing Plan.

1.52. **“Master Plan”** means the South Block Master Plan, City of St. George, Utah, approved by the St. George City Council in May, 2007.

1.53. **“Minimum Improved Residential Lot Price” - See Section 7.2.A.**

1.54. **“Minimum Lot with Home Price” - See Section 8.2.A.**

1.55. **“Minimum Multi-Family Unit Price” - See Section 8.2.A.**

1.56. **“Multi-Family Unit”** means a townhouse or other attached multi-family Residential Unit and the associated land on which it was constructed and completed. The multi-family Residential Unit shall be constructed and completed in substantial compliance with plans and specifications reviewed by appropriate City authorities, including but not limited to completion of the applicable Basic Onsite Infrastructure Improvements. The term **“completed,”** as used herein when referring to a Multi-Family Unit, shall mean the unit has received final inspection and acceptance by the appropriate City authority and for which a certificate of occupancy has been issued.

1.57. **“Multi-Family Unit Payment” - See Section 8.3.**

1.58. **“Neighborhoods”** means those portions of the Premises to be developed as distinct residential, commercial and mixed-use districts. The Neighborhoods to be constructed on the Premises are generally depicted in **Exhibit E**. Each Neighborhood may contain multiple Phases. The parties acknowledge that the locations and types of Neighborhoods may be adjusted from time to time throughout the Lease Term. In such circumstances, Lessee shall request such adjustments in writing, and Lessor shall not unreasonably withhold, condition or delay its approval to such.

1.59. **“North Option Parcel”** means: (a) those approximately 812 acres of land situated in St. George, Washington County, State of Utah, which are near the Initial Parcel and are generally depicted in **Exhibit F** to this Lease, ~~RESERVING, HOWEVER,~~ to Lessor and its successors and assigns any and all oil, gas, coal and other minerals underlying such land; and (b) all other rights and easements which are appurtenant to such parcel of land, other than the reserved mineral estate or as otherwise agreed or set forth herein.

1.60. **“North Option Parcel Term” - See Section 3.1.C.**

1.61. **“Offsite Project Improvements”** means all improvements necessary for the development of the Premises to be constructed by Lessee off the Premises, as depicted and explained in the Development Plan, which improvements shall be constructed in accordance with

the Zone Plan, the Master Plan, this Lease, the Improvement Documents, one or more Development Plans, and as required by applicable governmental approvals, including but not limited to:

- A. the extension of sanitary sewer lines, culinary water lines and storm sewer lines or channels to the Premises;
- B. the extension of other utilities to the Premises, including, without limitation, natural gas and electricity;
- C. the construction of curb and gutter and other street improvements upon public rights-of-way adjacent to the Premises and that relate to the Premises; and
- D. Offsite Roadway Improvements.

1.62. **“Offsite Roadway Improvements”** means all roadway improvements necessary for the development of the Premises to be constructed by Lessee off the Premises, as such are required by applicable governmental entities.

1.63. **“Open Space”** means a parcel of land to be kept in its natural condition that can be used to fulfill those open space requirements in the Master Plan. The portions of the Premises to be purchased and used as Open Space will be designated as such on a Final Plat. The anticipated Open Space areas and approximate acreages are generally depicted on **Exhibit G**; however, the exact locations and sizes of these areas may change as development progresses.

1.64. **“Option Parcel Base Payment”** – See Section 6.5.B.

1.65. **“Option Parcel Effective Date”** – See Section 13.1.C.

1.66. **“Option Term”** - See Section 3.2.

1.67. **“Park and Amenity Lands”** means those areas to be used for recreational purposes, as well as the amenities to be constructed on the Premises and the real property underlying and included in the amenities. Park and Amenity Lands include, but are not limited to, parks, playgrounds, trail systems, landscaping, man-made bodies of water, swimming pools, clubs, entryways and similar improvements. The Regional Park and Regional Sports Facilities are included in the Park and Amenity Lands. The portions of the Premises to be purchased and used as Park and Amenity Lands will be designated for such uses in a Final Plat. The anticipated Park and Amenity Lands and approximate acreages are generally depicted on **Exhibit G**; however, the exact locations and sizes of these areas may change as development progresses.

1.68. **“Patent”** – See Section 11.1.

1.69. **“Percentage Total”** – See Section 6.8.B.

1.70. **“Person”** means and includes natural persons, corporations, limited partnerships,

general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments (whether federal, state or local, domestic or foreign, and including political subdivisions thereof) and agencies or other administrative or regulatory bodies thereof.

1.71. **“Phase”** means a phase of development in the Project. Each Final Plat issued for the Project shall constitute a Phase.

1.72. **“Preliminary Development Plan”** – See Section 14.1.A.

1.73. **“Preliminary Plat”** means a preliminary subdivision plat including the information required by the applicable governmental authority for such plat, which may include the location of roads, utility lines, community improvements, residential lots, Open Space, Park and Amenity Lands, Undevelopable Lands, and utilities.

1.74. **“Premises”** means the Initial Parcel, as of the Effective Date. The North Option Parcel and East Option Parcel may be added to the Premises after the Effective Date if the applicable conditions set forth in this Lease are met.

1.75. **“Product Type”** means Residential Units of a particular type. For purposes of this Lease, the applicable Product Types are: (a) resort residential stacked flats, (b) resort residential villas, (c) primary and secondary resident stacked flats, (d) primary and secondary resident townhomes, (e) high density traditional single family (3,500-5,000 sf lots), (f) medium density traditional single family (5,000-8,000 sf lots), (g) low density traditional single family (8,000-12,000 sf lots), (h) high density age-restricted (pinwheel 4-plex), (i) medium density age-restricted, and (j) low density age-restricted (6,000-10,000 sf lots), as such are more particularly described in certain Improvement Documents and the Development Plan.

1.76. **“Project”** means the community that is developed for residential, commercial, institutional, recreational and other development pursuant to this Lease.

1.77. **“Reconciliation Payment”** – See Section 6.6.

1.78. **“Regional Park”** means that approximately 35.9- acre park to be developed as part of the Project, the location of which will be as generally depicted in Exhibit H.

1.79. **“Regional Sports Facilities”** means those improvements and facilities associated with sports facilities to be constructed on the Premises in that area generally depicted in Exhibit I.

1.80. **“Remedial Work”** - See Section 15.4.A.

1.81. **“Residential Unit”** means a house, townhouse, multi-family unit or other residential dwelling unit, which is completed in substantial compliance with plans and specifications reviewed by appropriate local and municipal authorities. In multi-family units,

each dwelling shall be considered a separate Residential Unit.

1.82. **“Second Closing”** – See Section 11.1.

1.83. **“Subject Neighborhood”** – See Section 5.5.

1.84. **“Termination Date”** means the date on which this Lease terminates, whether due to the expiration of the Lease Term or the earlier termination of this Lease for any cause whatsoever. The Termination Date is that date when the Initial Term, the North Option Parcel Term, and the East Option Parcel Term have all terminated.

1.85. **“Third-Party Gross Sales Price”** means the gross price a third-party purchaser has paid, as set forth on a final closing statement, for a Lot with Home as set forth on a final closing statement (including any architectural or design upgrades), a Multi-Family Unit (including any architectural or design upgrades), or an Improved Residential Lot. A conveyance to a corporation intermediary for the sole purpose of conveying title (as set forth in Section 5.6.C.) shall not constitute a third-party purchaser and shall not be used to calculate the Third-Party Gross Sales Price.

1.86. **“Third-Party REPC”** means a fully executed real estate purchase contract between Lessee and a third party.

1.87. **“TNC Parcel”** – See Section 24.5.

1.88. **“Undevelopable Lands”** means federally-designated floodplains and other such lands that are prohibited to be developed by an appropriate governmental authority. The locations of the Undevelopable Lands and approximate acreages are generally depicted in Exhibit G.

1.89. **“Water Reservation Fee”** – See Section 11.7.

1.90. **“Zone Plan”** means the Atkinville Interchange Area Zone Plan, adopted by the St. George City Council on January 4, 2007.

ARTICLE 2. LEASE OF PREMISES

2.1. **Lease.** Subject to the terms and conditions of this Article 2, and in consideration of the covenants of Lessee contained in this Lease, Lessor leases the Premises to Lessee, as of the Effective Date, in “AS IS” condition, including any and all defects, latent or otherwise, existing as of the Effective Date; **SUBJECT, HOWEVER,** to: (a) current taxes and assessments, reservations in patents and all rights-of-way, easements, covenants, conditions, restrictions, obligations, liens, encumbrances, and liabilities of record as of the date hereof; (b) all matters which an accurate survey or physical inspection of the Premises would disclose; (c) all zoning and building code requirements and other governmental laws, rules, ordinances and regulations now or hereafter in effect; and (D) any other matter set forth and agreed herein.

2.2. Lessee's Inspection of the Premises. Lessee acknowledges that, as of the Effective Date, Lessee has performed reasonable inspections of the Premises, has observed its physical characteristics and existing conditions, the operations thereon and on adjacent areas, and Lessee hereby waives any and all objections to, complaints about, or claims regarding (including but not limited to federal, state or common law-based actions and any private right of action under state and federal law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, and any state or local equivalent, to which the Premises is or may be subject) the Premises and its physical characteristics and existing conditions, including, without limitation, subsurface soil and water conditions, and Hazardous Substances on, under or adjacent to the Premises, that an appropriate environmental report should have revealed, except for claims relating to Hazardous Substances which may have been deposited or released during Lessor's ownership of the Premises. Except as described herein, Lessor is hereby released from all responsibility and liability regarding the operation and condition, valuation or utility of the Premises, or its suitability for any purpose whatsoever. Lessee expressly acknowledges that Lessee has not relied on any warranties, promises, understandings or representations, express or implied, oral or written, of Lessor or of any agent of Lessor, relating to the Premises, except as specifically set forth in this Lease.

2.3. Covenant of Quiet Enjoyment. Lessor covenants that so long as Lessee shall perform the obligations of Lessee contained in this Lease and shall not be in default in the performance of any of such obligations, Lessor shall take no act or fail to take any action that would deny Lessee and its licensees, successors, transferees and assigns the right to freely, peaceably, and quietly have, hold and enjoy full use and enjoyment of the Premises. This use and enjoyment of the Premises shall be exclusive as against third parties; however, Lessor shall have the right to enter, occupy and control the Premises until such time as certain conditions are met, as described in **Section 2.4.** of this Lease.

2.4. Exclusive Possession of Premises; Recorded Addendum. Lessor's right to enter, occupy and control a portion of the Premises shall terminate, and Lessee shall have exclusive possession of the applicable portion, when the earliest of the following events occurs: (a) at the recordation of a subdivision plat for the applicable portion of the Premises (excluding those portions to be developed, used and dedicated for public purposes); (b) at the commencement of the construction of improvements on the applicable portion of the Premises (excluding those portions to be developed, used and dedicated for public purposes); or (c) at such time as the parties mutually agree in writing that Lessee will be provided exclusive possession.

In each of these situations, an addendum to the Lease shall be executed by the parties and recorded with the office of the Washington County Recorder (the "**Exclusive Possession Addendum**"), the form of which is attached as **Exhibit K**. The Exclusive Possession Addendum will be recorded contemporaneously with or prior to the recordation of the subdivision plat described in **Subsection (a)** and the commencement of construction of improvements described in **Subsection (b)**. The Exclusive Possession Addendum shall constitute the written agreement between the parties described in **Subsection (c)**. The Exclusive Possession Addendum shall include a legal description of the applicable portion of the Premises for which exclusive possession will be provided as well as the effective date of the exclusive possession.

Any Exclusive Possession Addenda shall not alter Lessor's right to access the Premises to examine and inspect the operations thereon, as set forth in **Section 2.2**.

2.5. Lessor's Access to Premises. Lessor and its agents, at all reasonable times and upon notice to Lessee, shall have free and full access to the Premises for the purpose of examining or inspecting the condition thereof in order to determine whether Lessee is performing the covenants and agreements of this Lease, and for the purpose of posting such notices as Lessor may desire to protect the rights of Lessor, provided the exercise of such rights does not interfere with Lessee's development, use and enjoyment of the Premises.

2.6. City Approvals. It shall be Lessee's obligation, at Lessee's sole cost and expense, to obtain all subdivision approvals, parcel maps and related approvals and permits from the City in connection with Lessee's development and sale of the Premises. Lessee shall be solely responsible for payment of all permits, impact fees, processing fees, posting of bonds or other security required by applicable governmental agencies in connection with the processing, execution and recordation of any subdivision approvals, parcel maps and related items pertaining to the Premises, and the construction of Lessee Improvements. Lessee acknowledges that certain obligations will be imposed by applicable governmental agencies in connection with the development of the Premises, such as satisfactorily bonding for Lessee Improvements, and Lessee will be responsible for performing such obligations at the time the Premises, or portions thereof, are developed. As described in this Lease, and consistent with this Lease and the Development Plan, Lessee shall, following consultation with Lessor, record CC&Rs against the Premises.

ARTICLE 3. TERM

3.1. Commencement Date and Term. The commencement date and term as to when the Lease is applicable varies for the Initial Parcel, the East Option Parcel and the North Option Parcel. The terms during which the parcels are subject to the Lease may run concurrently, depending on when Lessee exercises its option rights under the Lease.

A. Term for Initial Parcel. The term during which the Initial Parcel is subject to the Lease shall commence on the Effective Date, and shall continue until that date which is twenty (20) years thereafter (the "**Initial Parcel Term**"), subject to the Option Terms hereinafter described. At the end of the Initial Parcel Term and the Option Terms (which together are equal to 30 years), as applicable, the Initial Parcel shall no longer be subject to the terms of this Lease and Lessee shall have no rights or obligations concerning the Initial Parcel except for those rights and obligations that survive termination, as expressly set forth in this Lease.

B. Term for East Option Parcel. The term during which the East Option Parcel is subject to the Lease shall commence on the applicable Option Parcel Effective Date, and shall continue until that date which is twenty (20) years thereafter (the "**East Option Parcel Term**"), subject to the Option Term hereinafter described. At the end of the East Option Parcel Term and the Option Term (which together are equal to 25 years), as applicable, the East Option Parcel shall no longer be subject to the terms of

this Lease and Lessee shall have no rights or obligations concerning the East Option Parcel except for those rights and obligations that survive termination, as expressly set forth in this Lease.

C. Term for North Option Parcel. The term during which the North Option Parcel is subject to the Lease shall commence on the applicable Option Parcel Effective Date, and shall continue until that date which is fifteen (15) years thereafter (the "**North Option Parcel Term**"), subject to the Option Term hereinafter described. At the end of the North Option Parcel Term and the Option Term (which together are equal to 20 years), as applicable, the North Option Parcel shall no longer be subject to the terms of this Lease and Lessee shall have no rights or obligations concerning the North Option Parcel except for those rights and obligations that survive termination, as expressly set forth in this Lease.

D. Lease Term. Collectively, the Initial Parcel Term, the East Option Parcel Term and the North Option Parcel Term, as well as any Option Terms, may collectively be referred to as the "**Lease Term**".

3.2. **Option Term.** Provided that: (a) an Event of Default has not occurred and is not continuing; (b) this Lease is not terminated pursuant to the terms hereof; (c) Lessee is actively developing the Initial Parcel, East Option Parcel or North Option Parcel, as applicable, in accordance with the applicable Development Plans; and (d) Lessee is actively marketing the Premises in accordance with the Marketing Plan, Lessee shall have the option to: (i) extend the Initial Parcel Term for two (2) additional terms of five (5) years each; (ii) extend the East Option Parcel Term for one (1) additional term of five (5) years; and (iii) extend the North Option Term for one (1) additional term of five (5) years. Separately and collectively, the Initial Parcel Term, the East Option Term and the North Option Term shall be referred to as the "**Option Term**". Lessee shall exercise each Option Term by delivering to Lessor written notice at least ninety (90) days prior to the expiration of the Initial Parcel Term or the expiration of the first Option Term for such, the East Option Parcel Term, or the North Option Parcel Term, as applicable. If any Option Term expires, Lessee shall have the right to reinstate and exercise the Option Term within thirty (30) days of Lessor providing written notice to Lessee that the Option Term has expired or, if such notice is not provided, Lessee may reinstate and exercise the Option at any time prior to Lessor providing such thirty (30) day notice to Lessee. In the event Lessee elects to renew this Lease for the Option Term for any or all of the portions of the Premises, such renewal shall be subject to all the covenants, terms, provisions and obligations of this Lease, unless otherwise agreed to in writing by both Lessor and Lessee.

3.3. **Obligations on Lease Termination.** Upon the expiration of the Initial Parcel Term or earlier termination of this Lease for any cause whatsoever, Lessee shall immediately surrender peaceable possession of the Initial Parcel, including any Basic Onsite Infrastructure Improvements and common areas then located on the Premises and not yet conveyed to the City, utility providers, or other governmental authorities, in a good, clean and orderly condition (ordinary depreciation, reasonable wear and tear, casualty loss, and condemnation loss excepted). Upon the expiration of the East Option Parcel Term or earlier termination of this Lease for any cause whatsoever, Lessee shall immediately surrender peaceable possession of the East Option

Parcel, including any Basic Onsite Infrastructure Improvements and common areas then located on the Premises and not yet conveyed to the City, utility providers, or other governmental authorities, in a good, clean and orderly condition (ordinary depreciation, reasonable wear and tear, casualty loss, and condemnation loss excepted). Upon the expiration of the North Option Parcel Term or earlier termination of this Lease for any cause whatsoever, Lessee shall immediately surrender peaceable possession of the North Option Parcel, including any Basic Onsite Infrastructure Improvements and common areas then located on the Premises and not yet conveyed to the City, utility providers, or other governmental authorities, in a good, clean and orderly condition (ordinary depreciation, reasonable wear and tear, casualty loss, and condemnation loss excepted). Upon the expiration or earlier termination of the Initial Parcel Term, the East Option Parcel Term or the North Option Parcel Term, the parties acknowledge that Lessee shall have the right to complete and sell partially completed structures which are under contract as provided by **Section 25.2(A)** below.

3.4. Holding Over. If Lessee or any successor in interest to Lessee should remain in possession of the Premises after termination of the applicable Lease Term without executing a new lease, then such holdover shall be construed as a tenancy from month-to-month, subject to all of the covenants, terms, provisions and obligations of this Lease except for the provisions relating to the Annual Rent payable hereunder, which Annual Rent, during any holdover period, shall be equal to two (2) times the Annual Rent payable by Lessee for the preceding Lease Term. Nothing contained herein shall be construed as Lessor's permission for Lessee to hold over or as limiting Lessor's remedies against a holdover lessee. If Lessee or any successor in interest to Lessee should remain in possession of any part of the Premises after the term for those lands has expired, but while other lands are still subject to the Lease (e.g., if Lessee remains in possession of the Initial Parcel after the termination of the Initial Parcel Term, but during the East Option Parcel Term), then such shall constitute a default under the Lease.

ARTICLE 4. ANNUAL RENT

4.1. Annual Rent.

A. Obligation to Pay Annual Rent. Lessee shall pay to Lessor annually during the Lease Term the amounts set forth in **Section 4.1.B., 4.1.C., and 4.1.D.**, hereinafter separately and collectively referred to as the "**Annual Rent.**" Annual Rent for the Initial Parcel shall be paid initially on or before the Effective Date, and thereafter, annually on or before the anniversary of the Effective Date. Annual Rent for the North Option Parcel shall be paid at the exercise of the option for the North Option Parcel, and thereafter annually on or before the anniversary of that date. Annual Rent for the East Option Parcel shall be paid at the exercise of the option for the East Option Parcel, and thereafter annually on or before the anniversary of that date. If the Initial Parcel Term, North Option Term and East Option Term are in effect at the same time, the combined Annual Rents shall be Six Thousand Dollars (\$6,000.00), as set forth below.

B. Annual Rent for Initial Parcel. Unless this Lease is terminated, Lessee shall pay Lessor annually, commencing on the Effective Date and continuing thereafter through the Initial Parcel Term, Annual Rent for the Initial Parcel in the amount of Two

Thousand Dollars (\$2,000.00).

C. Annual Rent for North Option Parcel. Unless the Lease is terminated, Lessee shall pay Lessor annually, throughout the North Option Parcel Term, Annual Rent for the North Option Parcel in the amount of Two Thousand Dollars (\$2,000.00).

D. Annual Rent for East Option Parcel. Unless the Lease is terminated, Lessee shall pay Lessor annually, through the East Option Parcel Term, Annual Rent for the East Option Parcel in the amount of Two Thousand Dollars (\$2,000.00).

4.2. Payments by Lessor. In the event Lessee fails, within thirty (30) days after receipt of a written notice to Lessee from Lessor, to pay any amount to a third party that is then currently due to be paid by Lessee pursuant to the terms of this Lease, Lessee may elect to dispute such amount with the third party in which event Lessee shall notify Lessor in writing of such election within ten (10) days, and shall thereafter proceed diligently to resolve such dispute. If such dispute is not resolved by Lessee within sixty (60) days, Lessor may (without obligation) pay such amount, and Lessee agrees to pay Lessor, upon demand, all reasonable sums so expended by Lessor, together with interest at a rate equal to the lesser of: (a) four (4) percentage points added to the prime lending rate as listed in the Wall Street Journal during the period of non-payment, or (b) the maximum rate of usury interest permissible under the laws of the State of Utah from the date of expenditure until paid (the "**Default Rate**"). Such sum and interest shall be deemed "**Additional Rent**" hereunder.

4.3. Interest on Past Due Obligations. Any amount due to Lessor which is not paid when due and within any applicable notice and cure period shall bear interest at the Default Rate from the original due date until paid.

4.4. Delinquent Annual Rent Payment. In the event Lessee is delinquent in making any Annual Rent or Additional Rent payment as set forth herein, Lessee shall be obligated to pay a late fee of ten percent (10%) of the delinquent amount due to cover the administrative costs incurred by Lessor in connection with such delinquent payment, which late fee shall be in addition to interest or other enforcement costs under this Lease. The total amount of the delinquent Annual Rent payment, plus the late fee shall bear interest at the Default Rate from the date of delinquency and shall continue until the entire amount (including the delinquent payment, the late fee, and any accrued interest) is paid or until termination of the Lease. Lessee shall not be relieved of its obligation to pay the delinquent amount due on any accrued but unpaid late fee and interest accruing hereunder, even in the event Lessor has terminated the Lease.

4.5. Obligation to Make Payment. The obligation to make the payments described in this Lease shall survive the expiration or termination of this Lease. Neither the Base Payment, the Improved Residential Lot Payment, the Non-Residential Lot Payment, the Lot with Home Payment, the Multi-Family Unit Payment, the Atkinville Interchange Commercial Lot Payment, nor the Reconciliation Payment are rent payable under this Lease, but rather represent additional consideration to be paid to Lessor in connection with this Lease.

4.6. Net Lease. This is a net Lease and it is the intention of the parties that, except as

otherwise provided or limited by the specific provisions of this Lease, Lessee shall be responsible for all costs and expenses of the ownership, development, maintenance, repair and operation of the Premises which are incurred or have accrued during the Lease Term, including but not limited to any taxes assessed against the Premises. Any present or future law to the contrary notwithstanding, and except as provided herein, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Annual Rent or any Additional Rent, or other sum payable hereunder, nor shall the obligations of Lessee hereunder be affected, by reason of any damage to or destruction of the Premises or by any taking of the Premises or any part thereof by condemnation, except as provided in Article 20 and Article 21.

ARTICLE 5. MODELS FOR SALE; PURCHASE REQUIREMENTS AND LIMITATIONS

5.1. Purchase Models. Notwithstanding anything in this Lease to the contrary, Lessee shall have the right to purchase portions of the Premises from Lessor as: (a) Development Parcels, (b) Improved Residential Lots, (c) Lots with Homes, (d) Multi-Family Units, (e) Improved Institutional Lots, (f) Improved Commercial Lots, and (g) Atkinville Interchange Commercial Lots. Each of these options represents a different purchase model, with distinct obligations on Lessee both before and after the First Closing, as briefly described below:

A. Development Parcels. When Lessee purchases portions of the Premises as a Development Parcel, Lessee is purchasing lands that have been included within a Preliminary Plat but not a Final Plat. These lands are also being purchased prior to the installation of those improvements required for a parcel to be considered an Improved Residential Lot, Lot with Home, Multi-Family Unit, or Improved Non-Residential Lot. Lessee shall be required to obtain all approvals and complete the improvements necessary to create Improved Residential Lots, Lots with Homes, and Multi-Family Units, and/or Improved Non-Residential Lots within the Development Parcels after the First Closing, but prior to a Second Closing on the parcels.

B. Improved Residential Lots, Improved Non-Residential Lots, and Atkinville Interchange Commercial Lots. When Lessee purchases portions of the Premises as an Improved Residential Lot, Improved Non-Residential Lot, or Atkinville Interchange Commercial Lot, Lessee is purchasing a subdivided lot with completed improvements applicable to each type of lot. After the First Closing for an Improved Residential Lot, Improved Non-Residential Lot, or Atkinville Interchange Commercial Lot, Lessee will immediately re-convey such lot to a third-party purchaser (likely a builder) in a Second Closing without further improving the lot.

C. Lots with Homes and Multi-Family Units. When Lessee purchases portions of the Premises as a Lot with Home or a Multi-Family Unit, Lessee is purchasing a Residential Unit (either single family or multi-family, as applicable) and associated land on which the Residential Unit has been built prior to the First Closing. After the First Closing for a Lot with Home or Multi-Family Unit, Lessee will immediately re-convey the Lot with Home or Multi-Family Unit to a third-party homebuyer in a

Second Closing without further improving the lot.

5.2. Notice of Sale Model Used. Lessee shall notify Lessor, in writing, as to which sale model it will use for each area it intends to develop or purchase prior to recordation of a Final Plat for such lands.

5.3. Requirement to Purchase and Develop. Notwithstanding the Development Schedule, Lessee shall: (a) purchase a minimum of ten (10) acres of the Premises per Lease year on a cumulative basis; and (b) begin active development of a new Phase upon construction of and issuance of certificates of occupancy for ninety five percent (95%) of the Residential Units in all prior Phases. Lessor may waive such requirement in writing and shall not unreasonably withhold its consent to such waiver.

5.4. Development Required Before Subsequent Phase. Lessee may not begin actively developing a new Phase and/or may not purchase an additional Development Parcel until construction of and issuance of certificates of occupancy for sixty percent (60%) of the Residential Units in all prior Phases.

5.5. Development of Product Types in Neighborhoods. Lessee shall complete the development of the majority of a certain Product Type (as designated on one or more Final Plats) in a certain price point in a Neighborhood before obtaining a Final Plat for that same Product Type in the same price point in another Neighborhood. For purposes of this Section 5.5., the majority of a certain Product Type shall be deemed completed when fifty percent (50%) or more of the platted Residential Units in the Product Type have been constructed and certificates of occupancy have been issued for such. Also for purposes of this Section 5.5., Product Types shall be deemed to be in the same price point if the starting base prices for each have a difference of less than ten percent (10%). Conversely, Product Types shall be deemed to be in different price points if the starting base prices for each have a difference of at least ten percent (10%). Lessee may therefore not obtain a Final Plat including, e.g., resort residential stacked flats in Neighborhood 4 with base prices starting at \$400,000 until the majority of platted resort residential stacked flats in all Neighborhoods other than 4 in the same price point (i.e. between \$359,999 to \$439,999) have been completed. This limitation applies to all Product Types and all models used to purchase the Premises. The parties may mutually agree to waive these requirements based on market demands. Neither party shall unreasonably withhold, delay or condition its consent to such waiver.

5.6. Restrictions on Sales. The following restrictions shall apply to the sale of the Premises for residential or commercial purposes:

A. CC&Rs Recorded. Prior to Lessee's sale of (a) a portion of a Development Parcel to a third party for residential or commercial purposes; (b) a Lot with Home, (c) a Multi-Family Unit, (d) an Improved Residential Lot, (e) an Improved Non-Residential Lot, or (f) an Atkinville Interchange Commercial Lot, Lessee shall record CC&Rs against the portion of the Premises to be sold that are consistent with the Zone Plan, the Master Plan, the Design Guidelines and this Lease. Lessee shall submit the CC&Rs to Lessor for written approval, which approval shall not be unreasonably withheld.

conditioned or delayed, and for Lessor's signature, prior to recordation. Any sub-covenants, conditions and restrictions recorded against any portion of the Premises shall not contradict the terms of the CC&Rs. The parties acknowledge that, in certain circumstances, institutional purchasers of Improved Institutional Lots may not agree to be subject to CC&Rs. In such circumstances, the parties can mutually agree to waive the requirement to subject the Improved Institutional Lot to the CC&Rs; however, detailed site plans and design guidelines shall be submitted for Lessor's approval (which shall not be unreasonably withheld, conditioned or delayed) prior to closing such a sale. The purchase contract between Lessee and the Improved Institutional Lot purchaser shall contain a requirement that the lot be developed in accordance with the approved site plan and design guidelines.

B. Creation of HOA. Lessee shall create the HOA prior to the sale of any those portions of the Premises described in **Section 5.6.A.**

C. No Affiliates. Except as otherwise described herein, no portion of the Premises may be sold for residential, commercial or institutional purposes by Lessee to Lessee or any stockholder, partner, officer, director or Affiliate of Lessee or any partnership, limited liability company or corporation in which Lessee, including any of its principals or Affiliates or partners, members or stockholders are involved, unless Lessor first expressly consents in writing to such conveyance; provided, however, that Lessee may form a corporate intermediary for the sole purpose of conveying title. Lessor shall not unreasonably withhold its consent to a sale by Lessee to an Affiliate, provided that all other terms and conditions of this Lease (including values) are met.

5.7. Extraordinary Soils Conditions. In the event portions of the Premises are determined to have extraordinary soils conditions that make such lands uniquely difficult and expensive to develop, then the parties will work together in good faith to adjust any payments due under this Lease for such lands to account for the increased development costs. The parties will mutually agree in writing on the payment amounts to be paid to Lessor for such lands prior to the conveyance of such lands from Lessor to Lessee, and such payments shall take into account the actual costs associated with remediating the soils conditions on the lands.

5.8. Fair Market Value Received. In the event Lessor reasonably believes Lessee has sold Improved Residential Lots, Lots with Homes or Multi-Family Units to third-party purchasers for materially less than fair market, then Lessor shall have the right, within three (3) months following the sale of such lot or unit or on or before such date when a Reconciliation Payment is due for the lot or unit, as applicable, to commission an appraisal of the lots or units. The appraisal shall be commissioned and reviewed as set forth in **Section 5.9.** In the event the appraisal shows the amount paid by a third-party purchaser for the lot or unit was twenty-five percent (25%) less than fair market value, then the payments made to Lessor pursuant to the third-party purchase price shall be adjusted accordingly and an additional payment shall be made by Lessee to Lessor.

5.9. Appraisals. Certain terms of this Lease provide that an appraisal be performed to determine values. When such appraisals are performed, the party commissioning the appraisal

shall provide the other party with a copy of the appraisal once it is completed. If the non-commissioning party does not agree with the values for the lands set forth in such initial appraisal report, then the non-commissioning party shall have the right, within fifteen (15) days after its receipt of such initial appraisal, to retain a second Appraiser, at its own cost, to appraise the applicable lands. If the values determined by the initial and second Appraisers are within five percent (5%) of each other, then the average of such values shall constitute the appraised value of the appraised lands for purposes of this Lease. If the values determined by the initial and second Appraisers are not within five percent (5%) of each other, then the initial and the second Appraisers shall, within ten (10) days after delivery of the second Appraiser's appraisal report, select a third Appraiser, the cost of which shall be borne equally by Lessor and Lessee. If the two Appraisers cannot agree on a third Appraiser within such ten (10) day period, then upon the initiation of either party, a third Appraiser shall be selected by, and in accordance with, the procedures established by, the chapter of the American Arbitration Association situated within Salt Lake City, Utah within fifteen (15) days after the expiration of such ten (10) day period or as soon thereafter as possible. The third Appraiser shall be instructed to choose the value as determined by either of the two initial Appraisers as the one closest to the third Appraiser's estimation of the true value, such decision to be made within ten (10) days after engagement, and the value selected by the third Appraiser shall be the appraised value of the lands for purposes of this Lease.

5.10. Marketing. Throughout the Lease Term, including the Option Term, if applicable, Lessee shall provide funding to sustain the Marketing Plan so as to effectively design, construct and present the Lot with Homes and Multi-Family Units for sale to the public, the Improved Residential Lots to homebuilders, and the Improved Non-Residential Lots and Atkinville Interchange Commercial Lots for sale to appropriate institutional or commercial developers. In the event market conditions so dictate, Lessee may revise and, if necessary, modify (upgrade or downgrade) the Marketing Plan to address existing conditions in an effort to maximize returns and profits for Lessor and Lessee.

5.11. Lessor Approval of Builders. Lessee shall provide Lessor with written notice as to the builders that will be constructing Residential Units on portions of the Premises sold to Lessee as a Development Parcel, or Improved Residential Lot. Lessee shall not proceed to a Second Closing in such circumstances until it receives written approval of the applicable builder from Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6. DEVELOPMENT PARCELS AND ASSOCIATED PAYMENTS

6.1. Purchase of Development Parcels. Provided an Event of Default, as described in Section 25.1., has not occurred and is not continuing, and provided an event has not occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, Lessee shall have the right to purchase portions of the Premises as Development Parcels at the First Closing, subject to the terms and conditions of this Lease.

6.2. Restrictions on Sale. The following restrictions shall apply to the sale to Lessee of any portion of the Premises as a Development Parcel at the First Closing:

A. Timing. A Development Parcel may only be sold to Lessee after a Preliminary Plat for the Development Parcel has been approved by the appropriate governmental authorities, but prior to the approval and recordation of a Final Plat for such Development Parcel.

B. Size Minimums and Limitations. Lessee may not purchase a Development Parcel that is less than ten (10) acres or that exceeds fifty (50) acres without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned or delayed.

C. CC&Rs Recorded. CC&Rs shall be recorded against the applicable Development Parcel prior to the First Closing. These CC&Rs shall be consistent with the Zone Plan, Master Plan, and this Lease. Lessee shall submit the CC&Rs to Lessor for written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and for Lessor's signature, prior to recordation. Any sub-covenants, conditions and restrictions recorded against Lots with Homes, Multi-Family Units, or Improved Residential Lots shall not contradict the terms of the CC&Rs. The Master Plan, Zone Plan and CC&Rs shall not be amended without Lessor's prior written consent, which may be withheld in Lessor's sole discretion.

D. Escrow. Any sale of a Development Parcel shall be through an escrow established pursuant to an escrow agreement with a title company with offices or that have an affiliation with another title company in Washington County, Utah (the "Escrow Agent") reasonably and mutually acceptable to Lessee and Lessor, and such escrow agreement shall provide, among other things, that the applicable Base Payment due to Lessor (as set forth in Section 6.5 below) shall be promptly paid to Lessor following the First Closing.

6.3. Development Required. Lessee shall obtain Final Plat approval for a purchased Development Parcel and begin construction of applicable Basic Onsite Improvements within six (6) months after the Closing on a Development Parcel for a development of Residential Lots and within one (1) year after the Closing on a Development Parcel involving Commercial Lots. Lessee shall be required to develop each Development Parcel and sell portions thereof to third-party purchasers as either Improved Residential Lots, Lots with Homes, Multi-Family Units or Improved Non-Residential Lots (subject to those limitations and restrictions set forth in this Lease).

6.4. Restrictions on Subsequent Sales of Development Parcels by Lessee to Third Parties. The following restrictions apply to those portions of the Premises within Development Parcels that are subsequently sold to third-party purchasers as either Lots with Homes, Multi-Family Units, Improved Residential Lots, and/or Improved Non-Residential Lots:

A. Final Plat Recorded. Lots with Homes, Multi-Family Units, Improved Residential Lots, and Improved Non-Residential Lots within a Development Parcel may not be sold to a third-party purchaser prior to the recordation of a Final Plat including such lots.

B. Completed Improvements. All portions of a Development Parcel sold by Lessee to a third-party purchaser shall be sold as a Lot with Home, Multi-Family Unit, Improved Residential Lot, or Improved Non-Residential Lot, except for those portions not suitable for development or that are to be dedicated and/or used as public improvements, Open Space or as Park and Amenity Lands and subject to other restrictions in this Lease. All improvements required for a portion of the Premises to become a Lot with Home, Multi-Family Unit, Improved Residential Lot, or Improved Non-Residential Lot shall be completed prior to the Second Closing.

C. Development Plans for Improved Non-Residential Lots. Prior to the Second Closing on an Improved Non Residential Lot, Lessee shall require the third party purchaser of such lot to submit design and site plans for the Improved Non-Residential Lot to Lessor for written approval, which shall not be unreasonably withheld, conditioned or delayed. The Third Party REPCs between Lessee and all third-party purchasers of Improved Non-Residential Lots shall require material compliance with these approved design and site plans, and such requirements shall run with the land. The parties acknowledge that, in certain circumstances, Improved Institutional Lots may be exempt from the requirement to record CC&Rs against such lots during the time they are used for institutional purposes, if mutually agreed to by the parties. Such consent shall not be unreasonably withheld.

D. Other Restrictions. In addition to those requirements in this **Section 6.4.**, Lessee shall comply with those requirements set forth in **Section 5.6.** concerning the sale of a portion of a Development Parcel to a third-party purchaser.

6.5. Base Payments for Development Parcels.

A. Initial Parcel. At the First Closing for a Development Parcel that is included in the Initial Parcel, Lessee shall pay Lessor a base payment (the "**Initial Parcel Base Payment**") in the amount of Forty Thousand Dollars (\$40,000) per acre, and a pro-rata amount for any portion thereof. On the date that is five (5) years after the Effective Date and on that same day every five (5) years thereafter during the Lease Term, the Initial Parcel Base Payment shall be increased using the CPI Index. The Initial Parcel Base Payment shall be multiplied by a fraction, the numerator of which is the CPI Index for the most recent month available as of the date of adjustment, and the denominator of which is the CPI Index for the latter of the month of the effective date or the month which served as the numerator for the latest previous adjustment. If, on an adjustment date, the CPI Index does not exist in the format described above, Lessor may substitute any official index published by a governmental agency which is then in existence and which is then most comparable to the CPI Index. In no event shall the Initial Parcel Base Payment for any five (5) year period be less than the Initial Parcel Base Payment set forth in this **Section 6.5.A.**, unless Lessor consents in writing to a reduction (which consent may not be unreasonably withheld, conditioned or delayed,

and will take into consideration downturns in the market).

B. Option Parcels. At the time Lessee exercises its options on the North Option Parcel and the East Option Parcel, the applicable parcel shall be appraised by an Appraiser, chosen and paid for by Lessor. These appraisals shall establish the applicable per-acre base payment (an “**Option Parcel Base Payment**”) for each option parcel. The applicable Option Parcel Base Payment will be paid at the First Closing for a Development Parcel that is included in either the North Option Parcel or the East Option Parcel. Each Option Parcel Base Payment shall be increased on the fifth (5th) anniversary of the date the applicable option was exercised, and on that same date every five (5) years thereafter during the Lease Term, using the CPI Index. At these 5-year adjustments, the Option Parcel Base Payment shall be multiplied by a fraction, the numerator of which is the CPI Index for the most recent month available as of the date of adjustment, and the denominator of which is the CPI Index for the latter of the month of the effective date or the month which served as the numerator for the latest previous adjustment. If, on an adjustment date, the CPI Index does not exist in the format described above, Lessor may substitute any official index published by a governmental agency which is then in existence and which is then most comparable to the CPI Index. In no event shall the Option Parcel Base Payment for any five (5) year period be less than the Option Parcel Base Payment set forth in this **Section 6.5.B.**, unless Lessor consents in writing to a reduction (which consent may not be unreasonably withheld and will take into consideration downturns in the market).

6.6. Reconciliation Payments. If applicable, Lessee shall make additional payments (the “**Reconciliation Payment(s)**”) to Lessor pursuant to the terms of this Lease for those portions of the Premises sold at the First Closing as Development Parcels and subsequently sold for residential or commercial purposes. Reconciliation Payments apply only when Lessee is purchasing the Premises through the Development Parcel model.

A. Percentages for Improved Residential Lots. The applicable percentage to be used in calculating the Reconciliation Payment for Improved Residential Lots shall be Thirty Two Percent (32%) throughout the Lease Term.

B. Percentages for Lots with Homes and Multi-Family Units. The applicable percentages to be used in calculating the Reconciliation Payments for Lots with Homes and Multi-Family Units shall be those amounts set forth in **Exhibit L** as the “Percent of Gross Residential Sales Price Reconciliation Payment to SITLA”. The percentage rates will increase multiple times throughout the Lease Term at those time periods set forth in **Exhibit L**, with the “Years of Development” described in such exhibit commencing on: (a) the Effective Date for the Initial Parcel, and (b) the applicable Option Parcel Effective Date for the East and North Option Parcels. The percentage used to calculate the Reconciliation Payment for each Lot with Home or Multi-Family Unit shall be determined by the date on which a certificate of occupancy was issued by the appropriate governmental authority for the applicable Lot with Home or Multi-Family Unit. For example, if a certificate of occupancy was issued for a certain Lot with Home within the Initial Parcel on the third anniversary of the Effective Date (i.e. at the

beginning of the fourth year of the Lease Term), then the percentage used to calculate the Reconciliation Payment in those circumstances would be 5%. If a certificate of occupancy was issued for a Lot with Home within the Initial Parcel on the day before the third anniversary of the Effective Date (i.e. at the end of the third year of the Lease), then the percentage used to calculate the Reconciliation Payment in those circumstances would be 4%.

C. Percentage for Improved Non-Residential Lots. The applicable percentage to be used in calculating the Reconciliation Payment for Improved Non-Residential Lots shall be Fifty Percent (50%) throughout the Lease Term.

6.7. Timing of Reconciliation Payments. On or before the last day of April and October of each calendar year, Lessee shall perform the calculations described in this Section 6.7. If the calculations result in the need for payment of any Reconciliation Payments, then such payments shall be made on or before the immediately subsequent July 1 (for the period ending April 30) and January 2 (for the period ending October 31). Lessee's obligation to make Reconciliation Payments to Lessor shall survive the expiration or earlier termination of this Lease.

6.8. Calculating Reconciliation Payments. The following calculation determines Reconciliation Payments for portions of a Development Parcel sold as Improved Residential Lots, Lots with Homes, Multi-Family Units and Improved Non-Residential Lots subsequent to the First Closing:

A. Step One: Add together the Third-Party Gross Sales Prices (the "**Closing Gross Revenue**") for all such lots and units sold within each Development Parcel for the applicable six-month period. Improved Residential Lots, Lots with Homes, Multi-Family Units and Improved Non-Residential Lots should each have separate Closing Gross Revenues calculated.

B. Step Two: Multiply the Closing Gross Revenue totals for each of the lots and units by the applicable percentage set forth in Section 6.6. The result of each of these calculations is the "**Percentage Total**" for each type of lot and unit within the applicable Development Parcel for the six-month period.

C. Step Three: Divide the Base Payment for the applicable Development Parcel by the number of lots in the Development Parcel, as set forth in the Final Plat for the Development Parcel. Compare this amount to the Percentage Total for the applicable lot and unit. If the Percentage Total for the lot or unit exceeds the proportional Base Payment amount described herein, then the difference between the two amounts shall be the Reconciliation Payment for the lots or units for the applicable Development Parcel and six-month period. If the proportional Base Payment amount exceeds the Percentage Total for the applicable lots or units, then no Reconciliation Payment is due for such lots or units for the applicable Development Parcel and six-month period.

i. Example. The following example illustrates the foregoing calculation of

the Base Payment and the Reconciliation Payment set forth above with respect to a hypothetical Development Parcel within which Improved Residential Lots shall be sold:

Example Assumptions

Development Parcel:	10 acres
Total Number of Improved Residential Lots in Development Parcel:	25 lots
Applicable Percentage:	32%
Improved Residential Lots Sold in Six-Month Period:	6
Third-Party Gross Sales Price:	\$100,000 each lot
Closing Gross Revenues:	\$600,000

Calculating Base Payment

Base Payment for Development Parcel = 10 acres (Development Parcel acreage) x \$40,000 (Base Payment) = \$400,000

Calculating Reconciliation Payment

Step One (Closing Gross Revenues):

\$100,000 (Third-Party Gross Sales Price per Improved Residential Lot) x 6 (Improved Residential Lots Sold) = \$600,000 (Closing Gross Revenues)

Step Two (Percentage Total):

\$600,000 (Closing Gross Revenues) x 32% (applicable percentage) = \$192,000 (Percentage Total for Improved Residential Lots sold in six-month period)

Step Three (Reconciliation Payment):

\$400,000 (Base Payment) ÷ 25 (Improved Residential Lots in Development Parcel) = \$16,000 (Base Payment applied to each Improved Residential Lot in Development Parcel)

\$16,000 (Base Payment applied to each Improved Residential Lot) x 6 (Improved Residential Lots) = \$96,000 (Base Payment applied to Improved Residential Lots sold in six-month period)

Reconciliation Payment for Development Parcel in Six-Month Period = \$192,000 (Percentage Total) - \$96,000 (Base Payment applied to Improved Residential Lots sold) = \$96,000

Total Paid to Lessor with respect to Improved Residential Lots sold in Six-Month Period for Development Parcel = \$96,000 (Base Payment applied to Improved Residential Lots Sold) + \$96,000 (Reconciliation Payment) = \$192,000

This example shall apply to the calculation of Reconciliation Payments for Development Parcels sold at Second Closings as Improved Residential Lots, Lots with Homes, Multi-Family Units and Improved Non-Residential Lots; however, the applicable percentage for each type of lot and unit shall be in that amount in Section 6.6

ARTICLE 7. IMPROVED RESIDENTIAL LOTS AND ASSOCIATED PAYMENTS

7.1. Lessee's Purchase of Improved Residential Lots. Provided an Event of Default, as described in Section 25.1, has not occurred and is not continuing, and provided an event has not occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, Lessee shall have the right to purchase portions of the Premises from Lessor as Improved Residential Lots, subject to the terms and conditions set forth in this Lease.

7.2. Restrictions on Sale. The following restrictions shall apply to the sale to Lessee of any portion of the Premises as an Improved Residential Lot at the First Closing:

A. Minimum Prices. Improved Residential Lots shall be sold to third-party purchasers at prices established by Lessee, in Lessee's discretion, but following consultation with Lessor. However, Lessor and Lessee agree that the minimum approved price for an Improved Residential Lot (the "**Minimum Improved Residential Lot Price**") shall be five dollars (\$5.00) per square foot. No Improved Residential Lot may be sold to a third-party purchaser for less than the Minimum Improved Residential Lot Prices without the prior written consent of Lessor. On the fifth anniversary of the Effective Date, and on that same day every five (5) years thereafter during the Lease Term, the Minimum Improved Residential Lot Prices shall be increased, as applicable, using the CPI Index. The Minimum Improved Residential Lot Price shall be multiplied by a fraction, the numerator of which is the CPI Index for the most recent month available as of the date of adjustment, and the denominator of which is the CPI Index for the latter of the month of the Effective Date or the month which served as the numerator of the latest previous adjustment. If, on an adjustment date, the CPI Index does not exist in the format described above, the Lessor may substitute any official index published by a governmental agency which is then in existence and which is then most comparable to the CPI Index. In no event shall the Minimum Improved Residential Lot Price for any five (5) year period be less than the Minimum Improved Residential Lot Price set forth in this Section 7.2.A., unless Lessor consents in writing to a reduction (which consent may not be unreasonably withheld,

conditioned or delayed, and will take into consideration downturns in the market).

B. **Escrow.** Any sale of an Improved Residential Lot shall be through an escrow established pursuant to an escrow agreement with an Escrow Agent, and such escrow agreement shall provide, among other things, that the Improved Residential Lot Payments due to Lessor (as set forth in **Section 7.3.** below) shall be promptly paid to Lessor following the First Closing.

C. **Other Restrictions.** In addition to those requirements in this **Section 7.2.** Lessee shall comply with those requirements set forth in **Section 5.6.** concerning the sale of an Improved Residential Lot to a third-party purchaser.

7.3. **Improved Residential Lot Payments.** Upon each sale of an Improved Residential Lot, a payment shall be made to Lessor for the Improved Residential Lot (the "**Improved Residential Lot Payment**"). Subject to the Minimum Improved Residential Lot Prices, each Improved Residential Lot shall be calculated by multiplying the gross sales price of the Improved Residential Lot purchased by a third-party purchaser by Thirty Two Percent (32%). The Improved Residential Lot Payment is not rent payable under this Lease, but rather represents the purchase price of the Premises as purchased by Lessee on a lot-by-lot, phase-by-phase basis. No Reconciliation Payments shall be due for portions of the Premises sold as Improved Residential Lots at the First Closing.

ARTICLE 8. LOTS WITH HOMES, MULTI-FAMILY UNITS AND ASSOCIATED PAYMENTS

8.1. **Sale of Lots with Homes and Multi-Family Units.** Provided an Event of Default, as described in **Section 25.1.** has not occurred and is not continuing, and provided an event has not occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, Lessee shall have the right to purchase portions of the Premises from Lessor as Lots with Homes and Multi-Family Units, subject to the terms and conditions set forth in this Lease.

8.2. **Restrictions on Sale.** The following restrictions shall apply to the sale to Lessee of any portion of the Premises as a Lot with Home or Multi-Family Unit at the First Closing:

A. **Minimum Prices.** Lots with Homes and Multi-Family Units shall be sold at prices established by Lessee, in Lessee's discretion, but following consultation with Lessor. However, Lessor and Lessee agree that the minimum approved price for a Lot with Home (the "**Minimum Lot with Home Price**") shall be Ninety Dollars (\$90.00) per square foot of the single family Residential Unit on the Lot with Home, and a pro-rata amount for any portion thereof. No Lot with Home may sell for less than the Minimum Lot with Home Price without the prior written consent of Lessor. The minimum approved price for a Multi-Family Unit (the "**Minimum Multi-Family Unit Price**") shall be One Hundred Fifty Five Thousand Dollars (\$155,000.00) per Multi-Family Unit. No Multi-Family Unit may sell for less than the Minimum Multi-Family Unit

Price without the prior written consent of Lessor.

On the fifth anniversary of the Effective Date, and on that same day every five (5) years thereafter during the Lease Term, the Minimum Lot with Home and Minimum Multi-Family Unit Prices shall be adjusted, as applicable, using the CPI Index. The Minimum Lot with Home Price and Minimum Multi-Family Unit Price shall be multiplied by a fraction, the numerator of which is the CPI Index for the most recent month available as of the date of adjustment, and the denominator of which is the CPI Index for the latter of the month of the Effective Date or the month which served as the numerator of the latest previous adjustment. If, on an adjustment date, the CPI Index does not exist in the format described above, the Lessor may substitute any official index published by a governmental agency which is then in existence and which is then most comparable to the CPI Index. In no event shall the Minimum Lot with Home Price or Minimum Multi-Family Unit Price for any five (5) year period be less than the Minimum Lot with Home Price or Minimum Multi-Family Unit Price set forth in this **Section 8.2.A.**, unless Lessor consents in writing to a reduction (which consent may not be unreasonably withheld, conditioned or delayed, and will take into consideration downturns in the market).

B. **Escrow.** Any sale of a Lot with Home or Multi-Family Unit shall be through an escrow established pursuant to an escrow agreement with an Escrow Agent, and such escrow agreement shall provide, among other things, that the Lot with Home Payments or Multi-Family Unit Payments due to Lessor (as set forth in **Section 8.3.** below) shall be promptly paid to Lessor following the First Closing.

C. **Other Restrictions.** In addition to those requirements in this **Section 8.2.**, Lessee shall comply with those requirements set forth in **Section 5.6.** concerning the sale of an Improved Residential Lot to a third-party purchaser.

8.3. **Lot with Home and Multi-Family Unit Payments.** Upon each sale of a Lot with Home or Multi-Family Unit, a payment shall be made to Lessor for the Lot with Home (the "**Lot with Home Payment**") or Multi-Family Unit (the "**Multi-Family Unit Payment**"). Subject to the Minimum Lot with Home Prices and Minimum Multi-Family Unit Prices, each Lot with Home Payment and Multi-Family Unit Payment shall be calculated by multiplying the gross sales price of the Lot with Home or Multi-Family Unit purchased by a third-party purchaser by the applicable percentage set forth in **Exhibit L** as the "Percent of Gross Residential Sales Price Reconciliation Payment to SITLA". The percentage rates will increase multiple times throughout the Lease Term at those time periods set forth in **Exhibit L**, with the "Years of Development" described in such exhibit commencing on: (a) the Effective Date for the Initial Parcel, and (b) the applicable Option Parcel Effective Date for the East and North Option Parcels. The percentage used to calculate the Lot with Home Payment for each Lot with Home and the Multi-Family Unit Payment for each Multi-Family Unit shall be determined by the date on which a certificate of occupancy was issued by the appropriate governmental authority for the applicable Lot with Home or Multi-Family Unit. For example, if a certificate of occupancy was issued for a certain Lot with Home or Multi-Family Unit within the Initial Parcel on the third anniversary of the Effective Date (i.e. at the beginning of the fourth year of the Lease Term), then the percentage

used to calculate the Lot with Home Payment or Multi-Family Unit Payment in those circumstances would be 5%. If a certificate of occupancy was issued for a Lot with Home or Multi-Family Unit within the Initial Parcel on the day before the third anniversary of the Effective Date, then the percentage used to calculate the Lot with Home Payment or Multi-Family Unit Payment in those circumstances would be 4%. The Lot with Home Payment and Multi-Family Unit Payment are not rent payable under this Lease, but rather represent the purchase price of the Premises as purchased by Lessee on a lot-by-lot, phase-by-phase, and/or unit-by-unit basis.

ARTICLE 9. IMPROVED NON-RESIDENTIAL LOTS, ATKINVILLE INTERCHANGE COMMERCIAL LOTS AND ASSOCIATED PAYMENTS

9.1. Sale of Improved Non-Residential Lots and Atkinville Interchange Commercial Lots. Provided an Event of Default, as described in Section 25.1., has not occurred and is not continuing, and provided an event has not occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, Lessee shall have the right to purchase portions of the Premises from Lessor as Improved Institutional Lots, Improved Commercial Lots, and/or Atkinville Interchange Commercial Lots subject to the terms and conditions set forth in this Lease.

9.2. Improved Institutional and Commercial Lot Payments. Upon each sale of an Improved Institutional Lot or Improved Commercial Lot, a payment shall be made to Lessor for such lot (the "**Improved Non-Residential Lot Payment**"). The Improved Non-Residential Lot Payment shall be equal to fifty percent (50%) of the *greater* of: (a) the purchase price to be paid by a third-party purchaser at a subsequent closing for the Improved Non-Residential Lot (as determined by the Third-Party REPC for the lot), or (B) the appraised value for the Improved Non-Residential Lot based on the purpose for which it was sold, as determined in accordance with Section 9.4.

9.3. Atkinville Interchange Commercial Lot Payments. Upon each sale of an Atkinville Interchange Commercial Lot, a payment shall be made to Lessor for such lot (the "**Atkinville Interchange Commercial Lot Payment**"). The Atkinville Interchange Commercial Lot Payment shall be equal to seventy percent (70%) of the *greater* of: (a) the purchase price to be paid by a third-party purchaser at a subsequent closing for the Improved Non-Residential Lot (as determined by the Third-Party REPC for the lot), or (b) the appraised value for the Improved Non-Residential Lot, as determined in accordance with Section 9.4. In the event Lessee constructs additional road or utility infrastructure on an Atkinville Interchange Commercial Lot prior to its sale to a third party, then Lessee shall be reimbursed for those out-of-pocket, invoiced costs associated with such improvements through the proceeds of the third party sale. Notwithstanding the foregoing, in no event shall Lessor be paid less than fifty percent (50%) of the greater of the purchase price to be paid by a third-party purchaser at a subsequent closing or the appraised value of the Atkinville Interchange Commercial Lot, as applicable.

9.4. Appraised Value. Within thirty (30) days of receiving written notice from Lessee of the price at which Lessee intends to sell an Improved Non-Residential Lot or an Atkinville Interchange Commercial Lot to a third-party purchaser, Lessor may elect, at its own expense, to

have an Appraiser determine the value of such lot. The appraisal shall be commissioned and reviewed as set forth in **Section 5.9**.

ARTICLE 10. OPEN SPACE, PARK AND AMENITY LANDS AND UNDEVELOPABLE LANDS

10.1. Undevelopable Lands. Those portions of the Premises that are Undevelopable Lands may be dedicated by Lessor to the City, the HOA or other appropriate entity. These dedications shall occur as follows:

A. Lessee shall prepare one or more subdivision plats for the Undevelopable Lands at such time as Lessee and/or Lessor desire such to be dedicated, but prior to the termination of the Lease;

B. Lessor shall sign the Final Plat(s) for the Undevelopable Lands within thirty (30) days after receipt of such written request therefor from Lessee;

C. Lessor's dedication shall be made without warranty and shall reserve the mineral estate underlying the dedicated land to Lessor.

D. Lessor's dedication shall be without any consideration paid by Lessee or the party to whom the dedication or conveyance is made, except as described in other sections of this Lease.

In the alternative, Lessor may enter into a conservation easement for the Undevelopable Lands with an appropriate entity.

10.2. Open Space. Those portions of the Premises that are Open Space shall be purchased by Lessee for One Thousand Five Hundred Dollars (\$1,500) per acre. Lessor shall convey these acres via Patent after payment of the applicable purchase price in the same manner as described for other conveyances in this Lease. If a conservation group or some other entity that will manage the land and not materially alter its natural condition desires to purchase any Open Space, Lessor may convey the Open Space directly to such group with Lessee's written consent. If the price paid for the Open Space exceeds \$1,500 per acre, then Lessor and Lessee shall each receive fifty percent (50%) of the purchase amount exceeding \$1,500 per acre.

10.3. Park and Amenity Lands. Those portions of the Premises that are to be developed as Park and Amenity Lands (except for the Regional Park described in **Section 10.4**) shall be purchased by Lessee for Twenty Thousand Dollars (\$20,000) per acre. Lessor shall convey these acres via Patent after payment of the applicable purchase price (except that no payment shall be required for conveyance of the Regional Park property) in the same manner as described for other conveyances in this Lease. The Patents for such shall contain deed restrictions, restricting the use of the underlying lands to parks, trails, or other applicable recreational or amenity uses.

10.4. Regional Park. Approximately 35.9 acres of land at the intersection of Atkinville and Lizard washes were designated as park lands in the Master Plan. The Regional Park will

encompass these and other lands in the area. These approximately 35.9 acres of land may be dedicated by Lessor, with Lessee's approval, to the City or other non-profit entity. Such dedication will occur as set forth in **Section 10.1**. The lands to be dedicated will contain a restriction that such lands shall be used as open space in perpetuity, with a clause whereby ownership of the land would revert to Lessor, or other designated State entity, if this restriction was violated. The un-dedicated remainder of lands in the Regional Park will be purchased by Lessee at those prices established in **Section 10.3**. In the event Lessor determines that all or a portion of such 35.9 acres of land shall not be used as park land or open space, or if it reverts to Lessor as provided above, then such land shall become part of the Initial Parcel, to be developed by Lessee as provided herein.

10.5. **Public Improvements.** As part of the development of the Premises, the Offsite Project Improvements, certain Basic Onsite Infrastructure Improvements, street and utilities related to any of these areas will be dedicated to the HOA, City, governmental instrumentalities, and/or utility service providers, or others, along with easements, rights-of-way and portions of the Premises that support such infrastructure. These dedications shall occur through dedication plat in the same manner as set forth in **Section 10.1**.

10.6. **Removal Upon Sale or Dedication.** Upon the conveyance and/or dedication of the Undevelopable Lands, Open Space and/or Park and Amenity Lands, such property shall no longer be considered part of the Premises.

ARTICLE 11. CLOSING OF SALES

11.1. **First and Second Closings.** Subject to those terms and conditions set forth in this Lease, Lessor shall issue a purchase contract known as the "**Certificate of Sale**" and then a conveyance document known as the "**Patent**" to Lessee for the applicable portion of the Premises to be purchased. The completion of all actions relating to the first close of escrow from Lessor to Lessee shall be known as the "**First Closing**". The completion of all actions relating to the second close of escrow from Lessee to the subsequent purchaser for the applicable portion of the Premises shall be known as the "**Second Closing**". Those costs associated with the First Closing (the "**Closing Costs**"), excepting and excluding those costs associated with title insurance, shall be shared equally by the parties. Lessor shall pay any costs associated with providing a standard owners title insurance policy to Lessee when the transaction involves the sale of a Development Parcel. For all other sales, Lessee shall pay any costs associated with providing a standard owners title insurance policy. Lessee shall pay the costs of any extended coverage title insurance policy, if any, and any title endorsement (except any endorsements required to cure title defects, which shall be paid by Lessor). Those costs associated with the Second Closing shall be paid as determined by Lessee and the applicable third-party purchaser. Each Patent issued for any portion of the Premises shall convey such lands without warranty and shall contain reservations of the following: (a) the mineral estate underlying the lot to the State of Utah, along with the right for the State to prospect for, mine and remove the deposits; (b) valid, existing easements or rights-of-way and any rights, interests, reservations or exceptions appearing of record; (c) rights-of-way for ditches, tunnels, telephone and transmission lines that have been constructed by the United States; and (d) reservations and encumbrances as set forth in this Lease. Lessor shall disclose the above procedures and reservations to prospective

purchasers of Improved Residential Lots, Lots with Homes, Multi-Family Units, and Improved Non-Residential Lots prior to executing a Third-Party REPC. Certain events shall occur prior to the First and Second Closings, depending on the applicable sale model.

11.2. Closings for Development Parcels.

A. First Closing. The First Closing for the sale of a Development Parcel shall occur as follows:

i. Actions Prior to First Closing.

a. Prior to the First Closing for a Development Parcel, Lessee shall provide Lessor with a certified legal description of the applicable Development Parcel, prepared by a licensed surveyor. Lessee shall bear all costs associated with obtaining said legal description.

b. Escrow Agent shall confirm that a Preliminary Plat has been recorded for the Development Parcel.

c. At Lessee's request, Lessor shall deposit with Escrow Agent a fully executed Certificate of Sale and Patent in favor of Lessee for the applicable Development Parcel.

ii. Actions to Complete First Closing. Once the proceeds, actions and documents described herein have been received by Escrow Agent and/or otherwise taken, Escrow Agent shall take the following actions pursuant to the terms of this Lease in order to complete the First Closing between Lessor and Lessee for a Development Parcel:

a. Convey to Lessee, by means of the Certificate of Sale and Patent, all of Lessor's right, title and interest in the applicable Development Parcel.

b. Release to Lessor the Base Payment for the Development Parcel in connection with such First Closing.

c. Properly record the Patent from Lessor to Lessee.

d. Return the original executed Certificate of Sale to Lessor upon recordation of the Patent.

e. Issue to Lessee a standard owners policy of title insurance with respect to the Development Parcel acceptable to Lessee.

B. Second Closing. Once the First Closing for a Development Parcel has occurred and all applicable requirements set forth in this Lease have been met (including, but not

limited to, the requirement to improve the Development Parcel as Improved Residential Lots, Lots with Homes, Multi-Family Units, and/or Improved Institutional Lots), Lessee may proceed to the Second Closing, whereby Lessee shall convey its interest in the applicable land to a third-party purchaser. In the Development Parcel sale model, the Second Closing will occur at a date subsequent to the First Closing.

11.3. Closings for Improved Residential Lots, Lots with Homes and Multi-Family Units.

A. First Closing. The First Closing for the sale of an Improved Residential Lot, Lot with Home or Multi-Family Unit shall occur as follows:

i. Actions Prior to First Closing.

a. Escrow Agent shall confirm that a Final Plat has been recorded for the subdivision from which the Improved Residential Lot, Lot with Home or Multi-Family Unit to be sold is located.

b. Promptly following recordation of a Final Plat, Lessor shall deposit with Escrow Agent fully executed individual Certificates of Sale and Patents for each Improved Residential Lot, Lot with Home or Multi-Family Unit included within the recorded plat.

c. A fully-executed copy of a Third-Party REPC to sell an Improved Residential Lot, Lot with Home or Multi-Family Unit, as applicable, shall have been received by Escrow Agent; all conditions precedent and documents related to the third-party closing shall have occurred and shall have been prepared; and all funds to be paid by the third party pursuant to the agreement shall be on deposit with Escrow Agent, in a restricted account to be maintained by Escrow Agent for the benefit of Lessee. The third-party purchasers for Improved Residential Lots will be homebuilders and the third-party purchasers for Lots with Home and Multi-Family Units will be homebuyers.

d. Escrow Agent shall confirm in writing to Lessor that the gross sales price for the Improved Residential Lot, Lot with Home or Multi-Family Unit to be sold meets or exceeds the Minimum Improved Residential Lot Price, Minimum Lot with Home Price or Minimum Multi-Family Unit Price, as applicable.

ii. Actions to Complete First Closing. Once the proceeds, actions and documents described herein have been received by Escrow Agent and/or otherwise taken, Escrow Agent shall take the following actions pursuant to the terms of this Lease in order to complete the First Closing between Lessor and Lessee for an Improved Residential Lot, Lot with Home or Multi-Family Unit:

- a. Convey to Lessee, by means of the Certificate of Sale and Patent, all of Lessor's right, title and interest in the applicable Improved Residential Lot, Lot with Home or Multi-Family Unit.
 - b. Release to Lessor the Improved Residential Lot Payment, Lot with Home Payment or Multi-Family Unit Payment, as applicable, in connection with such First Closing, notwithstanding the fact that Lessee may elect to accept a promissory note and deed of trust or mortgage, or other financing, in whole in part, in connection with the sale of any Lot with Home, Multi-Family Unit, or Improved Residential Lot.
 - c. Properly record the patent from Lessor to Lessee.
 - d. Return the original executed Certificate of Sale to Lessor upon recordation of the Patent.
- iii. Second Closing. Once the First Closing for an Improved Residential Lot, Lot with Home, or Multi-Family Unit has occurred, Escrow Agent shall immediately take the following actions in order to complete each Second Closing:
- a. Convey to the third-party purchaser all of Lessee's right, title and interest in the Improved Residential Lot, Lot with Home, or Multi-Family Unit, as applicable, pursuant to the terms of this Lease and the Third-Party REPC;
 - b. Properly record the conveyance deed from Lessee to the third-party purchaser;
 - c. Distribute all funds and take all other actions described by this Lease and/or the Third-Party REPC.

11.4. Closings for Improved Non-Residential Lots.

A. First Closing. The First Closing for the sale of an Improved Non-Residential Lot shall occur as follows:

- i. Actions Prior to First Closing.
 - a. Escrow Agent shall confirm that a Final Plat has been recorded for the subdivision from which the Improved Non-Residential Lot to be sold is located.
 - b. Promptly following recordation of a Final Plat, Lessor shall deposit with Escrow Agent a fully executed Certificate of Sale and Patent for each Improved Non-Residential Lot included within the recorded plat.

c. A fully-executed copy of a Third-Party REPC to sell an Improved Non-Residential Lot shall have been received by Escrow Agent; all conditions precedent and documents related to the third-party closing shall have occurred and shall have been prepared; and all funds to be paid by the third party pursuant to the agreement shall be on deposit with Escrow Agent, in a restricted account to be maintained by Escrow Agent for the benefit of Lessee.

ii. Actions to Complete First Closing. Once the proceeds, actions and documents described herein have been received by Escrow Agent and/or otherwise taken, Escrow Agent shall take the following actions pursuant to the terms of this Lease in order to complete the First Closing between Lessor and Lessee for an Improved Non-Residential Lot:

a. Convey to Lessee, by means of the Certificate of Sale and Patent, all of Lessor's right, title and interest in the applicable Non-Residential Lot.

b. Release to Lessor the Improved Non-Residential Lot Payment in connection with such First Closing, notwithstanding the fact that Lessee may elect to accept a promissory note and deed of trust or mortgage, or other financing, in whole in part, in connection with the sale of any Improved Non-Residential Lot.

c. Properly record the Patent from Lessor to Lessee.

d. Return the original executed Certificate of Sale to Lessor upon recordation of the Patent.

iii. Second Closing. Once the First Closing for an Improved Non-Residential Lot has occurred, Escrow Agent shall immediately take the following actions in order to complete each Second Closing:

a. Convey to the third-party purchaser all of Lessee's right, title and interest in the Improved Non-Residential Lot pursuant to the terms of this Lease and the Third-Party REPC;

b. Properly record the conveyance deed from Lessee to the third-party purchaser;

c. Distribute all funds and take all other actions described by this Lease and/or the Third-Party REPC.

11.5. Contemporaneous Actions. While the description of the closing process for Improved Residential Lots, Lots with Homes, Multi-Family Units and Improved Non-Residential Lots seems quite lengthy, and must occur in the sequence and using the steps described above, as

a practical matter, the actions will occur virtually contemporaneously.

11.6. Removal from Premises Upon Sale. Following the First Closing, such lot, unit or other property shall then be removed from the definition of "Premises" hereunder, except as otherwise expressly set forth herein.

11.7. Water Reservation Fee Payments. Lessee shall pay a fee (the "Water Reservation Fee") to Lessor at each First Closing to reimburse Lessor for payments made to the Washington County Water Conservancy District to obtain and reserve water service for the development of the Premises. The Water Reservation Fee shall be as follows: Seventy Five Dollars (\$75) for each acre of land conveyed at the First Closing, and a pro rata amount for any portion thereof.

ARTICLE 12. RECORDS AND AUDITS

12.1. Records; Audit. Lessee shall maintain accurate books and records of all expenditures, receipts, loans and distributions associated with the transactions contemplated by this Lease, and shall further maintain a summary ledger account of all such items. All such books and records shall be made available to Lessor upon request at Lessee's principal place of business.

A. Lessor may retain an outside accounting firm to audit the project described in this Lease, including costs and distributions.

i. Unless fraud, misrepresentations or material deficiencies in general accounting principles are uncovered by the auditors, Lessor hereby agrees to pay all costs charged by said outside accountant for this audit, but Lessee shall receive a copy of the final audit report.

ii. If fraud, misrepresentations or material deficiencies in general accounting principles are uncovered by the auditors, Lessee hereby agrees to immediately remedy said problems, pay any applicable amounts to Lessor that are appropriate, including all penalties and fees resulting from the deficiency, as well as all costs charged by said outside accountant for such audit.

B. Within sixty (60) days after the expiration or earlier termination of this Lease, Lessee shall submit a final accounting of all amounts expended and due under the terms of this Lease to Lessor, and shall retain all books, records and backup information for six (6) years thereafter.

C. Lessee shall further provide annual financial reports and an audited annual report to Lessor in order to fully determine compliance with and the status of this Lease, including the status of the disposition of proceeds.

ARTICLE 13. EXERCISE OF RIGHTS TO OPTION PARCELS

13.1. Exercise of Options.

A. North Option Parcel. Lessee may exercise its option rights for the North Option Parcel at any time after those requirements in **Section 13.3.** have been completed, but prior to the end of the Initial Parcel Term. In the event the option for the North Option Parcel is not exercised prior to the end of the Initial Parcel Term, then Lessee's rights to the North Option Parcel shall automatically terminate at the end of the Initial Parcel Term, subject to the notice requirements of **Section 3.2.**

B. East Option Parcel. Lessee may exercise its option rights for the East Option Parcel at any time after those requirements in **Section 13.2.** have been completed, but prior to the end of the Initial Parcel Term. In the event the option for the East Option Parcel is not exercised prior to the end of the Initial Parcel Term, then Lessee's rights to the East Option Parcel shall automatically terminate at the end of the Initial Parcel Term, subject to the notice requirements of **Section 3.2.**

C. Notice of Exercise of Option. In order to exercise its option rights to the North Option Parcel and the East Option Parcel, Lessee shall provide Lessor with written notice of its intent to exercise the applicable option. This written notice shall provide all information required to reasonably show compliance with those requirements of **Sections 13.2. and 13.3.,** as applicable, and shall specify the effective date the option is exercised (each an "**Option Parcel Effective Date**"). The specified Option Parcel Effective Date shall constitute the beginning of the East Option Parcel Term and the North Option Parcel Term, as applicable. The East Option Parcel and North Option Parcel, as applicable, shall be included in the Premises at the applicable Option Parcel Effective Date.

13.2. Construction of Second Interchange; East Option Parcel. Prior to exercising its option to develop and purchase the East Option Parcel, Lessee shall: (a) commence and be actively pursuing the construction of an interchange in that area generally depicted in **Exhibit M;** and (b) have received all required permits for the construction of such interchange. This interchange shall be engineered and constructed in compliance with the Development Plan, engineering plans approved by Lessor and Lessee, and in compliance with applicable law. Lessee shall pay all costs associated with the engineering and construction of this interchange.

13.3. Construction of Roads, Utilities and Regional Sports Facilities; North Option Parcel. Prior to exercising its option to develop and purchase the North Option Parcel, Lessee shall have: (a) completed the construction of a road/bridge and the installation of utilities (according to City standards) over that portion of the Atkinville Wash generally depicted in **Exhibit N;** (b) completed the construction of a road/bridge and the installation of utilities (both according to City standards) over that portion of the Lizard Wash generally depicted in **Exhibit N;** and (c) dedicated both roads/bridges and all utilities constructed over the Atkinville and Lizard Washes for public use. Collectively, the bridges and other improvements to be constructed over Atkinville and Lizard Washes are referred to as "**Atkinville and Lizard Wash Bridges**". Lessee shall pay all costs associated with the engineering and construction of the Atkinville and Lizard Wash Bridges. Lessee shall use reasonable efforts to construct the Regional Sports Facilities as set forth in **Exhibit I** prior to exercising its option to develop and

purchase the North Option Parcel, but its failure to do so shall not preclude Lessee's purchase of the North Option Parcel.

13.4. Development and Purchase. Once the option of adding the East Option Parcel and/or North Option Parcel to the Lease has been exercised, these parcels shall be included in the Premises and shall be subject to the same terms and conditions of the Lease, except as otherwise expressly set forth in this Lease.

ARTICLE 14. DEVELOPMENT OF THE PREMISES AND CONSTRUCTION OF LESSEE IMPROVEMENTS

14.1. Development. Lessee shall develop the Premises in accordance with the following requirements:

A. Development Plans for Initial Phases. Lessee has submitted and Lessor has approved a preliminary plan for the development of the Premises (the "**Preliminary Development Plan**"), attached hereto as **Exhibit O**, for the initial Phases of the Premises. Within six (6) months from the Effective Date, Lessee shall provide Lessor with a Development Plan for the initial Phases for Lessor's approval, which shall not be unreasonably withheld, conditioned or delayed. The Development Plan for the applicable Phases shall contain a detailed proposed Development Schedule and description of the proposed development of the applicable Phases, as follows:

i. Identification of Lot with Home areas, Multi-Family Unit areas, Improved Residential Lot areas, Improved Non-Residential Lots, and associated planned densities for all Development Parcels within the applicable Phases (subject to further refinement, as set forth herein);

ii. Conceptual design of the following key elements of Basic Onsite Infrastructure Improvements within the applicable Phases:

- a. Roadways (within the Premises);
- b. Curb and gutter;
- c. Sidewalks;
- d. Water;
- e. Sewer;
- f. Gas;
- g. Electricity;
- h. Fiber optic, television and telephone; and
- i. Storm drainage and other drainage and flood control facilities.

iii. Conceptual design of the following key elements of Offsite Infrastructure Improvements within the applicable Phases:

- a. Offsite Roadway Improvements;
- b. Other roadways outside the Premises that are necessary for

- development of the Premises;
 - c. Curb and gutter;
 - d. Sidewalks and urban trails;
 - e. Water;
 - f. Sewer;
 - g. Gas;
 - h. Electricity;
 - i. Fiber optic, television and telephone; and
 - j. Storm drainage and other drainage and flood control facilities.
- v. Description of planning for the Basic Onsite Infrastructure Improvements and Offsite Infrastructure Improvements within the applicable Phases, including:
- a. Grading plan for the Development Parcels;
 - b. Comprehensive trail plan;
 - c. Storm water drainage and detention plan;
 - d. Improvements for Regional Park;
 - e. Public neighborhood and pocket parks;
 - f. Open space; and
 - i. Amenities.
- vi. Any design standards and features, in addition to the Design Guidelines, for the Basic Onsite Infrastructure Improvements and Offsite Infrastructure Improvements within the applicable Phases, including:
- (i) Architectural theme(s) for Lot with Homes and Multi-Family Units;
 - (ii) Entry features;
 - (iii) Walls and fencing; and
 - (iv) Landscaping.
- vii. Development Schedule for the construction of Offsite Project Improvements, Basic Onsite Infrastructure Improvements and amenities, including those amenities, trails and parks within the applicable Phases, that are necessary for the development of the applicable Development Parcels, which Development Schedule may be adjusted with the mutual agreement of the parties negotiated reasonably and in good faith;
- viii. Development Schedule for the sale of Lot with Homes and Multi-Family Units for the applicable Development Parcels, and the Development Schedule for the sale of the applicable Improved Non-Residential Lots, and Improved Residential Lots; and
- ix. Marketing Plan for the applicable Phases.

Once the parties have mutually agreed upon the Development Plan for the initial

Phases, changes may be made to the Development Plan only with the written consent of both parties. In the event there are conflicts between the Preliminary Development Plan and the Development Plan, the Development Plan (as the final plan) shall control. No portion of the Premises shall be sold to Lessee until a Development Plan has been submitted that includes the portion of the Premises proposed for sale. Lessee shall develop the Premises in accordance with the Development Plan and the Design Guidelines.

B. Development Plans for Subsequent Phases. The parties recognize that the size of the Project makes it difficult to provide a Development Plan for the entirety of the Premises at the beginning of the Lease Term. Lessee shall, therefore, provide Lessor with Development Plans for each Phase subsequent to the Effective Date, as further described herein. These Development Plans shall contain those same schedules (including a Development Schedule) and plans described above for the initial Phases. There shall be approved Development Plans in place at all times during the Lease Term for the applicable subsequent five (5) year period. These Development Plans shall be approved in writing by Lessor. Lessor's approval shall not be unreasonably withheld, conditioned or delayed, provided the Development Plans presented for approval demonstrate that Lessee is diligently pursuing the development and sale of the Premises and otherwise meet the terms of this Lease.

C. Changes to Development Plan. Lessor and Lessee agree that market conditions may change during the term of this Lease and that Lessee may need to modify the Development Plans to adjust its development of the Premises to such changing market conditions. Lessor and Lessee may agree, in writing, to changes in the Development Plans. Lessor's approval shall not be unreasonably withheld, conditioned or delayed provided Lessee is not in material default under this Lease and any changes to the Development Schedule do not extend beyond the Lease Term and/or the applicable period of time during which the Initial Parcel, North Option Parcel and East Option Parcel, as applicable for the relevant term, are subject to the Lease.

14.2. Failure to Follow Development Schedule. Lessee shall complete those improvements and purchase and sell those Development Parcels, Lots with Homes, Multi-Family Units, Improved Residential Lots, and Improved Non-Residential Lots in those time frames set forth in the Development Schedule included in the Development Plan, as such may be revised by the parties as set forth in this Lease. Lessor may declare Lessee to be in default under this Lease, and Lessor shall have those rights set forth in **Article 25** of this Lease, if Lessee: (a) is materially behind the final Development Schedule in the construction of the improvements set forth therein and fails to be actively involved in constructing such improvements within twelve (12) months of the receipt of written notice thereof from Lessor; (b) is materially behind the final Development Schedule for the aggregate number of Improved Commercial Lots sold and fails to get back on schedule within twelve (12) months of the receipt of written notice thereof from Lessor; or (c) is twenty five percent (25%) or more, in the aggregate, behind the Development Schedule for the sale of Lot with Homes, Multi-Family Units, or Improved Residential Lots (as applicable) for any two (2) consecutive year calendar period during the Lease Term. Lessor hereby agrees that in the event: (a) there is an annual decrease of fifteen percent (15%) or more

in Washington County home starts, as determined by the number of building permits applied for in Washington County in such time period; or (b) the United States National Bureau of Economic Research declares an economic recession, then the parties shall work together in good faith to mutually agree on a revised Development Schedule that takes into account market conditions at that time.

14.3. Offsite Roadways. Lessee shall construct the Offsite Roadway Improvements in accordance with those standards and in those time periods required by the City for development of the Premises, and subject to any other applicable law. These improvements will be constructed at Lessee's expense.

14.4. Regional Sports Facilities. Lessee shall complete the Regional Sports Facilities in accordance with the applicable Development Plan.

14.5. Home Owner's Association Property. Lessee shall establish a Home Owner's Association (the "**Home Owner's Association**" or "**HOA**") to own and manage certain amenities within the Project. Conveyances to the HOA shall occur as described in **Section 11.3** above.

14.6. Lessor Contribution to Initial Infrastructure. Lessor shall pay Three Million Dollars (\$3,000,000.00) (the "**Lessor Payment for Initial Infrastructure**") as reimbursement to Lessee toward those out of pocket costs associated with designing, engineering, installing and constructing certain infrastructure improvements on the Initial Parcel. Subject to **Section 14.7.**, Lessor shall make these payments based on invoices for completed work that are provided to Lessor from Lessee, which invoices Lessor shall review for compliance with the Lease and approve if they comply. Lessor shall pay thirty three percent (33%) of these approved invoiced costs, until such time as the Lessor Payment for Initial Infrastructure has been met, and shall not make such payments more than once a month. All other improvements on the Premises shall be paid for by Lessee.

14.7. Construction of Bridges over Washes.

A. Time Frame for Completion. Lessee shall commence and be diligently working on construction of the Atkinville and Lizard Wash Bridges within one (1) year of the Effective Date of this Lease. Lessee shall complete construction of the Atkinville and Lizard Wash Bridges within two (2) years of the Effective Date of this Lease. These bridges shall be engineered and constructed in compliance with the Development Plan, engineering plans approved by Lessor and Lessee, and in compliance with all applicable law.

B. Payment of Engineering Costs.

i. Lessor shall hire Alliance Consulting to perform the engineering and permitting work associated with constructing these bridges. Lessor shall pay Alliance Consulting directly for such work and such payments will be credited toward the Lessor Payment for Initial Infrastructure. Notwithstanding the

foregoing, no more than Three Hundred Sixty Thousand Dollars (\$360,000) paid to Alliance Consulting shall be credited toward the Lessor Payment for Initial Infrastructure.

ii. All other costs associated with the construction of these bridges shall be paid for by Lessee.

14.8. Construction of Improvements Generally.

A. Construction Generally. After the City has granted the appropriate approvals, Lessee shall commence the development of all Offsite Project Improvements, Basic Onsite Infrastructure Improvements, park improvements, and amenities which are described more fully in the Development Plan. All development shall be completed in accordance with the Development Schedule, during the Lease Term, and Lessor shall not incur any cost associated with the Lessee Improvements.

B. Construction of Amenities. Lessee shall complete construction on all amenities in accordance with the requirements in the Development Schedule.

C. Bonds. In connection with any construction on the Premises, Lessee shall provide to the City such payment, performance, and completion bonds or other security as the City may reasonably request from time to time.

14.9. Alterations. In addition to the initial construction of the Lessee Improvements by Lessee, at any time and from time to time during the Lease Term, Lessee may make additions and alterations to the Lessee Improvements now or hereafter located on the Premises, provided that (a) all such additions and alterations shall be constructed of new, high-quality materials in a first-class, workmanlike manner, and shall not weaken or impair the structural strength or materially decrease the value of any existing improvements; (b) all required approvals of such construction shall have been obtained from the governmental authorities and utilities having jurisdiction thereof; (c) all such additions and alterations shall be constructed in accordance with the CC&Rs; and (d) the additions and alterations for the applicable portions of the Premises occurs during the applicable term.

14.10. Plans and Specifications; Contractors. All development work on the Premises, and all alterations and additions thereto, shall be done in compliance with and pursuant to detailed plans, drawings and specifications and by duly licensed and reputable contractors, which development work and alterations, as described herein, must first be approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Any material modifications (requiring City approval) to any such plans, drawings and specifications shall also require the prior approval of Lessor, such approval not to be unreasonably withheld, conditioned or delayed.

14.11. Development at Lessee's Expense. Lessee shall bear all costs and expenses in connection with the development and improvement of the Premises as described in this Lease, including but not limited to the design, pre-development, engineering, development, improvement, construction, alteration and repair of the Premises and all Lessee Improvements

pursuant to the terms of the Development Plan and this Lease, except as otherwise expressly set forth herein.

14.12. Notice. Prior to demolition or removal of any existing improvements or any grading of the Premises, and before initial commencement of each residential or commercial phase of construction on the Premises, Lessee shall give to Lessor five (5) days' prior written notice thereof, specifying the nature and location of the intended work and the expected date of commencement thereof.

14.13. Mechanics' Liens.

A. Lessee Is Not Lessor's Agent. The parties agree, and notice is hereby given, that Lessee is not the agent of Lessor for the construction, alteration or repair of any Lessee Improvements. All contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Lessee for the payment of any charge for work done or material furnished on the Premises during the Lease Term. Lessee shall have no right, authority or power to bind Lessor or any interest of Lessor for the payment of any claim for labor or material, or for any charge or expense, incurred by Lessee as to improvements, alterations or repairs on or to the Premises, and Lessee shall post a notice on the Premises during all construction work of any nature whatsoever that Lessor is not responsible for any material and labor used on the Premises.

B. Covenant Against Mechanics' Liens. Lessee shall indemnify and hold Lessor and the Premises harmless for, from, and against any mechanic's, materialman's, contractor's or subcontractor's liens arising from, and any claim for damage growing out of, the work or any construction, repair, restoration, replacement, or improvement done by or on behalf of Lessee. Unless disputed by Lessee, Lessee shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. If Lessee shall in good faith contest the validity of any such lien, claim, or demand, then Lessee shall, at its expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest Lessee shall, at the request of Lessor, provide such security and take such steps as may be required by law to release the Premises from the effect of such lien.

14.14. Annual Status Meeting. Between January 1st and March 1st of each year during the Lease Term (or as close to those dates as is reasonable for both parties), the parties shall meet to review the status and progress of Lessee's development under this Lease. Topics of review shall include: (a) a review of product phasing and pricing; (b) the Development Plans, including new Development Plans submitted pursuant to Section 14.1.B.; (c) Lessee Improvements; and (d) a summary of the Lot with Homes, Multi-Family Units, Improved Residential Lots, Improved Non-Residential Lots and/or Atkinville Interchange Commercial Lots sold during the previous calendar year. The purpose of this annual meeting is to inform Lessor of any modifications or changes to the Development Plan that may be requested by Lessee due to market changes or other conditions that the parties acknowledge and agree may arise over the extended period of

this Lease.

ARTICLE 15. USE OF THE PREMISES

15.1. Use. Lessee may use the Premises only for the uses contemplated by this Lease and for other uses reasonably incidental thereto. Lessor and Lessee agree not to conduct or permit to be conducted any public or private nuisance on or from the Premises. Lessee shall be responsible for preventing damages to adjacent and nearby properties resulting from drainage of storm water from the Premises. Lessee agrees not to permit or commit any waste of the Premises. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty as to the present or future suitability of the Premises for any purpose or use whatsoever.

15.2. Observance of Governmental Regulations.

A. In Lessee's use and occupancy of the Premises and the performance by Lessee of its rights and obligations under this Lease, Lessee shall fully comply with all laws, orders, rules, regulations, directives, ordinances and requirements of all governmental authorities having jurisdiction over the Premises, or any part thereof, and Lessee shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands, including, without limitation, attorneys' fees, that may in any way arise out of or be imposed because of the failure of Lessee to comply with such laws, orders, rules, regulations, directives, ordinances and requirements.

B. In Lessor's use and occupancy of the Premises and the performance by Lessor of its rights and obligations under this Lease, Lessor shall fully comply with all laws, orders, rules, regulations, directives, ordinances and requirements of all governmental authorities having jurisdiction over the Premises, or any part thereof, and Lessor shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including, without limitation, attorneys' fees, that may in any way arise out of or be imposed because of the failure of Lessor to comply with such laws, orders, rules, regulations, directives, ordinances and requirements.

15.3. Right of Contest. Lessee and/or Lessor shall have the right to contest the validity of any laws, orders, rules, regulations, directives, ordinances and requirements in the manner and under the conditions provided in this Lease with respect to the validity of taxes, assessments or other liens. During such contest, Lessee may refrain from complying therewith, provided that (a) Lessor is not subjected to criminal prosecution as a result thereof; (b) Lessor's title to the Premises is not subject to lien or forfeiture as a result thereof (or Lessee agrees to release and indemnify Lessor for any actual damages Lessor incurs as a result of Lessee's actions to contest the matter); and (c) neither the Premises nor any rights or interest of Lessor are otherwise prejudiced or jeopardized thereby (or Lessee agrees to release and indemnify Lessor for any actual damages Lessor incurs as a result of Lessee's actions to contest the matter).

15.4. Environmental Compliance.

A. Restrictions on Hazardous Substances Remedial Work. Lessee shall not cause or permit any Hazardous Substance to be brought, kept or used in or about the Premises by Lessee, its officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, or concessionaires, except in commercial quantities not in violation of Applicable Environmental Law and similar to those quantities usually kept on similar premises by others in the same business or profession. Lessee, its officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires shall store, use and dispose of such materials in compliance with all applicable federal, state and local laws. Lessee shall promptly take all actions, at its sole expense, as are necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substance on, in or under the Premises by Lessee, its officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires, including, without limitation, any investigation or monitoring of site conditions or any cleanup, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Substance on, in or under the Premises or any release or suspected release or threat of release of any such Hazardous Substance in the air, soil, surface water or ground water (collectively, the "Remedial Work"). Lessee shall obtain all necessary licenses, manifests, permits and approvals to perform the Remedial Work. Lessee shall promptly perform all Remedial Work and the disposal of all waste generated by the Remedial Work in accordance with all Applicable Environmental Law.

B. Compliance with Applicable Environmental Law. Without limiting the generality of the foregoing or any other provision of this Lease, Lessee shall be solely and completely responsible for insuring that all activities on the Premises by Lessee, its officers, directors, owners, employees, agents, contractors, subcontractors, sublessees, assignees, licensees and concessionaires ("**Lessee's Parties**") from and after the effective date of this Lease comply fully with Applicable Environmental Law, and for responding to, defending against and/or complying with any administrative order, request or demand relating to potential or actual contamination on the Premises caused or permitted by Lessee or Lessee's Parties arising by reason of Lessee's or Lessee's Parties' violation of this **Section 15.4.B.** Lessee's responsibility under this **Section 15.4.B.** includes, but is not limited to, promptly responding to such orders, requests, demands and claims on behalf of Lessor and defending against any assertion of Lessor's financial responsibility or individual duty to perform thereunder. However, Lessee shall in no way be responsible for any Hazardous Materials or trash existing on the Premises prior to the execution of this Lease or that exist as a result of actions or inaction by Lessor, including activities of Lessor, its officers, directors, owners, employees, agents, contractors, subcontractors, sublessees, or licensees.

C. Negligent Acts. Lessor and Lessee shall each be responsible for its own negligent acts, and those negligent acts of its agents, officials or employees, associated with the presence of any Hazardous Substance on, in or under the Premises or the release of any Hazardous Substance into the air, soil, surface water or ground water.

D. Survival. The obligations of the parties set forth in this **Section 15** shall survive the termination or expiration of this Lease.

ARTICLE 16. PARTNERHIP IN COMMERCIAL VENTURES; REPAIRS AND MAINTENANCE

16.1. Commercial Ventures. During the Lease Term, the parties may desire to enter into an agreement wherein they join to form a limited liability company to develop a portion of the Premises for commercial purposes. In such circumstances, Lessor would contribute certain lands to the partnership. Lessor and Lessee acknowledge that any such partnership is not required by the terms of this Lease, and that approval of Lessor's Board of Trustees would be required before Lessor could enter into such an agreement.

16.2. Repairs. During the Lease Term, Lessee, at its sole cost and expense, shall: (a) keep and maintain all of the Lessee Improvements now or hereafter located on the Premises and all additions thereto, in good, first-class, attractive and safe condition, and (b) repair and shall make all necessary repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary on the Premises, in order to maintain such state of repair and condition; it being the intention of the parties that Lessor shall not be responsible for any of the foregoing (unless caused by Lessor's negligence), and that the Lessee Improvements will be in good repair and condition at said time, reasonable wear and tear and insured casualty loss excepted. Lessee, at Lessee's expense, shall be responsible for all improvements, additions, alterations, maintenance, and repairs necessary or appropriate to make any road improvements, sidewalks, and public improvements that may be located on the Premises and constructed by Lessee compliant with the Americans With Disabilities Act. Lessee waives any provisions of law that may create or require any duty of repair by Lessor or permit Lessee to make repairs at the expense of Lessor. Notwithstanding anything in this **Article 16** to the contrary, Lessee shall not have any responsibility for any maintenance or repairs for any Lessee Improvements now or hereafter located on the Premises once any such Lessee Improvements have been dedicated to the City of St. George or are sold to a third party.

ARTICLE 17. UTILITIES

During the Lease Term, Lessee agrees to pay when due, and to defend and hold Lessor, the Lessor Indemnitees and the Premises harmless for, from and against any liability for all charges for water, sewer, gas, electricity, telephone, and all other utility services of every kind and nature supplied to and used on the Premises, including all connection fees and/or pending assessment charges, unless contracted for or incurred as a result of Lessor's actions. Any interruptions or impairments of utility services of any nature or in any manner whatsoever shall not affect any of Lessee's obligations under this Lease unless caused by the negligent or reckless misconduct of Lessor or the Lessor Indemnitees, in which case Annual Rent shall be equitably abated or other applicable damages or costs shall be assessed against Lessor and or the Lessor Indemnitees for all costs and damages incurred by Lessee and/or Lessee's Parties during the period of the interruption or impairment based on the portion of the Premises that are not useable as a result of such interruption or impairment. If the Premises are deprived of any of these utilities for a period of time that is longer than three (3) days, and said interruption or impairment

was not the result of actions by Lessee or Lessee's Parties, Lessee shall have the option to extend any and all time periods under this Lease by the same number of days as the disruption existed.

ARTICLE 18. TAXES AND ASSESSMENTS

18.1. Payment of Taxes and Assessments. Except as otherwise provided in **Section 18.2**, Lessee shall pay, prior to delinquency: (a) all taxes, assessments, levies, fees, fines, penalties and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, during the Lease Term, imposed or levied upon or assessed against the Premises or the improvements to the Premises, so long as they relate to actions taken by Lessee or relate to the Premises and accrue during the Lease Term; (b) any Annual Rent or any Additional Rent or other sum payable by Lessee hereunder; (c) taxes and assessments associated with this Lease, the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Premises not otherwise specifically ascribed to Lessor under the terms of this Lease; and (d) all sales, transaction privileges, gross receipts or similar taxes imposed or levied upon (except real property taxes), assessed against or measured by any Annual Rent or other amounts payable to Lessor hereunder, but expressly excluding any Lessor income or similar taxes which may result from this Lease or the actions related hereto. If Lessee fails to pay any of the foregoing before they become delinquent, Lessor, after notice to Lessee, may pay such delinquent taxes, assessments, levies, fees, fines, penalties and governmental charges, and all expenditures and costs incurred thereby shall be payable as Additional Rent hereunder within thirty (30) days after such notice to Lessee. Lessee will furnish to Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by Lessee. If any such assessment may legally be paid in installments, Lessee may pay such assessment in installments.

18.2. Prorations. Lessor shall be responsible to pay all taxes related to the real property only (not including any privilege taxes) throughout the Lease Term, but the parties agree that due to Lessor's status as a governmental entity, no such real property taxes will accrue. However, all other types of taxes, including personal property taxes which are due and payable in the first year of the Lease Term, or within one (1) year after the Termination Date, whichever is applicable, shall be prorated as of the Effective Date or the Termination Date, as applicable, and delivered by each of the parties within fifteen (15) days of the Termination Date, on the basis of the fiscal year with respect to which such taxes are assessed, and assuming that such taxes are payable in arrears. Lessee shall be responsible for and shall pay the portion of such taxes relating to the period beginning with the Effective Date and ending on the Termination Date, and Lessor shall be responsible for and shall pay the portion of such taxes relating to the periods preceding the Effective Date and following the Termination Date.

18.3. Privilege of Contesting. Upon at least fifteen (15) days' prior written notice to Lessor and Lessee furnishing to Lessor such bonds or other reasonable forms of security as reasonably determined and requested by Lessor, Lessee shall have the right to protest, contest, object to or oppose the legality or amount of any such taxes and assessments to be paid by Lessee hereunder. In the event of any such contest, Lessee may defer payment of any such tax or assessment so long as the legality or the amount thereof is being so contested diligently and in good faith; provided, however, that if at any time payment of the whole or any part thereof shall

become necessary in order to prevent the termination by sale or otherwise of the right of redemption of any property affected thereby or to prevent physical eviction of either Lessor or Lessee because of nonpayment thereof, Lessee shall pay the same in order to prevent such termination of the right of redemption or such eviction. Any such contest shall be at the sole cost and expense of Lessee and Lessee shall pay any costs or expenses incurred by Lessor as a result of any such contest. Each refund of any tax, assessment, fee or charge so contested shall be paid to Lessee, and Lessor shall not, without prior approval of Lessee, make or enter into or finally agree to any settlement, compromise or any disposition of any contest or discontinue or withdraw any contest or accept any refund, other adjustment or credit of or from any such tax or assessment as a result of any contest. If there are any refunds of the taxes or assessment at the end of the Lease Term, the amounts will be prorated between Lessor and Lessee so that Lessee receives all amounts which were paid during the Lease Term. Any and all penalties and interest that become due as a result of any such contest shall be paid by Lessee.

ARTICLE 19. INSURANCE AND INDEMNITY

19.1. Lessee Indemnity. Lessor shall not be liable for and Lessee covenants and agrees to indemnify and save Lessor and the Lessor Indemnitees entirely harmless for, from and against each and every claim, demand, liability, loss, cost, damage and expense, including, without limitation, attorneys' fees and court costs, arising out of any accident or other occurrence causing injury to or death of persons or damage to property by reason of construction or maintenance of any Lessee Improvements, of any additions, alterations or renovations thereto, or due to the condition of any Lessee Improvements on the Premises, or the use or neglect thereof caused by the negligent acts or omissions of Lessee or Lessee's Parties (to the extent Lessee is legally responsible for their actions). Lessee further agrees to indemnify and save Lessor and the Lessor Indemnitees and the interests of Lessor in the Premises entirely harmless for, from and against all claims, demands, liabilities, damages and penalties arising out of any failure of Lessee to comply with any of Lessee's obligations under this Lease, including, without limitation, attorneys' fees and court costs. These indemnities shall survive the expiration of this Lease or the earlier termination thereof.

19.2. Liability Insurance. Lessee, at the sole cost and expense of Lessee, shall at all times during the Lease Term maintain in force a policy or policies of commercial general liability insurance insuring Lessee against all liability resulting from injury or death occurring to persons in or about the Premises, with limits for each occurrence of not less than Two Million Dollars (\$2,000,000.00), combined single limit, with respect to personal injury, death and property damage, Three Million Dollars (\$3,000,000.00) aggregate. Lessor will be included as an additional insured under such liability insurance policy or policies. Lessor shall have the right to require Lessee to reasonably increase this amount from time to time throughout the Lease Term. The original of such policy or policies shall remain in possession of Lessee; provided, however, that Lessor shall have the right to receive from Lessee, upon written demand, a duplicate policy or policies of any such insurance or a certificate evidencing such insurance coverage. Lessee shall also maintain and keep in force all employees' compensation insurance on its employees, if any, required under the applicable workmen's compensation laws of the state in which the Premises are located.

19.3. Policy Requirements. All insurance policies required or otherwise provided and maintained under this **Article 19** shall contain provisions to the effect that the insurance shall not be canceled or modified without thirty (30) days' prior written notice to Lessor and that no modification shall be effective if it is inconsistent with the terms of this Lease. All such policies shall be issued by a commercially reasonable company or companies, responsible and authorized to do business in the state of Utah, which shall include but shall not be limited to I Builder Insurance Corporation, Inc., a Utah corporation, as Lessee shall determine, and shall be approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

19.4. Mutual Release of Subrogation Rights. Without in any way limiting the applicability of **Section 19.1.**, Lessee and Lessor each hereby release and relieve the other and the officers, directors, owners, shareholders, employees, agents and representatives of the other, and waive their entire right of recovery against the other and the officers, directors, owners, shareholders, employees, agents and representatives of the other, for loss or damage arising out of or incident to the perils insured against under this **Article 19**, which perils occur in, on or about the Premises, whether due to the negligence of Lessor or Lessee or their agents, employees, contractors, concessionaires and/or invitees, but only to the extent of insurance proceeds actually paid. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to and, to the extent reasonably allowed by the insurance carriers, obtain waiver of subrogation agreements or endorsements from the insurance carrier or carriers concerning the foregoing mutual waiver of subrogation contained in this Lease.

ARTICLE 20. DAMAGE AND DESTRUCTION

20.1. No Abatement of Annual Rent. No damage to or destruction of Lessee Improvements shall effect an abatement or reduction in the Annual Rent, it being understood that this is a ground lease and Lessor shall have no right, title or interest in or to the homes or structures constructed on the Premises. Lessee waives any provisions of the law that may be to the contrary.

20.2. Damage or Destruction. If any Basic Onsite Infrastructure Improvements are damaged or destroyed during the Lease Term by any casualty which is normally covered by a policy of casualty insurance, Lessee agrees to repair and/or rebuild the same so that the repaired or rebuilt Basic Onsite Infrastructure Improvements shall have at least the same values as such Basic Onsite Infrastructure Improvements had immediately prior to such damage or destruction, such construction to be undertaken and completed in accordance with the requirements of **Article 14**. Notwithstanding the above, Lessee shall have no obligation to repair or restore any Basic Onsite Infrastructure Improvements that have been previously conveyed or dedicated to the City or other public entities and accepted, nor to any third party. In no event whatsoever shall Lessor be required to repair, replace, or restore any Lessee Improvements as a result of any such damage or destruction.

20.3. Termination by Lessee. If the Lessee Improvements are damaged or destroyed by fire or other casualty covered under a standard fire and extended coverage policy at any time during the last three (3) years of the Lease Term, are damaged or destroyed by casualties not

required to be included in such coverage, or the cost of repairing or rebuilding such Lessee Improvements exceeds fifty percent (50%) of the full replacement value thereof, Lessee, by giving written notice to Lessor within sixty (60) days after the occurrence of such damage or destruction and by removing, if requested by Lessor and approved by any permitted mortgagee, any damaged Lessee Improvements and leveling and grading that portion of the Premises underlying such removed Lessee Improvements, may elect to terminate this Lease with respect to that portion of the Premises underlying such removed Lessee Improvements. Notwithstanding anything contained in this Lease to the contrary, in the event of a termination of the Lease, and after available insurance proceeds have been used to pay off any existing leasehold mortgages and any permitted encumbrance on Lessee's leasehold estate in the Premises, the balance of any insurance proceeds shall be payable to Lessee and Lessor at the rate of eighty-one percent (81%) and nineteen percent (19%), respectively.

ARTICLE 21. CONDEMNATION

21.1. Eminent Domain; Cancellation. If the Premises are taken by any entity with the power of eminent domain (a "Condemning Authority"), if the Premises are conveyed to a Condemning Authority by a negotiated sale, if part of the Premises is so taken or conveyed such that the use of the remaining Premises is materially interfered with, or such that the Lessee Improvements cannot be rebuilt so that upon completion Lessee may again use the Premises without substantial interference, the parties may mutually agree upon amendments to this Lease, the Development Plan and/or the Development Schedule to, among other things, reflect the changed circumstances due to the occurrence of any of the foregoing and set forth how any condemnation award is to be allocated among the parties; provided, however, that in the event the parties are unable to mutually agree upon such amendments within one hundred eighty (180) days after the occurrence of any of the foregoing, that Lessee may terminate this Lease by giving Lessor written notice thereof, and such termination shall be effective as of the date set forth in such notice, which shall be no earlier than the date of the transfer to the Condemning Authority. If this Lease is terminated pursuant to this Section 21.1., Lessor shall pay to Lessee any Annual Rent prepaid beyond the effective date of termination, as well as the portion of any compensation award attributable to the value of the Lessee Improvements made to the Premises, and any other amounts of the condemnation award applicable to the Lessee Improvements or Lessee's actions, including but not limited to the portion of the award associated with an increase in value of the Premises as a result of the development of the Premises.

21.2. Partial Takings. If part of the Premises or any of the Lessee Improvements is taken or conveyed without substantially interfering with the use of the Premises, Lessee shall, in its discretion, following consultation with Lessor, have the option to either: (a) terminate this Lease and recover a portion of the compensation award as described more fully in this paragraph; or (b) continue with this Lease and restore the Lessee Improvements. If Lessee selects option (b), this Lease shall not terminate and Annual Rent shall not be abated. In such event, Lessor shall receive the portion of the condemnation award attributable to the value of the fee title estate taken based upon the value of the Premises before Lessee's development work and nineteen percent (19%) of the portion of the condemnation award attributable to the value of the fee estate taken based upon the increased value of the Premises resulting from Lessee's development work, and Lessee shall receive eighty-one percent (81%) of the portion of the

condemnation award attributable to the increased value of the fee estate taken from the Premises resulting from Lessee's development work thereon, plus all remaining portions of the condemnation award and other compensations or sums, and Lessee shall apply all such amounts it receives to pay the cost of restoring the Lessee Improvements and/or the Premises so as to be suitable for Lessee's use and to comply with its obligations under this Lease and to the Premises.

ARTICLE 22. ASSIGNMENT OR SALE

22.1. Prohibition Against Assignment. Lessor and Lessee acknowledge that Lessor has entered into this Lease because of the unique financial capabilities and development experience and abilities, planning skills and marketing expertise of Lessee. As a result, Lessee shall not have the right to assign all or part of this Lease to another party or entity that is not an Affiliate of Lessee without Lessor's prior written consent, which consent shall be in the reasonable discretion of Lessor, and any attempted assignment shall be null and void, shall constitute an immediate default under this Lease, and shall, at Lessor's election, result in the immediate termination of this Lease. Notwithstanding the foregoing, Lessee agrees that Lessor, in determining whether to consent to any proposed assignment, may reasonably consider the proposed assignee's development experience and abilities, planning skills and marketing expertise and may refuse to consent to such assignment if, in Lessor's reasonable opinion, the proposed assignee lacks the necessary experience, skills, abilities or expertise to adequately perform Lessee's obligations under this Lease.

22.2. Indirect Transfers. The sale, issuance or transfer of fifty percent (50%) or more of the membership interest of the initial collective membership interest in Lessee as of the Effective Date, so that such group, taken as a whole, would own less than fifty one percent (51%) of Lessee, shall be deemed to be an assignment of this Lease within the meaning of this Article 22. In addition, Clyde Properties LLC, or associated affiliate, shall remain the managing member in the Lessee during the Lease Term, unless otherwise agreed to by Lessor in writing.

ARTICLE 23. LESSEE FINANCING

23.1. Lessee's Right to Mortgage. Provided Lessee is not in default under this Lease, and subject to the terms and conditions set forth in this Lease, Lessee shall have the right to encumber its leasehold interest by one (1) or more mortgages, deeds of trust, security agreements or otherwise (a "**Leasehold Mortgage**"), subject, however, to the limitations set forth in this Article 23. Any such Leasehold Mortgage shall be subject and subordinate to the rights of Lessor under this Lease.

23.2. Notice to Lessor of Leasehold Mortgage. No holder of a Leasehold Mortgage on this Lease shall have the rights or benefits set forth in this Article 23, nor shall the provisions of this Article 23 be binding upon Lessor, unless and until a copy of the fully executed Leasehold Mortgage and each assignment thereof shall have been delivered to Lessor, notwithstanding any other form of notice, actual, or constructive.

23.3. Leasehold Mortgagee Protection. If Lessee shall enter into a Leasehold Mortgage pursuant to this Section 23, then so long as any such Leasehold Mortgage shall remain

unsatisfied of record, the following provisions shall apply:

A. Notice of Default. The Lessor, upon serving upon Lessee any notice of default under this Lease, shall also serve a copy of such notice upon the holder of such Leasehold Mortgage, at the address provided for in such Leasehold Mortgage, or in the last assignment thereof delivered to Lessor as provided for in this Lease, or at such other place as such holder may designate in writing to Lessor.

B. Right to Cure. Any holder of such Leasehold Mortgage shall, in case Lessee shall be in default under this Lease, within the time period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instance of such holder as if the same had been made by Lessee.

C. No Default. For purposes of this **Article 23**, no event of default shall be deemed to exist if the default is with respect to the performance of work, or of acts to be performed, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

D. Leasehold Mortgagee Foreclosure. Notwithstanding anything to the contrary contained herein, upon the occurrence of an event of default, Lessor shall take no action to terminate this Lease without first giving the holder of such Leasehold Mortgage written notice thereof and a reasonable time thereafter within which either to: (a) obtain possession of the Premises (including possession by a receiver); or (b) institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease; so long as such holder cures all defaults then reasonably susceptible of being cured by such holder; provided, however, that: (a) such holder shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured; (b) nothing herein contained shall preclude Lessor from exercising any rights or remedies under this Lease with respect to any other default by Lessee during the pendency of such foreclosure proceedings; and (c) such holder shall agree with Lessor in writing to comply during the period of such forbearance with such of the terms, conditions, and covenants of this Lease as are reasonably susceptible of being complied with by such holder.

E. Termination of Lease. In the event this Lease is terminated pursuant to the terms hereof prior to the expiration of the Lease Term, Lessor shall serve upon the holder of such Leasehold Mortgage written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due and owing under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Lessor. Such holder shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

Upon written request of the holder of such Leasehold Mortgage, within thirty (30) days after service of such notice that this Lease has been terminated, Lessor shall enter

into a new lease with such holder, or its designee, provided that such new lease shall be: (a) entered into at the reasonable cost of the new Lessee thereunder; (b) effective as of the date of termination of this Lease; and (c) for a term equal to the remaining term under this Lease and at the rent and upon all agreements, terms, covenants, and conditions hereof, including applicable rights of renewal or options to extend. Such new lease shall require the new Lessee to perform any unfulfilled obligations of Lessee under this Lease which are reasonably susceptible of being performed by such new Lessee. Upon the execution of such new lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay expenses, including reasonable attorneys' fees, court costs, and disbursements incurred by Lessor in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution, and delivery of such new lease.

F. Delivery of Notice. Any notice or other communication which Lessor shall desire or is required to give to or serve upon the holder of such Leasehold Mortgage on this Lease shall be in writing and shall be served by registered mail, addressed to such holder at its address as set forth in such Leasehold Mortgage, or in the last assignment thereof delivered to Lessor pursuant to the terms of this Lease, or at such other place as such holder may designate in writing to Lessor.

G. Priority of Leasehold Mortgages. Anything contained in this Lease to the contrary notwithstanding, if the holders of more than one Leasehold Mortgage shall make written requests upon Lessor for a new lease, the new lease shall be entered into pursuant to the request of the holder whose Leasehold Mortgage is prior in lien (as determined by Lessor in its reasonable discretion), whereupon the written requests for a new lease of each holder of a Leasehold Mortgage junior in lien thereto shall be void and of no force or effect.

H. Consent of Leasehold Mortgagee. No agreement between Lessor and Lessee modifying, canceling, or surrendering this Lease shall be effective without the prior written consent of the leasehold mortgagee.

I. No Merger. No union of the interests of Lessor and Lessee herein shall result in a merger of this Lease in the fee interest.

23.4. Certificates of Compliance. Lessor, upon request of Lessee, and Lessee, upon request of Lessor, hereby agree to execute, acknowledge, and deliver a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications); (b) the dates, if any, to which Annual Rent has been paid; (c) whether or not, to the knowledge of the party executing such certificate, there are then any uncured events of default under this Lease (and, if so, specifying the same); and (d) any other matter reasonably related to this Lease. Any such certificate may be relied upon by any prospective permittee, sublessee, any entity providing financing to Lessee for any purpose, and any mortgagee or assignee of, or participant with, any mortgagee. The reasonable costs in preparing such statements will be reimbursed by the

requesting party.

ARTICLE 24. ADDITIONAL COVENANTS

24.1. Delivery of Lessee Estoppel Certificate. Lessee shall, at any time upon thirty (30) business days' prior written notice from Lessor, execute, acknowledge and deliver to Lessor a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modifications and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed; (c) acknowledging that Lessee has unconditionally accepted the Premises, is in possession thereof, and no defense to enforcement of the Lease exists; (d) agreeing to provide any mortgagee of Lessor with the opportunity to cure defaults by Lessor; and (e) agreeing not to amend, cancel or assign the Lease, except to an Affiliate, without the prior written consent of any mortgagee of Lessor. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

24.2. Consequences if Lessee Estoppel Certificate not Delivered. Lessee's failure to deliver such statement within such time may be interpreted as conclusive upon Lessee: (a) that this Lease is in full force and effect, without modification, except as may be represented by Lessor; (b) that there are no uncured defaults in Lessor's performance; (c) that not more than one (1) year's rent has been paid in advance; (d) that Lessee is in possession of the Premises; and (e) that no defenses exist to the enforcement of the Lease.

24.3. Delivery of Lessor Estoppel Certificate. Lessor shall, at any time upon thirty (30) business days' prior written notice from Lessee, execute, acknowledge and deliver to Lessee a statement in writing (A) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modifications and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; (B) acknowledging that there are not, to Lessor's knowledge, any uncured defaults on the part of Lessee hereunder, or specifying such defaults if any are claimed; and (C) acknowledging that Lessee is in possession of the Premises and no defense to enforcement of the Lease exists. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

24.4. Consequences if Lessor Estoppel Certificate not Delivered. Lessor's failure to deliver such statement within such time may be interpreted as conclusive upon Lessor: (A) that this Lease is in full force and effect, without modification, except as may be represented by Lessee; (B) that there are no uncured defaults in Lessee's performance; (C) that not more than one (1) year's rent has been paid in advance; (D) that Lessee is in possession of the Premises; and (E) that no defenses exist to the enforcement of the Lease.

24.5. Access Easement. The parties acknowledge that Lessor previously sold certain lands adjacent to the Premises to The Nature Conservancy (the "TNC Parcel") and that the TNC Parcel lacks adequate legal access. The Nature Conservancy has utilized a public utility easement

area to access the TNC Parcel as of the Effective Date, but desires a more permanent option across the Premises. The access issue has not been resolved because planning of the portion of the Premises immediately adjacent to the TNC Parcel has not been finalized. It is anticipated that roads will be publicly dedicated during the course of development of the Project that will provide adequate access to the TNC Parcel; however, in the event such does not occur then Lessor and Lessee agree to work together to provide The Nature Conservancy, or its successors in interest, with a perpetual access easement across the Premises. This easement shall provide reasonable access to the TNC Parcel, but shall also allow Lessee to maximize the use and development of the Premises. This easement, if necessary, shall be granted prior to the sale or dedication of that portion of the Premises that is adjacent to the TNC Parcel to any third party. In the event The Nature Conservancy, or its successors in interest, are no longer able to access the TNC Parcel through the public utility easement prior to the issuance of the perpetual easement or other public access, then the parties will work together to provide The Nature Conservancy with temporary access until more permanent access is available or granted.

ARTICLE 25. DEFAULT

25.1. Events of Default. Subject to the cure provisions of Section 25.2., any of the following occurrences or acts shall constitute an event of default (“Event of Default”) under this Lease:

A. General. If Lessee shall fail to:

i. Pay any Annual Rent, Additional Rent, Base Payments, Lot with Home Payments, Multi-Family Unit Payments, Improved Residential Lot Payments, Improved Non-Residential Lot Payments, Reconciliation Payments or other sums owed Lessor under this Lease, within thirty (30) days of the date such payment is due;

ii. Provide any insurance coverage as required by this Lease, within thirty (30) days of written request; or

iii. Observe or perform any other provision of this Lease, within thirty (30) days after notice to Lessee of such failure, or such longer period as reasonably may be required to cure such default if the same cannot be cured within such 30-day period and Lessee commences to effect the cure within such 30-day period.

B. Bankruptcy. To the extent permitted by law, if Lessee shall: (a) file a petition in bankruptcy or for reorganization, or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law; (b) be adjudicated a bankrupt; (c) make an assignment for the benefit of creditors; (d) admit in writing its inability to pay its debts generally as they become due; (e) have filed a petition or answer proposing the adjudication of Lessee as a bankrupt; (f) seek its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law by filing in any court, and such petition or answer shall not be discharged or denied within sixty (60) days after the occurrence of any of the foregoing;

C. Other Insolvency Events. If a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee or of the Premises or Lessee's leasehold interest therein shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and such proceeding shall not be discharged within sixty (60) days after the occurrence thereof, or if Lessee shall consent to or acquiesce in such appointment; and

D. Abandonment. If, following commencement of development of the Premises and prior to the sale of all lots to be improved pursuant to the Lease and the Development Plan, Lessee shall abandon the Premises, it being agreed to be conclusive evidence of abandonment should Lessee cease to construct any improvements to the Premises prior to the completion of an existing Development Parcel and/or fail to maintain any marketing plan or any sales effort as required under the Marketing Plan with regard to the Premises, for a period of One Hundred Eighty (180) consecutive days, absent the actions of some third-party or force majeure.

25.2. Remedies. If an Event of Default caused by Lessee shall have happened and be continuing, Lessor shall first notify Lessee and give Lessee an adequate opportunity to cure the Event of Default. The duration of time for remedy of the Event of Default shall be based on the nature of the default, but, unless provided otherwise in this Lease, shall in no case be shorter than ninety (90) days following Lessee's receipt of written notice of the default. The foregoing notwithstanding, if Lessee's default is a financial default relating to the payment of Annual Rent, Additional Rent, Lot with Home Payments, Multi-Family Unit Payments, Improved Residential Lot Payments, Improved Non-Residential Lot Payments or other sums owed Lessor by Lessee under this Lease, Lessee shall have thirty (30) days to cure said default. If Lessee defaults for any other reason, Lessee shall have ninety (90) days as a minimum to cure said default, but Lessee shall be granted such time as is reasonable to cure said default, so long as the following conditions are met: (A) Lessee, acting in good faith, takes reasonable steps to remedy the Event of Default; and (B) Lessee is current on Annual Rent and all other payments due under the Lease. If, after adequate notice of an Event of Default has been provided by Lessor to Lessee, Lessee fails to timely cure the Event of Default pursuant to the terms of this Section 25.2., Lessor shall have the following rights and remedies, to the maximum extent available or permitted under applicable law:

A. Right to Terminate. Lessor shall have the right to give Lessee notice of Lessor's termination of the Lease. Upon the giving of such notice, the Lease Term and the estate hereby granted shall expire and terminate on the date set forth in such notice as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the Lease Term, and all rights of Lessee hereunder shall expire and terminate, except as provided herein. If this Lease is terminated by Lessor, (A) Lessee shall not have the right to construct or sell any Lot with Homes or Multi-Family Units that have not yet been placed under contract and have proceeded in the construction phase to the pouring of the foundation, and (B) Lessee shall assign to Lessor Lessee's interest in the Premises and in the Development Plan and all related agreements, entitlements and permits pertaining to the future development, operation and

maintenance of the Premises. However, under no circumstances shall Lessor ever obtain any right, title or interest in Lessee's building plans or architectural renderings for Lessee's structures. Notwithstanding the above, Lessee shall have the right to complete any homes, buildings or structures then under contract under a Third-Party REPC which have proceeded in the construction phase to the pouring of the foundation, so long as said construction can be completed within eight (8) months with respect to single family homes, and eighteen (18) months with respect to Multi-Family Units and commercial buildings. Any construction not completed within such time period shall be deemed the property of Lessor. Upon completion of any Lot with Homes or Multi-Family Units currently under contract and construction, as described herein, and as of the date of the Lease termination, the proceeds of the sale of such Lot with Homes or Multi-Family Units shall be allocated to the parties pursuant to the terms and conditions of this Lease. Lessee shall also be entitled to any reimbursements and/or payments due under any development agreements or other documents pertaining to that portion of the Premises and Lessee's Improvements that Lessee has completed or will complete. Lessor shall be obligated to reimburse Lessee only for such items as specifically set forth in this Lease or as otherwise agreed to by Lessor in subsequent documents executed in connection with this Lease.

B. Right to Re-enter. Following termination, and subject to the limitations described in **Section 25.2.A.** above, Lessor shall have the immediate right to re-enter and repossess the Premises by summary proceedings, ejectment or any other legal action or in any lawful manner Lessor determines to be necessary or desirable and to remove all persons and property therefrom.

C. Reletting of the Premises. Following termination, and subject to the limitations described in **Section 25.2.B.** above, at any time or from time to time after Lessor's re-entry or repossession of the Premises, Lessor shall use reasonable efforts to relet the Premises at a rental which is reasonable in light of the then-existing market conditions in the community, in the name of Lessee or Lessor, or otherwise, without notice to Lessee, for such term or terms and on such other conditions and for such uses as Lessor, in its absolute discretion, may determine. Lessor may collect and receive any rents payable by reason of such reletting, and said rents shall be applied to mitigate and reduce any amounts Lessee owes to Lessor.

D. Right to Finish Improvements. Subject to the terms of **Section 25.2.A.**, Lessor shall have the right to perform the unperformed obligations of Lessee, and Lessee shall reimburse Lessor for the reasonable costs of performing such obligations within ten (10) days after receipt of an invoice therefor and proof of payment thereof. If Lessee does not reimburse Lessor within such 10-day period, Lessor shall have (a) the right to exercise any and all rights which Lessor might have at law to collect the same, and (b) a lien on the portion of the Premises to which such work relates, to the extent of the amount paid by Lessor but not reimbursed by Lessee (through bonds, letters of credit or otherwise), which amount shall bear interest at the Default Rate from the date of the invoice therefor until paid by Lessee. Such lien may be filed for record by Lessor as a claim against the then-owner of such portion of the Premises, to the extent permitted by

law, and in the form required by law, in the office of the Washington County Recorder, which lien shall contain at least the following information: (a) the name of the lien claimant; (b) the name of the then-owner of the portion of the Premises to which the lien relates; (c) a description of the work performed on behalf of such party and a statement itemizing the cost thereof; and (d) a description of the property and/or improvements being encumbered by such lien. To the extent permitted by law, the lien so claimed shall attach from the date of recordation in the amount claimed by Lessor and may be enforced and foreclosed in any manner allowed by law, including but not limited to suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. To the extent permitted by law, such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien. All the foregoing rights and remedies of Lessor, and any other rights or remedies which Lessor may have by law or under any other agreement between Lessor and Lessee, shall be cumulative. However, Lessor agrees to cooperate with Lessee in the marketing and sale of any Lot with Homes or Multi-Family Units that remain in order to minimize the damages for all parties.

Lessee shall, subject to any prior rights of holders of Leasehold Mortgages, immediately upon Lessor's written request assign to Lessor all of Lessee's right, title and interest in and to the Development Plan and any and all construction plans, drawings, site plans or other documents, construction contracts and other agreements prepared or entered into with respect to the development of the Premises, including, without limitation, all entitlements obtained by Lessee with respect to the Premises.

E. **No Release.** No expiration or termination of this Lease pursuant to this **Section 25.2.**, by operation of law or otherwise, shall relieve Lessee of its liabilities and obligations hereunder all of which shall survive such expiration, termination, re-entry, repossession or reletting. However, once Lessee has complied with the terms of this **Section 25.2.**, Lessee shall be released from further or future liabilities related to its obligations to Lessor under this Lease.

F. **Damages.** In the event of any termination of this Lease or re-entry or repossession of the Premises by reason of the occurrence of an Event of Default by Lessee, Lessee will pay to Lessor all Rent, Additional Rent and other amounts due to Lessor up to and including the date of such expiration, termination, re-entry or repossession; and if Lessor is unable thereafter to relet or sell the Premises, Lessee shall, until the end of what would have been the Lease Term, in the absence of such expiration, termination, re-entry or repossession, be liable to Lessor for, and shall pay to Lessor, as liquidated and agreed current damages: (a) all Annual Rent on a current basis and all Additional Rent and other sums which would be payable under this Lease by Lessee in the absence of such expiration, termination, re-entry or repossession, less (b) the net proceeds, if any, of the reletting affected for the account of Lessee, after deducting from such proceeds all expenses of Lessor in connection with such reletting (including but not limited to all repossession costs, brokerage commissions, attorneys' fees and expenses (including fees and expenses of appellate proceedings), employees'

expenses, alteration and construction costs, if any, and expenses of preparation for such reletting and other expenses related to Lessee's default). If Lessor terminates this Lease as a result of a default by Lessee, Lessor will obtain the benefit of any Basic Onsite Infrastructure Improvements made to the Premises by Lessee, which the parties acknowledge will greatly increase the value of the Premises and Lessor may thereafter develop the remainder of the Premises as benefited by such Basic Onsite Infrastructure Improvements. Under no circumstances shall Lessee be liable for any consequential, special, or punitive damages to Lessor, including but not limited to any damages based upon the expectation to receive Lessor's Residential Sale Payment, and Lessor hereby waives any and all such damages. Lessor shall also be entitled to recover all reasonable attorneys' fees and fees associated with the enforcement of this Agreement.

25.3. Arbitration in Limited Circumstances.

A. Procedures. If Lessor claims that Lessee has committed an Event of Default associated with Lessee's failure to follow the Development Schedule then, prior to Lessor terminating the Lease for such reasons and subject to those notice and cure provisions in this Lease, the parties shall enter into arbitration, in accordance with the terms set forth below:

i. The party seeking arbitration shall notify the other party in writing, specifying the issue for arbitration.

ii. Within ten (10) days thereafter, the parties shall agree upon one arbitrator.

iii. If the parties are unable to so agree after ten (10) days, then within two (2) additional business days, Lessor and Lessee shall each select one arbitrator (but if either party fails or refuses to timely select an arbitrator, the single arbitrator selected by the other party shall be deemed to be the single arbitrator of the dispute). The two arbitrators so selected thereafter shall, within seven (7) additional days, select a third arbitrator with expertise in the subject matter of the dispute, and arbitrator so selected shall arbitrate the dispute. In the event the two arbitrators selected by the parties are unable to agree on a third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association.

iv. The arbitrator shall meet with the parties immediately after their appointment to determine a schedule for arbitration, including whether and to what extent discovery is required. The arbitrator shall apply the procedural rules of the American Arbitration Association to the extent that those rules are not inconsistent with the procedures set forth herein or the other terms and conditions of this Lease. The arbitrator may set the matter for an evidentiary hearing, or oral argument, or may determine to dispose of the dispute based upon written submissions only. If an evidentiary hearing is held, the normal rules of evidence shall be relaxed, pursuant to the arbitrator's discretion. Both parties shall have the right to participate in the hearing and may determine the most effective and efficient method for the presentation of their case. The parties may present

evidence through live testimony, written reports and affidavits, or the argument of counsel or its representative at the hearing. The parties may be represented by any person of their choice at proceedings before the arbitrator, irrespective of whether the representative is an attorney.

v. The decision of the arbitrator shall be binding on the parties and may be judicially enforced subject to and in accordance with the procedures set forth in this **Section 25.3**. In the event the arbitrator determines an Event of Default was committed by Lessee and that Lessor may terminate the Lease, then Lessee shall have ninety (90) days (commencing on the date the decision of the arbitrator is provided to the parties) to cure the Event of Default, or if curing the default reasonably takes a period longer than ninety (90) days, Lessee shall cure the default as soon as reasonably practicable without interruption by working continuously and diligently until the default is cured, such additional period not to exceed six (6) months.

B. Costs and Expenses. The costs and expenses of the arbitration shall be shared equally by and between the parties, unless the arbitrator shall otherwise rule.

C. Effect of Arbitration Decisions. The arbitration board shall be authorized to issue equitable, as well as legal, remedies.

25.4. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing by law, in equity or by statute.

25.5. Lessor Breach. Should Lessor be in default of any of its obligations under this Lease, Lessee shall notify Lessor of such default in writing. Should such default continue for more than thirty (30) days after Lessor's receipt of such notice, or if such default cannot be cured within thirty (30) days and Lessor has failed to commence and be diligently prosecuting the cure of such default, Lessee shall have the right to: (A) file suit against Lessor in a court of competent jurisdiction for specific performance and damages, as the case may be; and/or (B) terminate the Lease and recover any and all sums owed by Lessor to Lessee under this Lease, as well as any and all damages and costs that Lessee may incur as a result of the default, or the termination of this Lease, including all fees, costs, and attorneys' fees necessary to enforce this Lease or recover these amounts.

25.6. Governmental Immunity. Pursuant to Utah Code Annotated Section 63-30d-301(1), Lessor acknowledges and agrees that all of its obligations under this Lease are contractual in nature. Lessor does not waive, alter or modify its governmental immunity.

ARTICLE 26. GENERAL PROVISIONS

26.1. Waiver of Breach. No waiver of the breach of any provision of this Lease shall be construed as a waiver of any preceding or succeeding breach of the same or any other

provision of this Lease, nor shall the acceptance of rent by Lessor during any period of time in which Lessee is in default in any respect other than payment of such rent be deemed to be a waiver of such default.

26.2. Notices. Notices shall be in writing and shall be given by: (A) personal delivery; (B) deposit in the United States mail, certified mail, return receipt requested (which receipt shall be preserved as evidence of delivery), postage prepaid; or (C) overnight express delivery service, addressed or transmitted to Lessor and Lessee at the following addresses, or to such other addresses as either party may designate to the other in a writing delivered in accordance with the provisions of this **Section 26.2.:**

If to Lessor: School and Institutional Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, UT 84102
Attn: Planning & Development Group

If to Lessee: Desert Color St. George, LLC
c/o Clyde Properties LLC
730 No. 1500 West
Orem, UT 84057

and to:
Blue Diamond Capital
Michael C. Bingham
180 No. University, Suite 250
Provo, UT 84601

With a copy (which shall not constitute notice) to:
Durham Jones & Pinegar
Attention: Paul M. Durham, Esq.
111 So. Main Street, Suite 2400
Salt Lake City, UT 84111

All notices shall be deemed to have been delivered and shall be effective upon the date on which the notice is actually received, if notice is given by personal delivery or by overnight express delivery service, or on the third day after mailing if notice is sent through the United States mail.

26.3. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

26.4. Recording. At any time following the Effective Date, Lessee may record a memorandum of this Lease in the form attached hereto as **Exhibit P.**

26.5. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies hereunder or at law or in equity.

26.6. Construction. The titles which are used following the number of each Section are so used only for convenience in locating various provisions of this Lease and shall not be deemed to affect the interpretation or construction of such provisions. The parties acknowledge that each party and its counsel have reviewed and revised this Lease. This Lease shall not be construed for or against Lessor or Lessee. References in this Lease to "Sections" and "Articles" refer to the Sections and Articles of this Lease unless otherwise noted.

26.7. Successors. This Lease and all of the provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Lessor and Lessee.

26.8. Governing Law. The terms, conditions, covenants, and agreements herein contained shall be governed, construed, and controlled according to the laws of the State of Utah.

26.9. Broker's Commission. Lessee and Lessor represent and warrant to each other that there are no claims for brokerage commissions or finders' fees in connection with this Lease and each agrees to hold harmless the other for, from and against all liabilities arising from any claims, including any attorneys' fees connected therewith, relating to claims arising out of the other's actions.

26.10. Time is of the Essence.

A. Time of Essence. Time is of the essence of this Lease and in the performance of all of the covenants and conditions hereof.

B. Force Majeure. If either Lessor or Lessee is delayed or hindered in or prevented from the performance of any act required hereunder by reason of inability to procure materials, failure of power, riots, insurrection, war, acts of God, labor disputes, and other reasons of a like nature not the fault of the party delayed in performing work or doing other acts required under the terms of this Lease, then performance of such act shall be excused for the period of delay and the time for the performance of any such act shall be extended for a period equivalent to the period of such delay.

26.11. Relationship of the Parties. The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and agreed that Lessor does not in any way, nor for any purpose, become a partner of Lessee or a joint venture with Lessee in the conduct of Lessee's business or otherwise, and that the provisions of any agreement between Lessor and Lessee relating to rent are made solely for the purpose of providing a method whereby rental payments are to be measured and ascertained.

26.12. Time Periods. In the event the time for the performance of any obligation or the taking of any action hereunder expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

26.13. Limitation on Interest. This Lease is expressly limited so that in no event shall

the amount paid or agreed to be paid for any loan or forbearance provided for in this Lease exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable. If, for any reason whatsoever, performance of this Lease, or of any other agreement entered into between the parties in connection with this Lease results in exceeding such highest rate of interest, then, *ipso facto*, the interest rate provided for in this Lease or in any related instrument shall be reduced to such highest lawful rate; and if for any reason the payee shall receive as interest an amount which would exceed such highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance and not to the payment of interest; and if a surplus remains after full payment of principal and lawful interest the surplus shall be remitted to the payor. This provision controls over every other provision of this Lease.

26.14. Quitclaim. At the expiration or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor, within five (5) days after written demand, from Lessor to Lessee, any quitclaim deed or other document deemed necessary or desirable by Lessor's counsel to remove the cloud of this Lease from the real property subject to this Lease.

26.15. Lessee's Obligations to the State of Utah. While the Premises are held in trust by the State of Utah or subject to a restriction against alienation imposed by the State of Utah, all of Lessee's obligations under this Lease are to the State of Utah, as well as to Lessor.

26.16. Inspection. The State of Utah and Lessor, and their authorized representatives shall have the right, at any reasonable time during the Lease Term, to enter upon the Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

26.17. Tax Immunity. Nothing contained in this Lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust property (including the Premises) or any interest therein or income therefrom.

26.18. Entire Agreement. This Lease sets forth all the promises, inducements, agreements, conditions, and understandings between Lessor and Lessee relative to the Premises, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them other than are set forth herein. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless in writing and signed by each of them.

26.19. No Warranty as to Title. Lessor shall provide good and marketable title to the Premises at the First Closing.

26.20. Counterparts and Facsimile Transmissions. This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and facsimile transmissions of signatures shall have the same force and effect as original signatures.

26.21. Authorization. Each individual executing this Lease represents and warrants that

he/she has read this Lease, is authorized to act on behalf of the entity for which he/she will sign and that he/she is executing this Lease in his/her authorized capacity.

26.22. Savings Clause. Notwithstanding any other provision of this Lease, in the event that a notice deadline, performance deadline, or a closing deadline passes without the appropriate action being taken, the party owed the performance must give the other party written notice of the passing of the notice deadline, the lack of performance or the passing of a closing deadline, and thereafter the performing party will have ten (10) days to fully perform or comply, as appropriate, and only then will the non-performing party's rights lapse, expire or terminate. This provision in no way limits any other notice or performance deadline described in this Lease, but instead extends each of those deadlines to provide the parties ten (10) days of additional time to perform as required under the terms of this Lease.

26.23. Approval by Lessor. Unless specifically described to the contrary under the terms of this Lease, if Lessor is requested by Lessee to respond to a request to comment, review, modify, approve or act on a particular matter or request, and Lessor fails to do so within thirty (30) calendar days after receipt of a written request to do so, Lessor's approval shall be deemed granted.

26.24. Workmanship Standards. All actions or work completed by either Lessee or Lessor pursuant to the terms of this Lease shall be completed with good workmanship, consistent with industry standards, and in accordance with the requirements of any and all laws, ordinances and regulations applicable thereto, including zoning and building code requirements of any municipal or other governmental agency having jurisdiction at the time.

26.25. Dispute Resolution. Any controversy or dispute arising out of either party's obligations, rights and performance under the terms and conditions of this Lease (collectively, the "Dispute") shall first be subject to private negotiation between the parties. If such Dispute is not resolved by the private negotiation of the parties, the parties shall engage in non-binding mediation as a precondition to filing suit. Either party may commence mediation by serving the other with a written demand of mediation. Upon receipt of written demand for mediation, the parties shall endeavor in good faith to schedule and participate in mediation of the Dispute as soon as is reasonable practicable. In the event the Dispute is not resolved through mediation, either party may commence suit by filing a complaint in the federal or state district courts for Salt Lake County, Utah. For all purposes related to resolution of Disputes arising under this Lease, the parties submit themselves to the jurisdiction and venue of the federal and state district courts in and for Salt Lake County, Utah. The prevailing party in a lawsuit brought to enforce the provisions of this Lease shall be entitled to an award of its reasonable attorney's fees and costs of suit, including expert witness charges.

26.26. Cultural Resources. It is hereby understood and agreed that all cultural resources, articles of antiquity, treasure-trove, and critical paleontological resources in or upon the Premises are and shall remain the property of the State of Utah. Lessee further agrees to cease all activity on the affected portions of the Premises, and immediately notify Lessor if any discovery of human remains or a "site" or "specimen," as defined in Section 9-8-302 or 63-73-1 Utah Code Annotated (1953), as amended, is made on the Premises, and continue to cease all construction

or maintenance on the affected portions of the Premises until such time as the human remains, "site" or "specimen" in question has been treated to the satisfaction of Lessor and the State of Utah.

26.27. Guaranty. As partial consideration and inducement for Lessor to enter into this Lease, Clyde Companies, Inc. and Bingham Family Alaska, LLC shall execute a corporate guaranty in the form attached hereto as **Exhibit P** to ensure payments required under this Lease are received. The prevailing party in any litigation concerning either guaranty shall be awarded its reasonable costs and attorneys' fees.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first written above.

Lessor:

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: David Ure
David Ure, Director

Lessee:

DESERT COLOR ST. GEORGE, LLC
a Utah limited liability company

By: DESERT COLOR MANAGER, LLC
a Utah limited liability company, its Manager

Name: [Signature]
Title: Manager

APPROVED AS TO FORM:
SEAN D. REYES
ATTORNEY GENERAL

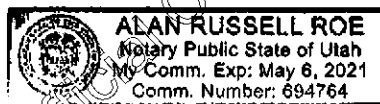
By: Michelle E. McConkie
Michelle E. McConkie
Special Assistant Attorney General

STATE OF UTAH

COUNTY OF SALT LAKE

On this 11th day of September, 2017, personally appeared before me David Ure, the Director of the School and Institutional Trust Lands Administration, who acknowledged that he, being duly authorized, did execute the foregoing instrument on behalf of the School and Institutional Trust Lands Administration.

Alan Russell Roe
Notary Public



STATE OF UTAH)

: ss.

COUNTY OF Salt Lake)

On this 11th day of September, 2017, personally appeared before me Brooke Dase Cole, the Manager of Desert Color Manager, LLC, the Manager of DESERT COLOR ST. GEORGE, LLC, who acknowledged that he/she, being duly authorized, did execute the foregoing instrument on behalf of Desert Color Manager, LLC, as the Manager of DESERT COLOR ST. GEORGE, LLC.

Alan Russell Roe
Notary Public



EXHIBIT B
Design Guidelines (first page)



EXHIBIT C
Legal Description of Initial Parcel

Beginning at a point which is North 88°46'19" West 1879.38 feet along the North section line and South 00°00'00" East 3148.23 feet from the North 1/4 corner of Section 35, Township 43 South, Range 16 West of the Salt Lake Base and Meridian said point also being a point on the state line between the State of Utah and the State of Arizona said point also being the Southeasterly corner of the Nature Conservancy parcel with Parcel ID No. SG-6-3-35-112 and running thence along the Easterly boundary of said Nature Conservancy parcel North 01°04'41" East 470.84 feet to the Southeasterly corner of the Nature Conservancy parcel with Parcel ID No. SG-6-3-35-430; thence along the Easterly boundary of said Nature Conservancy parcel North 01°04'40" East 976.74 feet to the Northeasterly corner of said Nature Conservancy parcel said corner also being on the Easterly Right of Way of Interstate 15; thence along said Easterly Right of Way through the following six (6) courses: North 28°34'00" East 114.56 feet; thence North 55°35'40" East 223.87 feet; thence North 28°34'22" East 2200.00 feet; thence South 61°25'38" East 250.00 feet; thence South 75°27'48" East 206.16 feet; thence North 30°16'12" East 1350.34 feet; thence leaving said Easterly Right of Way North 81°19'41" East 249.88 feet; thence North 08°40'19" West 400.00 feet; thence South 81°19'41" West 249.65 feet to a point on said Easterly Right of Way; thence along said Easterly Right of Way through the following five (5) courses: North 08°39'43" West 228.21 feet; thence North 28°41'53" East 299.57 feet; thence North 16°45'54" East 200.61 feet; thence North 14°54'48" East 728.00 feet; thence North 28°34'00" East 2864.00 feet to a point on the Southwesterly Right of Way of the Atkinville Interchange; thence along said Southwesterly Right of Way through the following twenty five (25) courses: North 33°39'43" East 676.43 feet; thence North 42°22'04" East 238.09 feet to the point of curvature of a 57.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 88.59 feet through a central angle of 89°02'52" the chord of said curve bears North 86°53'30" East for a distance of 79.94 feet to the point of tangency; thence South 48°35'04" East 153.04 feet; thence South 51°52'44" East 37.25 feet; thence South 51°38'00" East 46.28 feet to the point of curvature of a 500.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 105.87 feet through a central angle of 12°07'55" the chord of said curve bears South 45°34'02" East for a distance of 105.67 feet to the point of tangency; thence South 39°30'04" East 150.78 feet to the point of curvature of an 800.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 130.28 feet through a central angle of 09°19'49" the chord of said curve bears South 35°09'03" East for a distance of 130.13 feet to the point of tangency; thence South 30°18'38" East 78.99 feet; thence South 34°28'13" East 88.02 feet; thence South 27°49'54" East 97.89 feet; thence South 27°49'54" East 107.28 feet; thence South 27°49'54" East 7.76 feet; thence South 24°58'12" East 480.75 feet to the point of curvature of a 180.40 foot radius curve to the right; thence Southwesterly along the arc of a said curve 300.00 feet through the central angle of 95°16'49" the chord of said curve bears South 22°43'10" West for a distance of 266.60 feet to the point of a 600.00 foot radius compound curve to the right; thence Southwesterly along the arc of said curve 225.56 feet through a central angle of 21°32'22" the chord of said curve bears South 81°34'15" West for a distance of 224.23 feet to the point of tangency; thence North 88°11'29" West 104.94 feet to the point on the arc of a 1955.00 foot radius curve to the left; thence Southwesterly along the arc of said curve 136.99 feet through a central angle of 04°00'53" the chord of said curve bears South 04°09'41" West for a distance of 136.96 feet to the point of tangency; thence South 02°09'14" West 17.91 feet; thence North 85°45'20" East 53.53 feet; thence South 86°14'05" East 139.05 feet; thence South 88°01'08" East 141.37 feet; thence North 89°44'45" East 157.82 feet to the point of curvature of a 196.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 139.11 feet through a central angle of 40°39'59" the chord of said curve bears South 69°55'16" East a distance of 136.21 feet to a point on the arc of a 196.00 foot radius curve to the right said point being common to said Southwesterly Right of Way of Atkinville Interchange and the Southerly Right of Way of the Southern Parkway; thence leaving said Southwesterly Right of Way of Atkinville Interchange and along said Southerly Right of Way of the Southern Parkway through the following twenty two (22) courses: Southeasterly along the arc of said 196.00 foot radius curve 78.64 feet through a central angle of 22°59'15" the chord of said curve bears South 38°05'39" East 78.11 feet to the point of tangency; thence South 26°36'08" East 844.17 feet; thence South 28°11'38" East 237.59 feet to the point of curvature of a 2710.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 465.78 feet through a central angle of 09°50'52" the chord of said curve bears South 33°13'16" East for a distance of 465.21 feet to the point of tangency; thence South 37°58'14" East 344.81 feet; thence South 38°35'35" East 702.55 feet; thence South 37°08'17" East 128.76 feet; thence South 40°21'00" East 74.61 feet; thence South 35°26'19" East 257.64 feet to the point of curvature of a 3835.00 foot

radius curve to the right; thence Southeasterly along the arc of said curve 347.55 feet through a central angle of $05^{\circ}11'33''$ the chord of said curve bears South $35^{\circ}57'58''$ East a distance of 347.43 feet to the point of tangency; thence South $32^{\circ}42'47''$ East 193.47 feet; thence South $30^{\circ}52'15''$ East 685.71 feet; thence South $30^{\circ}24'56''$ East 824.93 feet; thence South $30^{\circ}55'10''$ East 21.77 feet; thence South $30^{\circ}55'10''$ East 100.00 feet; thence South $30^{\circ}55'10''$ East 389.26 feet; thence South $32^{\circ}11'25''$ East 274.63 feet; thence South $34^{\circ}43'57''$ East 606.70 feet to the point of curvature of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 789.48 feet through a central angle of $06^{\circ}09'15''$ the chord of said curve bears South $42^{\circ}32'12''$ East a distance of 789.10 feet to the point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 2555.47 feet through a central angle of $19^{\circ}55'15''$ the chord of said curve bears South $55^{\circ}34'27''$ East a distance of 2542.62 feet to a point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 100.00 feet through a central angle of $00^{\circ}46'46''$ the chord of said curve bears South $65^{\circ}55'28''$ East a distance of 100.00 feet to a point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 2751.51 feet through a central angle of $21^{\circ}26'56''$ the chord of said curve bears South $77^{\circ}02'19''$ East 2735.47 feet to a point of non-tangency; thence South $02^{\circ}14'12''$ West 73.75 feet to a point on the state line between the State of Utah and the State of Arizona; thence along said state line through the following four (4) courses: North $88^{\circ}43'10''$ West 2641.36 feet to state line marker No. 26; thence North $88^{\circ}43'10''$ West 5287.61 feet to state line marker No. 25; thence North $88^{\circ}43'26''$ West 5277.59 feet to state line marker No. 24; thence North $88^{\circ}43'03''$ West 1429.48 feet to the point of beginning.

Contains 1,331.86 acres, more or less.

Less and excepting that portion of property lying within the dedicated Right of Way of Black Mountain Drive as shown on the Roadway Dedication plat thereof recorded as Document No. 20090041241 in the office of the Washington County Recorder in said County in the State of Utah also less and excepting that portion of property lying within the dedicated Right of Way of as shown on the Roadway Dedication plat thereof recorded as Document No. 20090026781 in the office of said Washington County Recorder

EXHIBIT D
General depiction of Initial Parcel

EXHIBIT D - GENERAL DEPICTION OF INITIAL PARCEL

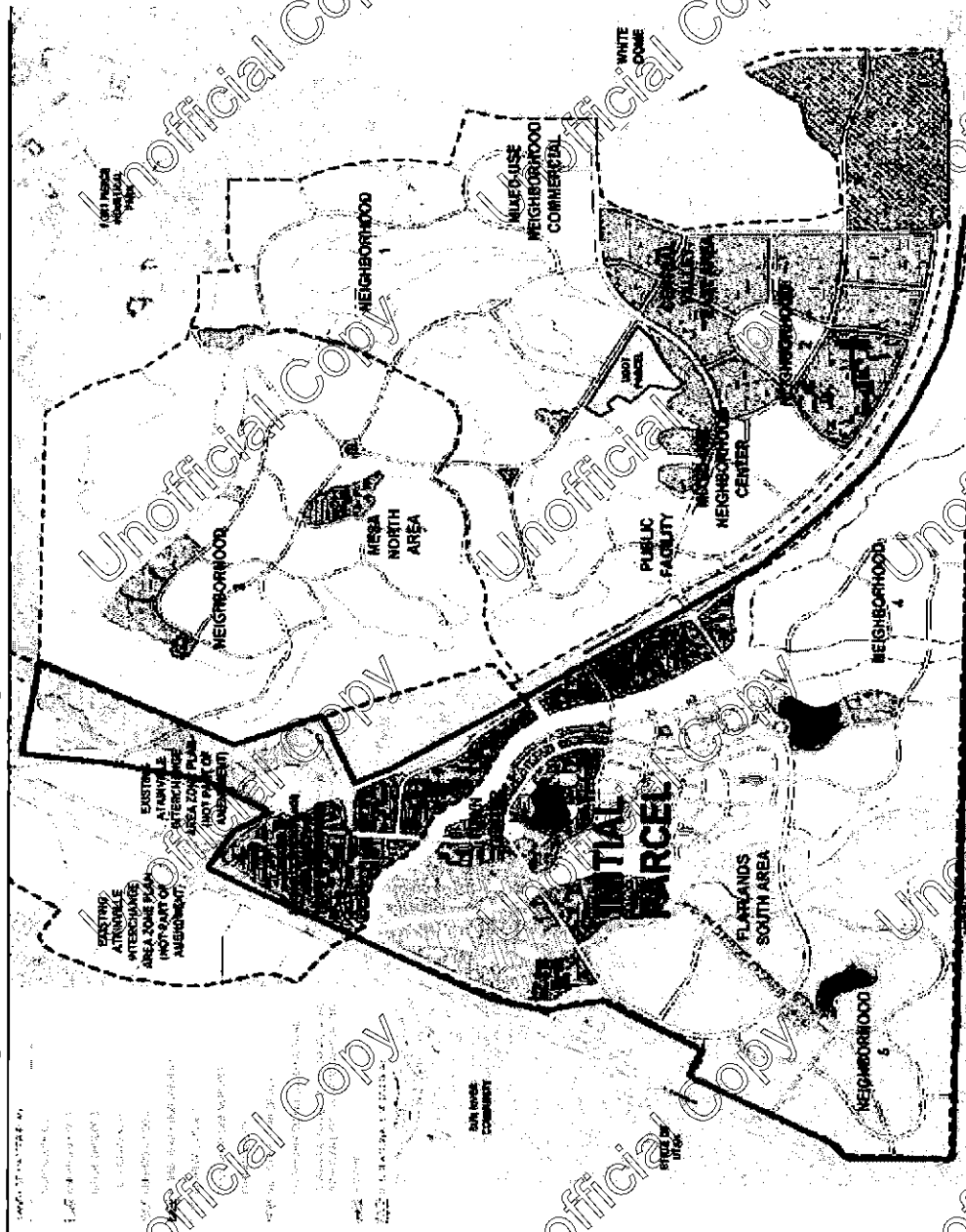


EXHIBIT E
General Depiction of Neighborhoods in the Project

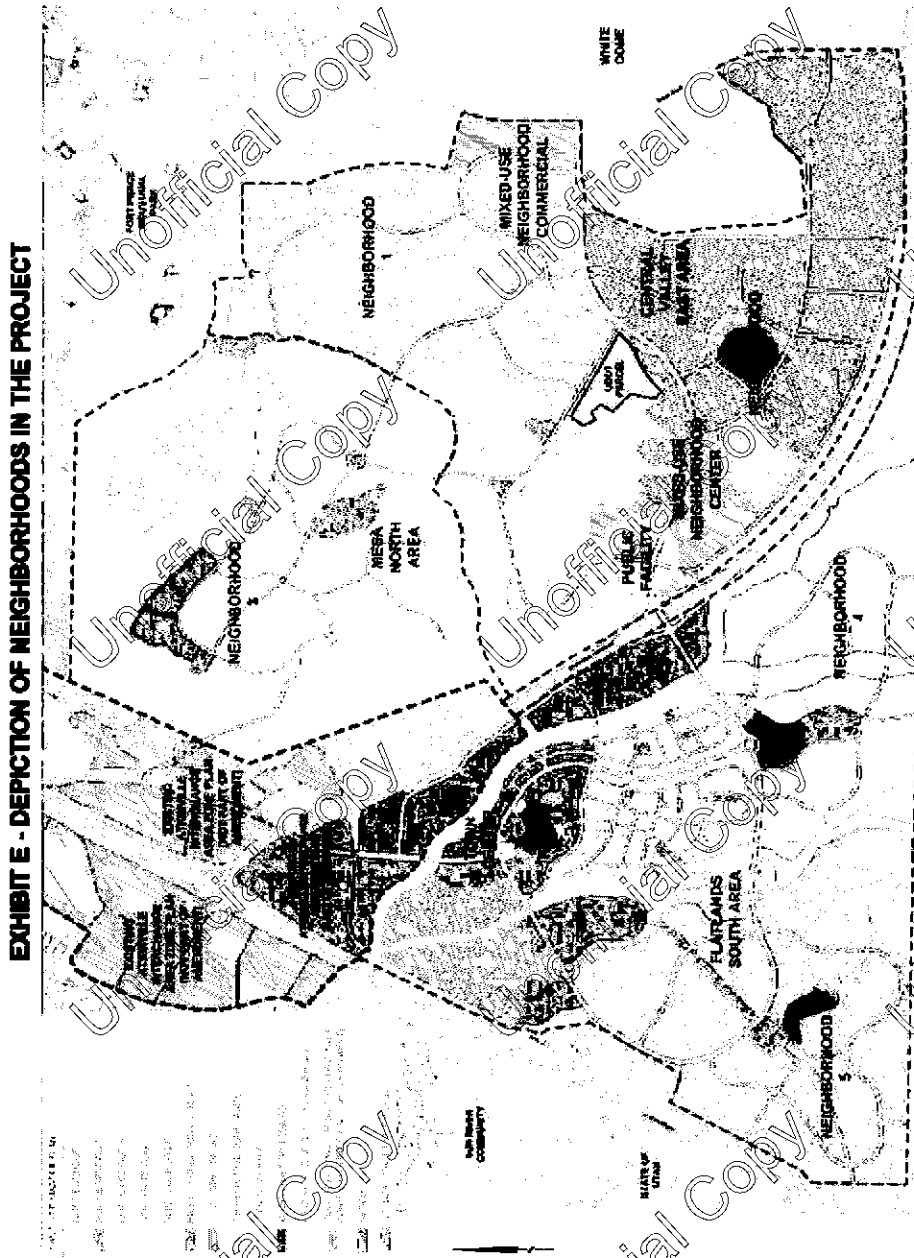


EXHIBIT G

General Depiction of Open Space, Undevelopable Lands and Park and Amenity Lands

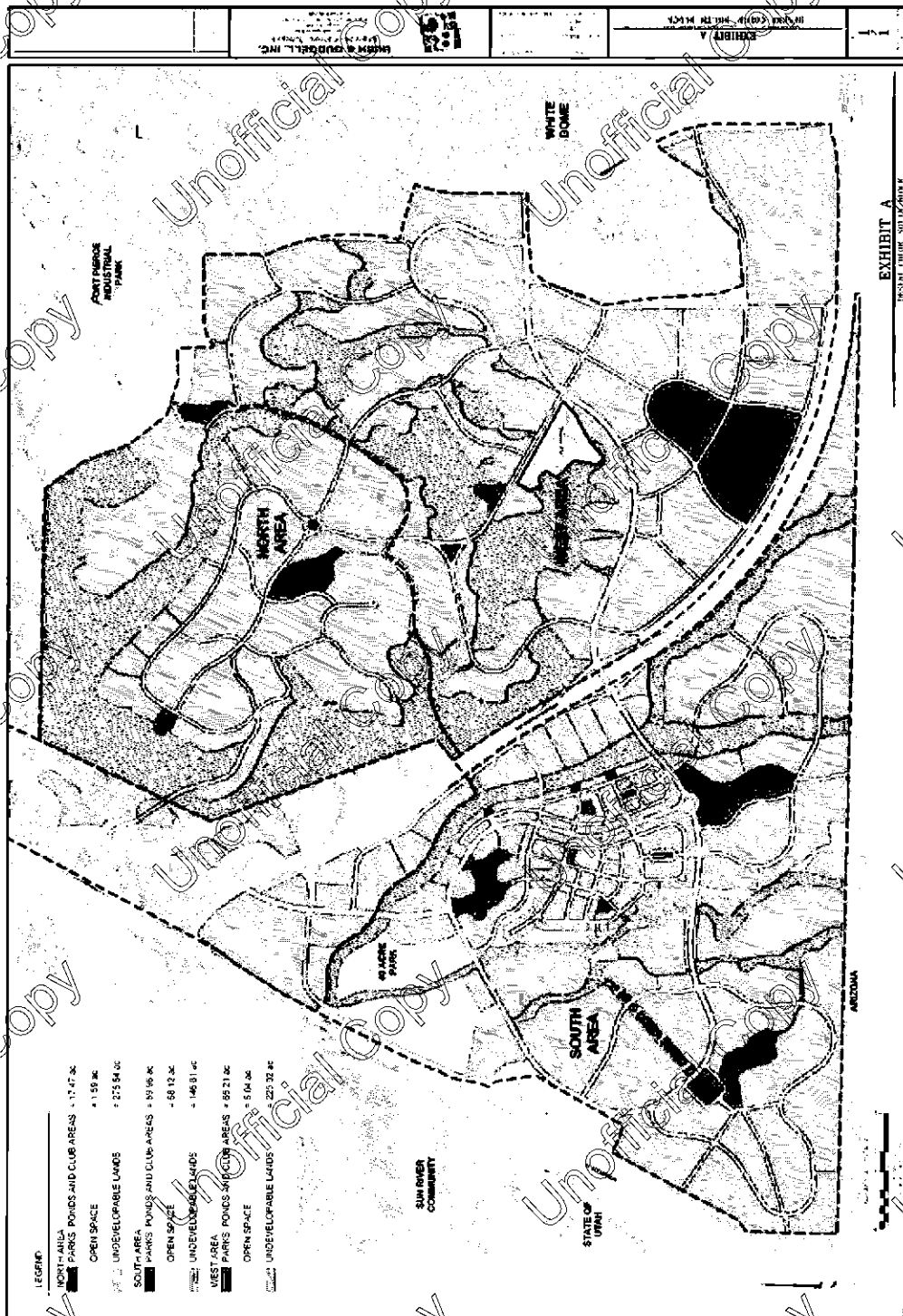


EXHIBIT H
General Depiction of Regional Park

EXHIBIT H- GENERAL DEPICTION OF REGIONAL PARK

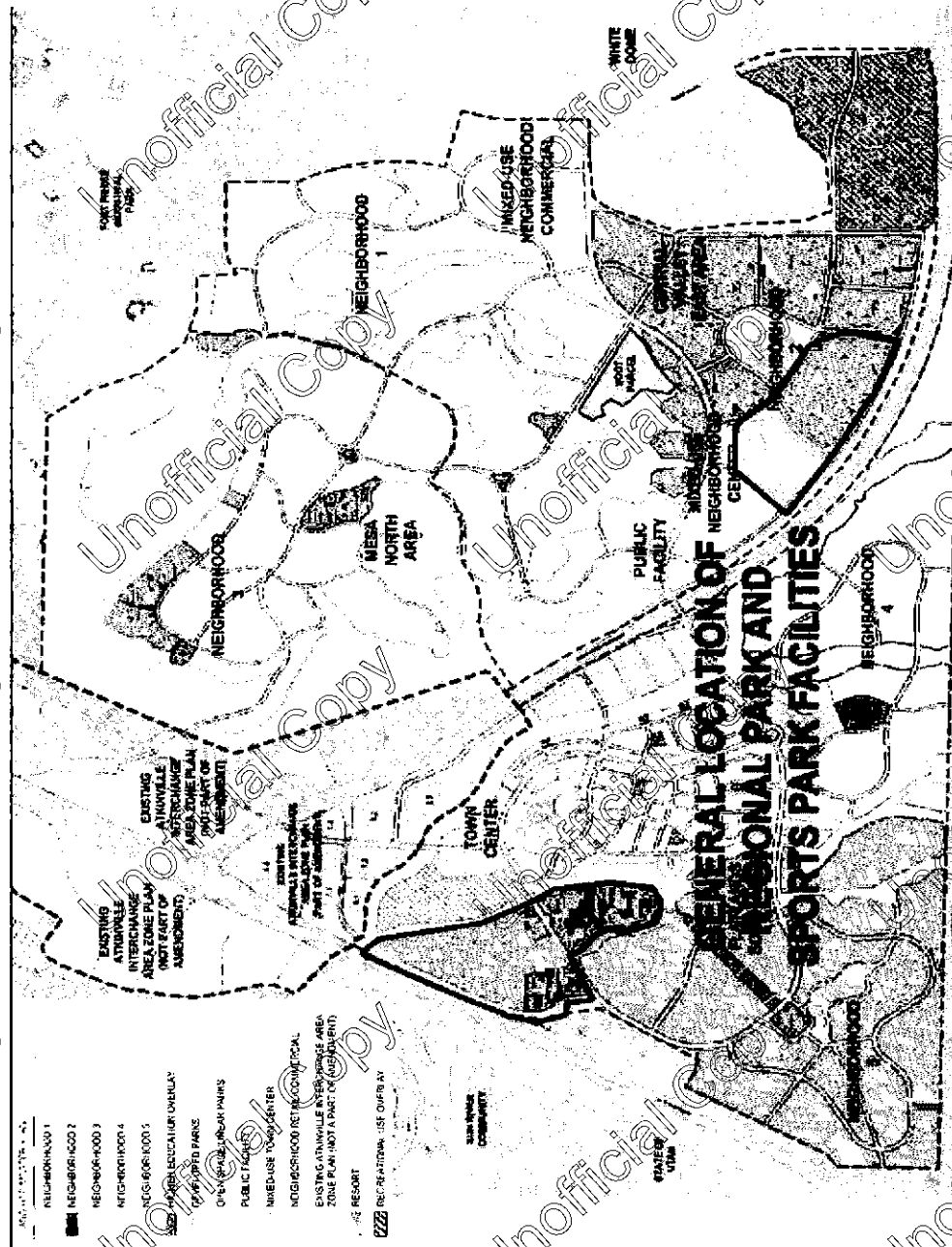


EXHIBIT 4
General Depiction of Regional Sports Facilities

[See Exhibit H]

EXHIBIT J
General Depiction of East Option Parcel

EXHIBIT J- GENERAL DEPICTION OF EAST OPTION PARCEL

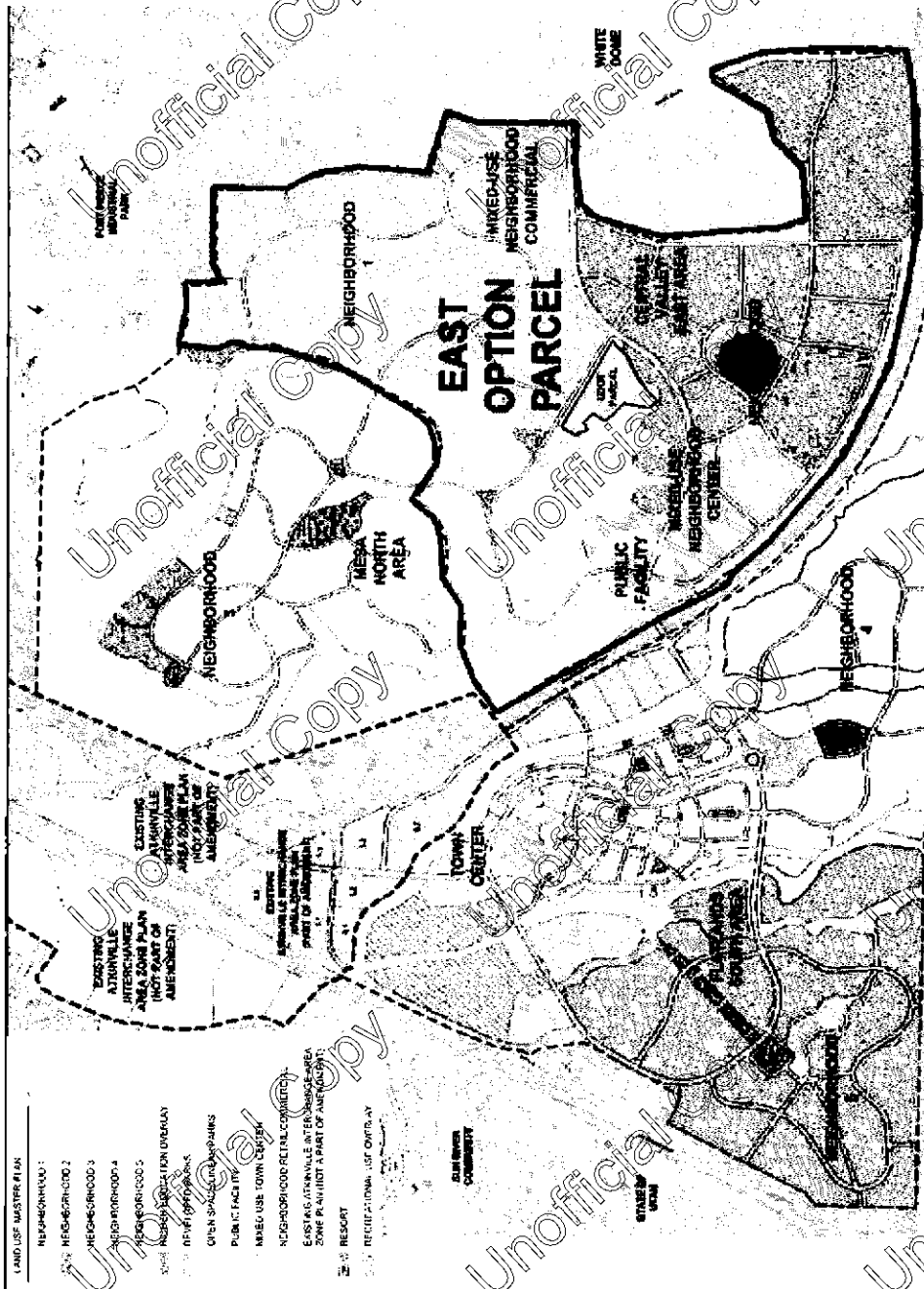


EXHIBIT K
Form of Exclusive Possession Addendum

**ADDENDUM NO. ____ TO
DEVELOPMENT LEASE AGREEMENT NO. 1100**

This ADDENDUM NO. _____ TO DEVELOPMENT LEASE AGREEMENT NO. 1100 (the “**Addendum**”), is effective _____ (the “**Effective Date**”), by and between the State of Utah, through the School and Institutional Trust Lands Administration (the “**Lessor**”), and Desert Color St. George, LLC (the “**Lessee**”).

Effective _____, the parties entered into Development Lease Agreement No. 1100 (the “**Lease**”), under which certain lands in Washington County, Utah (the “**Premises**”) were leased to Lessee to be subdivided and developed for residential and other related purposes.

Pursuant to the Lease, Lessor has the right to enter, occupy and control the Premises until such time as exclusive possession is provided pursuant to the terms of the Lease.

1. The parties hereby acknowledge that one or more of the conditions described in the Lease has been met and that Lessee has exclusive possession of a portion of the Premises (the “**Exclusive Possession Parcel**”). The Exclusive Possession Parcel is more particularly described as follows:

[Insert legal description here.]

2. Lessee’s exclusive possession of the Exclusive Possession Parcel commences on the Effective Date.

[Signature and Notary Blocks omitted from exhibit]

EXHIBIT L
Percentages to Calculate Payments Associated with Lots with Homes and Multi-Family Units (Reconciliation Payments, Lot with Home Payments and Multi-Family Unit Payments)

Desert Color Gross Residential Reconciliations by Development Year

Initial Parcel

Development Year	Years of Development	Percent of Gross Residential Sales Price Reconciliation Payment to SITLA
Year 1 Year 3	3	4.0%
Year 4 Year 7	4	5.0%
Year 8 Year 10	3	6.0%
Year 11 Year 12	2	7.0%
Year 13+		8.0%

North Option Parcel

Development Year	Years of Development	Percent of Gross Residential Sales Price Reconciliation Payment to SITLA
Year 1 Year 3	3	4.0%
Year 4 Year 6	3	5.0%
Year 7 Year 9	3	6.0%
Year 10 Year 12	3	7.0%
Year 13 Year 14	2	8.0%
Year 15+		9.0%

East Option Parcel

Development Year	Years of Development	Percent of Gross Residential Sales Price Reconciliation Payment to SITLA
Year 1 Year 3	3	4.0%
Year 4 Year 6	3	5.0%
Year 7 Year 9	3	6.0%
Year 10+		7.0%

EXHIBIT M
General depiction of Second Interchange

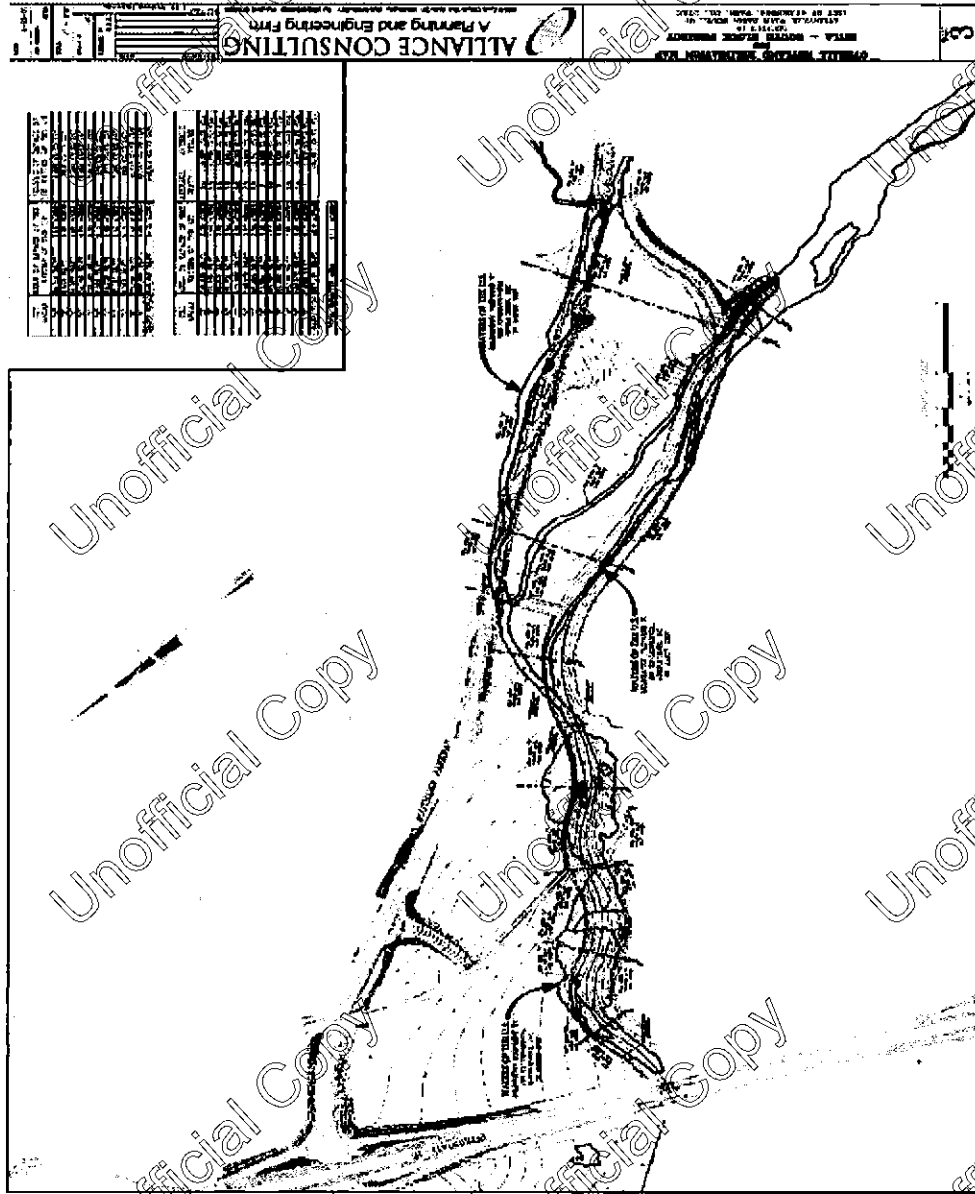


EXHIBIT M - GENERAL DEPICTION OF SECOND INTERCHANGE

EXHIBIT N
General Depiction of Improvement Area for Atkinville and Lizard Wash Bridges

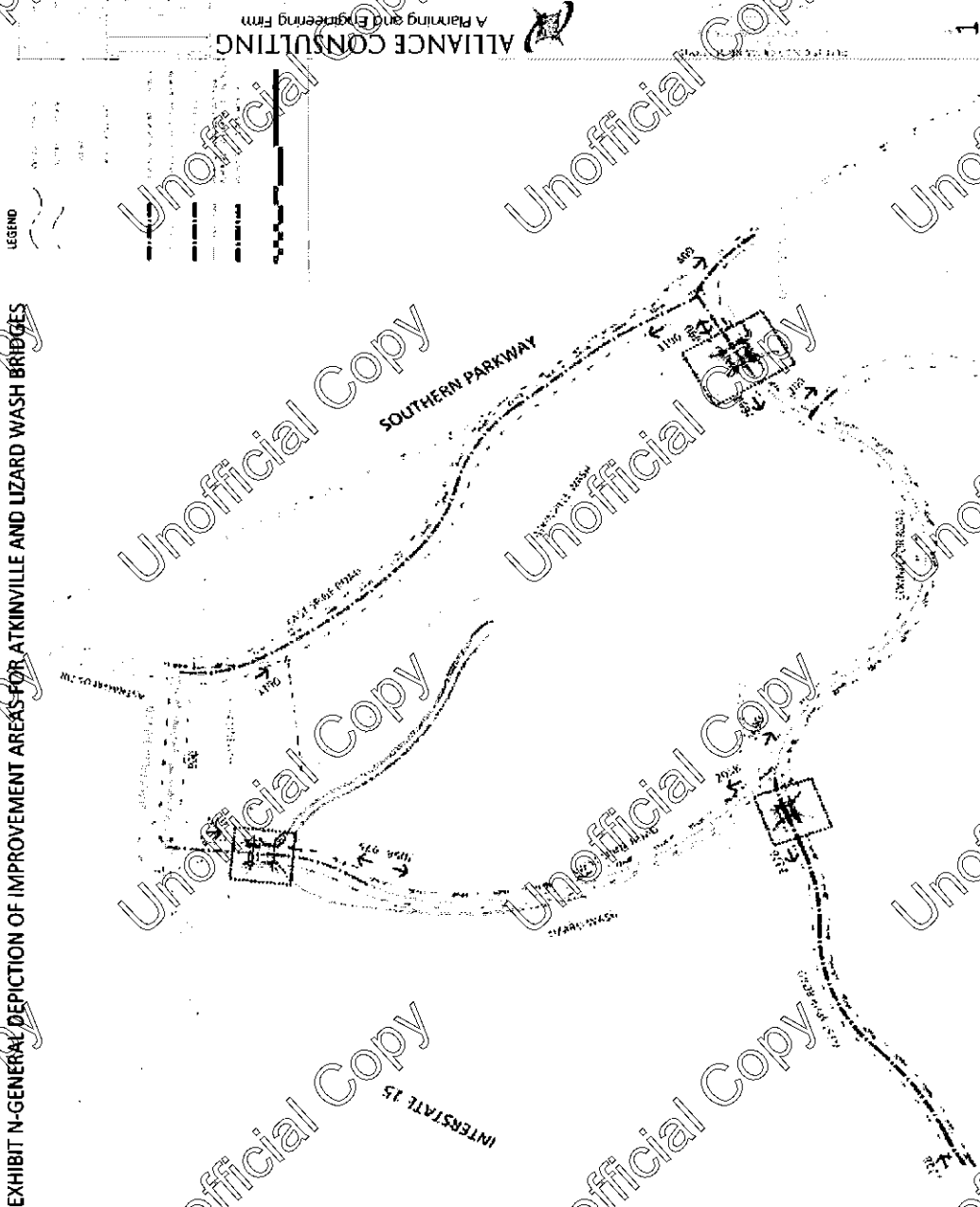


EXHIBIT N-GENERAL DEPICTION OF IMPROVEMENT AREAS FOR ATKINVILLE AND LIZARD WASH BRIDGES

