

WHEN RECORDED, MAIL TO:



WASHINGTON CITY <sup>County</sup>  
C/O WASHINGTON CITY RECORDER'S OFFICE  
111 NORTH 100 EAST  
WASHINGTON CITY, UT 84780

*W-PL*

**DEVELOPMENT AGREEMENT FOR THE ESCAPES AT SUNRISE RESIDENCES,  
A PROPOSED SUBDIVISION PROJECT IN WASHINGTON CITY, UTAH**

This Development Agreement (the "Agreement") is entered into as of this \_\_\_\_ day of April 2014, by and among the State of Utah, through the School and Institutional Trust Lands Administration ("SITLA"), and Washington City (the "City"). SITLA is the owner of certain real property located in Washington City, Washington County, Utah, on which they propose the development of a project to be known as The Escapes at Sunrise Residences Subdivision.<sup>1</sup>

**RECITALS**

A. SITLA is the owner of approximately Sixty-Seven and 765/1000<sup>th</sup> (67.765) acres of real property located in Washington City, Washington County, Utah, as more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property"), on which it proposes the development of a single family residential subdivision known as The Escapes at Sunrise Residences Subdivision (the "Project").

B. SITLA and Brennan Holdings No. 100, LLC ("Brennan Holdings") have entered into Development Lease Agreement No. 1046 for the construction of the Project on the Property. Brennan Holdings will act as the developer on the Project.

C. On January 8, 2014, at a regularly scheduled City Council meeting, the City Council considered SITLA's application for a zone change for the Property. As part of the discussion for the zone change, the City Council considered SITLA's request to modify the zone change request from the original request of R-1-8 for the entire Property, to three zones of R-1-12, R-1-10 and R-1-8.

D. As part of that discussion and consideration, the parties discussed a "feathering" or blending of the lot sizes throughout three zones. SITLA agreed to incorporate a transition/blending between the adjacent zones and subdivisions (those currently built and those in the proposed zone changes) in return for approval of the zoning modification. As used in this Agreement, "feathering" refers to a visual transitioning from any adjacent lower density subdivision to a higher density zone/subdivision by blending lot sizes closer in size to the adjacent (lower density/larger lot) subdivisions.

E. City Council approved the requested zoning for the Property conditioned upon SITLA and the City entering into this Agreement, which will be entered into prior to City Council's approval or recording of the first final plat for the Property or Project. As set forth herein, the City Council's approval of any subdivision in the Project is conditioned on satisfaction of the feathering requirement.

F. SITLA is willing to make certain improvements on the Project in a manner that is in harmony with the objectives of the City's General Plan and long range development objectives and which addresses the more specific planning issues set forth in this Agreement and is willing to abide by the

<sup>1</sup> Prior to approval or recording of any final subdivision in the Project, the Project's residential subdivision received approval for changing the Project's preliminary subdivision plat name from "The Escapes at Sunrise Residences" to two (2) preliminary plats with the names of "The Terraces at Green Springs" and "The Reserve at Green Spring". Consistent with this Agreement, the Project's total acreage, total number of proposed lots, and design and layout did not change.

terms of this Agreement in order to obtain City Council approval of any subdivision plats on the Property, which improvements are identified hereafter in connection with the development of the Project.

G. The City has authorized the negotiation and adoption of development agreements under appropriate circumstances in which, among other possible factors, the proposed development contains outstanding features that advance the policies, goals, and objectives of the City's General Plan, preserves and maintains the development objectives of the City, contributes to capital improvements which benefit the City and which provide assurances that the Property will be developed satisfying the feathering condition.

H. The City, acting pursuant to its authority under Utah Code Ann., Section 10-9a-101, et seq., and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

#### **A G R E E M E N T**

Now, therefore, in consideration of the mutual covenants, conditions and considerations as more fully set forth herein, SITLA and the City hereby agree as follows:

1. **Recitals; Findings.** The foregoing recitals are incorporated herein by reference. The City finds that the development of the Project pursuant to this Agreement and the City ordinances shall result in meaningful planning and economic benefits to and shall further the health, safety and welfare of the City and its residents by, among other things, (i) requiring development of the Project in a manner consistent with the applicable rules, regulations and policies of the City; (ii) conditioning subdivision approval only upon the satisfactory application of the feathering condition; and (iii) providing for the installation of open space landscaping and other such improvements to enhance the aesthetic quality and beauty of the Project and the area. The City is entering into and approving this Agreement pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act (Utah Code Ann. 10-9a-101, et seq.) ("LUDMA") and the City ordinances and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

2. **Project Plan: Development Pursuant to this Agreement.**

(a) **Project and Preliminary Plat.** Any Project Preliminary Plat, as well as any exhibits attached thereto, which may be submitted hereafter, are an integral part of this Agreement, and the City's approval of such Plat and the Proposed Project are conditioned upon the Project being developed in accordance with the requirements stated herein.

(b) **Development.** Upon execution of this Agreement by the City, SITLA, its lessees, assignees, designees and/or authorized agents, are authorized to proceed with the Project in accordance with the conditions set forth in this Agreement and the exhibits referenced herein and the provisions and requirements of the City's subdivision approval process.

3. **Construction Standards on Project.** All improvements in the Project contemplated by this Agreement shall be installed in accordance and consistent with the conditions of this Agreement and any exhibits referred to herein, with Washington City Design and Construction Standards, the City's subdivision approval process and all other governmental and regulatory standards.

4. **Obligations of SITLA.**

(a) **Improvements.** SITLA, its lessees, assignees, designees and/or authorized agents, shall install, construct, provide for and complete the following improvements in order to qualify for requested zoning. The costs associated with installing these improvements will be paid for by Brennan Holdings or some other designee of SITLA and/or Brennan Holdings. All such improvements shall be constructed in a good and workmanlike manner and in accordance with

applicable regulations and governmental standards and within the time periods for development set forth herein, the City's subdivision approval process, or as otherwise agreed to by the City:

(i) Landscaped Open Space Street Corridors. Landscaped open space corridors along Concord Parkway and Washington Parkway as shown/depicted in the attached Exhibit B.<sup>2,3</sup>

(ii) Trail System. A ten-foot (10 ft.) meandering trail in the landscaped open space corridors along Concord Parkway and Washington Parkway as shown/depicted in Exhibit B.<sup>2,3</sup>

(iii) Open Space. Open spaces area from Concord Parkway to and including the area referred to as "Open Space (Detention Area)" and open space area referred to as "Trail Head" as shown in Exhibit B.<sup>2,3</sup>

(iv) Feathering (as described herein) of Lots Throughout the Project. The lots within the Project (and as depicted on any subdivision plat on the Property) must incorporate the feathering condition to the reasonable satisfaction of the City Council. The proposed preliminary plat(s), attached as Exhibit B, satisfies the feathering condition. The City will not unreasonably delay, condition, or withhold approval of subdivision plats for the Project if the plats meet the feathering requirements, those other conditions of this Agreement, and applicable law.<sup>3</sup>

(b) Costs Associated with the Improvements.

(i) Construction Costs. All costs to install, construct, and complete the Improvements shall be paid for by Brennan Holdings or some other designee of SITLA and/or Brennan Holdings.

(ii) Maintenance Costs. Until such time as a particular component of the Improvements is dedicated to and accepted by the City and standard maintenance thereof is assumed by the City, SITLA, its lessees, assignees, designees and/or authorized agents, shall maintain such component of the Improvements. The costs associated with maintenance of these improvements will be paid for by Brennan Holdings or some other designee of SITLA and/or Brennan Holdings.

(c) Based upon SITLA's acceptance of this Agreement and promised performance of all requirements and conditions herein, as well as all other applicable rules, regulations and laws, SITLA, its lessees, assignees, designees and/or authorized agents, will be allowed to develop and construct upon the Property as provided in this Agreement and attachments and exhibits hereto.

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<sup>2</sup> All the open space street corridor areas and the open space areas referred to as "Trail Head" and "Open Space (Detention Area)" shall be landscaped with drought tolerant vegetation dense enough to reflect the greenery of the Green Springs Drive area, as approved by the Washington City Staff. Shade trees and shrubs will be an integral part of the landscaping and shall meet all spacing and sight distance requirements. The Landscaping will be maintained by the homeowners association to be created for the Project at the time of final subdivision approval.

<sup>3</sup> Exhibit B consists of two individual diagrams depicting the lot and subdivision improvements proposed to conform the feathering and other improvements and development layout elements in compliance with this Agreement. (The first page of Exhibit B is a copy of the approved layout, etc., prior to the subdivision name being amended from "The Escapes at Sunrise Residences" to two (2) preliminary plats with the names of "The Terraces at Green Springs" and "The Reserve at Green Spring", which amendment is depicted on the second page of Exhibit B. As clarified in footnote 1 hereto, the Project's total acreage, total number of proposed lots, and design and layout did not change with the amendment and replacement of "The Escapes at Sunrise Residences" with "The Terraces at Green Springs" and "The Reserve at Green Spring").

Notwithstanding anything to the contrary, SITLA may construct no more than One Hundred Seventy-Nine (179) finished residential building lots with a resulting gross overall project density equal to or less than Two and 7/10<sup>th</sup> (2.7) dwelling units per acre. Said residential building lots shall meet the frontage and setback requirements required by City ordinance.

(d) Inspection of Improvements. Upon completion of the Improvements, the City shall inspect the Improvements within a reasonable time after receipt of written notice from SITLA, its lessees, assignees, designees and/or authorized agents, that such Improvements are complete. The City shall approve the Improvements so long as they are constructed in accordance with this Agreement and the City's formally adopted standards therefore, as verified by the City's inspection.

(e) Documentation Supporting Provisions Herein. If either the City or SITLA determines that any provision of this Agreement requires a separate (recordable or otherwise) document/agreement to protect or clarify the City's or SITLA's rights pursuant to the intent of the parties under this Agreement, both parties shall cooperate in preparing and completing such documents.

5. Applicable Laws and Regulations. All applicable City ordinances and regulations in existence at the time of execution of this Agreement will govern the Project, except as provided herein and by law. The provisions of this Agreement shall not be affected by any inconsistent or contrary moratorium or other ordinances, resolution, rule or regulation enacted by the City that prohibits or regulates site improvement, or the erection, construction, reconstruction, or alteration of any building or structure or changes to the City's approval process for subdivisions after the date of this Agreement. Notwithstanding the foregoing, the rights and obligations of the parties under this Agreement shall be subject to later enacted and applicable state and federal laws and regulations and to the extent applicable, corresponding local ordinances enacted consequent to such state and federal laws. The Agreement shall be subject to any moratorium or ordinance enacted by the City to respond to a bona fide threat to public health and safety and involving facts and circumstances beyond the reasonable control of the city, and which threat represents a compelling, countervailing public interest. The City acknowledges that as of the date of this Agreement, to the best of its knowledge, information and belief, the City is presently unaware of any existing facts under which such moratorium or ordinance might be enacted.

6. Subdivision Plat Approvals and Compliance with City Design and Construction Standards. SITLA expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve SITLA from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats for the Project, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City, including but not limited to, the Washington City Subdivision Ordinance and Standards and Specifications for Design and Construction.

7. Bonding for Improvements. SITLA shall comply with all bonding for completion, restoration and guarantee of improvement requirements of the City. Specifically, as a condition of recording of any final plat for the Project, SITLA shall provide the following bonds, or equivalent security as allowed by Washington City ordinances:

(a) Completion of all Improvements or Completion Security. If SITLA does not complete all improvements prior to recordation of the final plat of the first phase, or any other phase, a completion bond shall be provided to the City. Such completion bond shall be the estimated cost for applicable construction costs for which a surety bond (or other form of security provided by the City's subdivision ordinance) will be required in the amount of 125% thereof. The security must be in a form acceptable to the City.

(b) Restoration Bond. If SITLA intends to install improvements rather than provide a completion bond, SITLA must provide a restoration bond to the City in the amount determined by the City. (If a restoration bond is not provided, plat recording may not occur until all improvements are installed and approved by the City.)

(c) Warranty Security. At the completion of the improvements for which completion security is required in Paragraph 7(a), SITLA shall provide the City with a warranty bond (or other form of security provided by the City's subdivision ordinance) in the amount of the greater of ten percent (10%) of the construction costs referred to in Paragraph 7(a), or ten percent (10%) of the actual construction costs for such improvements. The security must be in a form acceptable to the City.

(d) Application. In case of any discrepancy between the bonding/security provisions in this Agreement and the City's subdivision ordinance provisions regarding bonding/security, the provision providing greater protection to the City (as such is determined by the City) shall be applicable.

8. Term: Agreement to Run with the Land. The term of this Agreement shall be ten (10) years from the date first set forth herein. This Agreement shall be recorded against the Property as described in Exhibit A attached hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of SITLA in the ownership or development of any portion of the Property. Additionally, SITLA shall provide reasonably acceptable notes upon the final plat(s) prior to recordation giving notice of the primary provisions of this Agreement.

9. Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld.

10. No Joint Venture, Partnership or Third Party Rights. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between SITLA and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11. Binding Effect. Subject to the provisions of Paragraph 9, all of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

12. Integration. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

13. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

14. Previous Agreements. Except as otherwise expressly provided herein, this Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties pertaining to this Project.

15. Miscellaneous.

(a) Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

(b) Survival. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

(c) Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(d) Plat Notes. Primary provisions of this Agreement, as determined by the City, shall be included as notes on each final plat of the Project, as well as incorporated into Project CC&Rs and Homeowners Association corporate documents, if any.

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[SIGNATURE PAGES FOLLOW]

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

Attest:



By: Danice B. Bulloch  
Danice B. Bulloch, City Recorder

CITY:

Washington City,  
a Utah Municipality

By: Kenneth F. Neilson  
Kenneth F. Neilson, Mayor

STATE OF UTAH )  
SS.  
COUNTY OF WASHINGTON )

On this 21st day of November 2014, before me personally appeared KENNETH F. NEILSON and DANICE B. BULLOCH whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of WASHINGTON CITY, and that the foregoing document was signed by them by authority, and they acknowledged before me that Washington City executed the document and that the document was the act of Washington City for its stated purpose.



Tara Peniz  
Notary Public  
Residing at: Washington, UT

SITLA:

[Signature]  
By: Rodger Mitchell  
Its: Assistant Director

Approved as to Form  
Sean D. Reyes  
ATTORNEY GENERAL  
By: Michelle G. McCollis

STATE OF UTAH                     )  
  :SS.  
COUNTY OF Salt Lake            )

On the 18th day of December, 2014, personally appeared before me  
Rodger Mitchell and \_\_\_\_\_, personally known to me or proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

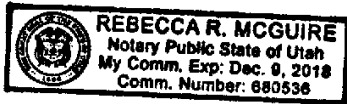


Alan Russell Roe  
NOTARY PUBLIC  
Residing at: Salt Lake County

Consented to by:

Brennan Holdings No. 100, LLC  
By: Robert M. Brennan  
Its: By: Robert M Brennan  
Managing Member  
STATE OF UTAH )  
  :SS.  
COUNTY OF Washington )

On the 8 day of January, 2015, personally appeared before me Robert Brennan whose  
identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly  
sworn (or affirmed), did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_,  
and did duly acknowledge to me that the foregoing document was entered into on behalf of such entity by authority  
of its organizational documents and that the document was the act of \_\_\_\_\_, for its  
stated purpose.



Rebecca R. McGuire  
Notary Public  
Residing at: Washington County



**EXHIBIT A  
(PROPERTY LEGAL DESCRIPTION)**



**Bush and Gudgell, Inc.**  
Engineers • Planners • Surveyors  
Salt Lake City - St. George  
www.bushandgudgell.com

**Development Agreement  
Legal Description  
(SITLA and Washington City)**

A PARCEL OF LAND COVERING THE TERRACES AT GREEN SPRINGS AND THE RESERVE AT GREEN SPRINGS AS SHOWN ON THE PRELIMINARY PLAT OF BOTH SUBDIVISIONS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT S 89°02'14" E 406.99 FEET FROM THE SOUTHWEST CORNER OF SECTION 3, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE NORTH BOUNDARY LINE OF NORTHBRIDGE ESTATES PHASES 3 RECORDED AND ON FILE AT THE WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH AND RUNNING THENCE N 2°42'34" E 0.27 FEET TO THE POINT OF A 350.00 FOOT RADIUS CURVE TO THE LEFT; THENCE 211.73 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 34°39'38" TO THE POINT OF A 650.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE 249.15 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°57'42"; THENCE N 9°59'22" W 113.07 FEET TO THE POINT OF A 650.00 RADIUS CURVE TO THE RIGHT; THENCE 321.28 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 28°19'12"; THENCE N 71°40'10" W 111.28 FEET TO THE POINT OF A 250.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE 154.83 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°29'06" TO THE POINT OF A 803.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE 31.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°13'08" TO A POINT ON THE WEST LINE OF SAID SECTION 3; THENCE N 1°13'49" E ALONG SAID WEST LINE 901.50 FEET; THENCE N 70°57'14" E 849.23 FEET TO THE POINT OF A NON-TANGENT 1300.00 FOOT RADIUS CURVE TO THE LEFT WHICH RADIUS BEARS N 49°54'47" E; THENCE 489.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°34'38"; THENCE S 61°39'51" E 353.10 FEET TO THE POINT OF A 800.00 FOOT RADIUS CURVE TO THE LEFT; THENCE 292.76 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°58'02"; THENCE S 7°22'07" W 72.15 FEET TO THE POINT OF A NON-TANGENT 760.00 FOOT RADIUS CURVE TO THE LEFT WHICH RADIUS BEARS S 80°50'44" E; THENCE 238.08 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°56'54" TO A POINT ON THE BOUNDARY OF THE WASHINGTON CITY GREEN SPRING MINOR SUBDIVISION RECORDED AND ON FILE AT THE WASHINGTON COUNTY RECORDERS OFFICE, STATE OF UTAH; THENCE ALONG SAID BOUNDARY THE FOLLOWING TWO (2) COURSES; (1) N 89°19'59" W 485.57 FEET; (2) S 0°43'38" E 1338.34 FEET TO THE SOUTH LINE OF SAID SECTION 3; THENCE N 89°02'14" W 923.77 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PACEL:

BEGINNING AT A POINT N 1°13'49" E 1004.63 FEET FROM THE SOUTHEAST CORNER OF SECTION 4, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE ARC OF A 803.00 FOOT RADIUS CURVE TO THE LEFT WHICH RADIUS BEARS S 51°35'48" W AND RUNNING THENCE 563.70 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°13'17" TO THE POINT OF A 150.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE 153.85 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 58°45'54"; THENCE N 88°44'18" W 129.16; THENCE N 1°15'42" E 263.69 FEET; THENCE N 70°57'14" E 767.06 FEET TO THE EAST LINE OF SAID SECTION 4; THENCE S 1°13'49" W ALONG SAID EAST LINE 901.50 FEET TO THE POINT OF BEGINNING.

CONTAINS 67.765 ACRES

**EXHIBIT B**  
**(PROJECT/PROPERTY PROPOSED LOT & DEVELOPMENT PLAT(s))**

