

Agreement Page 1 of 30  
Russell Shirts Washington County Recorder  
12/31/2020 09:18:28 AM Fee \$40.00 By  
SOUTHERN UTAH TITLE COMPANY

WHEN RECORDED RETURN TO:  
Brennan Family Holdings, LLC  
2382 South 1340 West  
St. George, UT 84770

**Development Agreement**

**by and between**

**Washington City,  
a Utah municipal corporation**

**and**

**Brennan Family Holdings, LLC,  
an Idaho Limited Liability Company**

216949

**TABLE OF CONTENTS**

|                                                                                                            | <b>Page</b> |
|------------------------------------------------------------------------------------------------------------|-------------|
| 1. DEFINITIONS                                                                                             | 1           |
| 2. RECITALS INCORPORATED                                                                                   | 4           |
| 3. FINDINGS AND AUTHORITY                                                                                  | 4           |
| 4. DEVELOPMENT PURSUANT TO PCD PLAN AND DESIGN GUIDELINES                                                  | 4           |
| 5. VESTED RIGHTS; EXCEPTIONS                                                                               | 5           |
| 6. DEVELOPMENT OF THE PROJECT                                                                              | 6           |
| 7. APPROVAL PROCESS FOR DEVELOPMENT APPLICATIONS                                                           | 7           |
| 8. APPLICATION UNDER CITY'S FUTURE LAWS                                                                    | 11          |
| 9. WASHINGTON DAM ROAD IMPROVEMENTS                                                                        | 11          |
| 10. SOUTHERN PARKWAY STORM DRAINAGE ISSUES                                                                 | 11          |
| 11. BRENNAN MUNICIPAL IMPROVEMENTS                                                                         | 12          |
| 12. FINANCIAL ASSURANCE                                                                                    | 13          |
| 13. BUILDER/SUBDEVELOPER PERFORMANCE OF BRENNAN MUNICIPAL IMPROVEMENTS,<br>BONDING BY BUILDER/SUBDEVELOPER | 13          |
| 14. DEDICATION OF BRENNAN MUNICIPAL IMPROVEMENTS                                                           | 13          |
| 15. COMMUNITY ASSOCIATION'S RESPONSIBILITIES FOR IMPROVEMENTS                                              | 14          |
| 16. OPEN SPACE                                                                                             | 14          |
| 17. CITY IMPROVEMENTS                                                                                      | 14          |
| 18. NO FURTHER EXACTIONS                                                                                   | 15          |
| 19. IMPACT FEES                                                                                            | 15          |
| 20. TERM; EXTENSION                                                                                        | 16          |
| 21. ON-SITE PROCESSING OF NATURAL MATERIALS                                                                | 16          |
| 22. ADMINISTRATIVE AMENDMENTS                                                                              | 16          |
| 23. AMENDMENT                                                                                              | 17          |
| 24. SEPARATE DEVELOPMENT AGREEMENTS                                                                        | 18          |
| 25. ASSIGNMENT AND TRANSFER OF DEVELOPMENT                                                                 | 18          |
| 26. DEFAULT                                                                                                | 19          |
| 27. NOTICE AND FILINGS                                                                                     | 19          |
| 28. WAIVER                                                                                                 | 20          |
| 29. COUNTERPARTS                                                                                           | 20          |
| 30. CAPTIONS AND CONSTRUCTION                                                                              | 20          |
| 31. FURTHER ACTS                                                                                           | 20          |
| 32. ESTOPPEL CERTIFICATE                                                                                   | 20          |

**TABLE OF CONTENTS**  
(continued)

|                                                 | <b>Page</b> |
|-------------------------------------------------|-------------|
| 33. TIME OF THE ESSENCE: FORCE MAJEURE          | 20          |
| 34. TERMINATION ON SALE TO THE PUBLIC           | 20          |
| 35. NO PARTNERSHIP OR THIRD-PARTY BENEFICIARIES | 20          |
| 36. NAMES AND PLANS                             | 21          |
| 37. GOOD STANDING AUTHORITY                     | 21          |
| 38. SEVERABILITY                                | 21          |
| 39. GOVERNING LAW                               | 21          |
| 40. RECORDATION                                 | 21          |
| 41. NO WAIVER OF GOVERNMENTAL IMMUNITY          | 21          |
| 42. ATTORNEY'S FEES                             | 21          |
| 43. ENTIRE AGREEMENT                            | 21          |

## DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is entered into and effective as of the \_\_\_\_ day of December, 2020, (the “**Effective Date**”) by and between Washington City, a Utah municipal corporation (the “**City**”) and Brennan Family Holdings, LLC, an Idaho Limited Liability Company (“**Brennan**”). City and Brennan may hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

### Recitals

- A. Brennan is the owner of approximately 605 acres of property located in Washington City, Utah in the vicinity of the Southern Parkway and accessed off the Long Valley Road Interchange of the Southern Parkway. The property is described with specificity in Exhibit “A”, attached to this Agreement and incorporated by reference (the “**Property**”). The Property is to be developed and known as “Long Valley Trails”. Brennan desires to develop the Property as a planned community development in a manner consistent with the City’s Planned Community Development Ordinance (the “**PCD Ordinance**”), *Washington City Code*, Title 9, Chapter 13A (2020), a copy of which is included in Exhibit “B” attached and incorporated by reference.
- B. On or about December 9, 2020, the City Council granted final approval for a planned community development project plan for the Project (the “**PCD Plan**”). A copy of the PCD Plan is attached hereto as Exhibit “C” and incorporated by reference.
- C. Brennan and the City desire to enter into this Agreement in order to implement the PCD Plan to more fully set forth the covenants and commitments of each Party, while giving effect to applicable State law. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to the terms of, *Utah Code Ann.* § 10-9a-102 (2020).

### Agreement

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements set forth below and other good and valuable and consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. Definitions.

“**Administrative Amendment**” means and includes any amendment to this Agreement or other action that may be approved by the Administrator as provided in Section 22.

“**Administrator**” means the person designated by the City as the Administrator of this Agreement.

“**Agreement**” means this Development Agreement including all of its Exhibits.

“**Applicant**” means a person or entity submitting a Development Application or a request for an Administrative Amendment.

“**BLM**” means the United States Department of the Interior, Bureau of Land Management.

“**Brennan**” means Brennan Family Holdings, LLC an Idaho Limited Liability Company, and its respective assignees or transferees as permitted by this Agreement.

“**Brennan Municipal Improvements**” means the improvements described in Section 11.

“**Building Permit**” means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure on any portion of the Project, or to construct any of the Brennan Municipal Improvements.

“**Buildout**” means the completion of all of the development on all of the Project.

“**Capital Facilities Plan**” means a plan to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

“**CC&Rs**” means the Conditions, Covenants and Restrictions regarding certain aspects of design and construction on the Property to be recorded in the chain of title on the Property.

“**City**” means Washington City, a Utah municipal corporation.

“**City Consultants**” means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage for reviewing certain aspects of the development of the Project.

“**City Council**” means the elected City Council of the City.

“**City Improvements**” means the improvements described in Section 17.

“**City’s Future Laws**” means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect after the Effective Date, and when a Development Application is submitted for a part of the Project which may be applicable to the Development Application depending upon the provisions of this Agreement.

“**City’s Vested Laws**” means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that were in effect as of the Effective Date of this Agreement, as contained in *Washington City Code*, Titles 8, 9 and 10, a digital copy of which is attached as Exhibit “B”.

“**Community Home Owners Association**” means one or more associations formed pursuant to State law to perform the functions of an association of property owners.

“**Denial**” means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or “redlines” by City staff.

“**Densit[y][ies]**” means the number of Residential Dwelling Units allowed per acre.

“**Development Application**” means an application to the City for development of a portion of the Project including a Final Plat, a Building Permit or any other permit, certificate or other authorization from the City required for development of the Project or any portion thereof.

“**Development Report**” means a report containing the information specified in Sections 6.4, 6.5.1 and/or 6.5.2 submitted to the City by Brennan for the development by Brennan of any Parcel or for the sale

of any Parcel to a Subdeveloper or the submittal of a Development Application by a Subdeveloper pursuant to an assignment from Brennan.

“**Dixie REA**” means the Dixie Rural Electric Association.

“**Final Plat**” means the recordable map or other graphical representation of land prepared in accordance with *Utah Code Ann.* § 10-9a-603 (2020), and approved by the City, effectuating a Subdivision of any portion of the Project.

“**General Plan**” means a plan approved by the City that sets forth general guidelines for the proposed future development of the property in the City, including the Property, as required and contemplated under Utah Code § 10-9a-401, et seq. (2020), as amended.

“**Impact Fees**” means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in *Utah Code Ann.* § 11-36a-101, et seq. (2020).

“**Intended Uses**” means the use of all or portions of the Project for single-family, townhomes, condominiums and multi-family apartments, public/private facilities, businesses, commercial areas, RV storage, pool(s), professional and other offices, services, open spaces, parks, trails, recreation courts and other uses as more fully specified in the PCD Plan.

“**Land Use Act**” *Utah Code Ann.* § 10-9a-101, et seq. (2020).

“**Long Valley Trail System**” means the trail system that is planned and designed as an amenity to serve the Project, as further described in the PCD Plan.

“**Maximum Residential Units**” means the development on the Property of not more than Two Thousand Three Hundred Sixty-One (2,361) Residential Dwelling Units, as provided in the PCD Plan.

“**Modification Application**” means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

“**Non-City Agency**” means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of any aspect of the Project.

“**Outsourc[e][ed][ing]**” means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this Agreement.

“**Parcels**” means an area identified on the PCD Plan for development of a particular type of Intended Use that is not an individually developable lot.

“**PCD Ordinance**” shall have the meaning set forth in Recital A.

“**PCD Plan**” means the planned community development project plan for the Project as defined in Recital B. A copy of the PCD Plan is attached as Exhibit “C”.

“**Planning Commission**” means the City’s Planning Commission established by the Zoning Ordinance.

“**Project**” means the development to be constructed on the Property pursuant to the PCD Plan and this Agreement, with the associated Intended Uses, Densities, and all of the other aspects approved as part of this Agreement.

“**Property**” shall have the meaning set forth in Recital A.

“**Public Lot**” shall have the meaning set forth in Section 34.

“**Residential Dwelling Units**” means, for purposes of calculating Density, a unit intended to be occupied for residential living purposes; one single-family residential dwelling and each separate unit in a multifamily dwelling, apartment building or condominium equals one Residential Dwelling Unit.

“**State**” means the State of Utah.

“**Subdeveloper**” means an entity not “related” (as defined by Internal Revenue Service regulations) to Brennan which purchases a Parcel for development.

“**Subdivision**” means the division of any portion of the Project into a subdivision pursuant to State law and/or the Zoning Ordinance.

“**System Improvement**” means those elements of infrastructure that are defined as System Improvements pursuant to *Utah Code Ann.* § 11-36a-102(21) (2020).

“**Transfer Deed**” shall have the meaning set forth in Section 6.5.

“**UDOT**” means the Utah Department of Transportation.

“**Zoning Ordinance**” means the City’s Zoning Ordinance adopted pursuant to the Land Use Act that was in effect as of the date of this Agreement as a part of the City’s Vested Laws and, as applicable, amendments thereto including City’s Future Laws.

**2. Recitals Incorporated.** The above Recitals are substantive and are incorporated into this Agreement as if set forth fully herein.

**3. Findings and Authority.**

3.1 **Findings.** The City finds that: (a) the PCD Plan and this Agreement are consistent with the City’s General Plan, the PCD Ordinance and all other applicable ordinances, rules, regulations and policies of the City; and (b) development of the Property pursuant to this Agreement and the PCD Plan will result in significant planning and economic benefits to the City and will further the health, safety and welfare of the City and its residents by, among other things: (i) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the City; (ii) providing for the dedication of infrastructure improvements to be completed in several phases as set forth herein; (iii) increasing property tax and other revenues to the City derived from improvements to be constructed on the Property; and (iv) creating jobs from the construction and development activities located on the Property.

3.2 **Acknowledgments.** The City acknowledges Brennan is relying on the PCD Plan, the execution and continuing validity of this Agreement and the City’s performance of its obligations hereunder. Brennan has expended substantial funds in the development of the Property and, in reliance upon this Agreement, will continue to expend additional funds. Brennan acknowledges that the City is relying on the PCD Plan, the execution and continuing validity of this Agreement, and Brennan’s

performance of its obligations under this Agreement, in continuing to perform the obligations of Brennan hereunder. The City has expended substantial time, resources and funds in connection with the proposed development of the Property and, in reliance of this Agreement, will continue to expend additional time, resources and funds.

**4. Development Pursuant to PCD Plan and Design Guidelines.**

4.1 PCD Plan. City acknowledges that the PCD Plan satisfies the requirements of the PCD Ordinance for the development of the Project. Upon approval by the City Council, the PCD Plan becomes incorporated into and part of the City's Zoning Ordinance and the City's General Plan. The PCD Plan describes the Project as a phased master planned community which will include residential and community-related development. The PCD Plan shows the portions of the Project that will be developed as well as natural open spaces. The residential component of the Project will provide various types of housing ranging from single-family homes to townhomes, condominiums and possibly apartments. Community-related facilities will include without limitation, a community center, RV storage, pool(s), recreation courts, and connecting trails and park(s). The PCD Plan is an integral part of this Agreement and is fully incorporated into this Agreement.

4.2 Additional PCD Plan Contents. The PCD Plan generally depicts the Intended Uses, Densities, drainage, major roads and community facilities that will be installed and constructed upon the Property.

4.3 Design Guidelines. The PCD Plan provides a detailed set of Design Guidelines and Standards (the "**Design Guidelines**"), which will govern development on the Property. Several builders may be designing and constructing homes and units upon different Parcels at the same time, and the Design Guidelines are intended to guide development and construction over the entire Project, to ensure continuity in community and are an integral part of this Agreement and fully incorporated into this Agreement.

4.4 Purpose; Authorization to Develop. The Parties desire that the City has reasonable certainty concerning the manner in which the Property will be developed, and that Brennan will have reasonable certainty in proceeding with development of the Property. Brennan shall comply with terms and conditions of the PCD Plan and this Agreement, and the City authorizes Brennan to develop the Property as set forth in the PCD Plan and this Agreement.

**5. Vested Rights; Exceptions.**

5.1 Vested Rights. To the maximum extent permissible under the laws of the State and the United States and at equity, this Agreement grants and vests in Brennan all rights, consistent with the PCD Plan and City's Vested Laws, to develop the Project according to the PCD Plan as provided in this Agreement. The Parties intend that the rights granted to Brennan and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights and pursuant to *Utah Code Ann.* § 10-9a-509 (2020). It is expressly understood by City that Brennan may assign all or portion of its rights under this Agreement and the PCD Plan, provided such assignment conforms with the requirements of, and assignees agree to be bound by the terms of, this Agreement.

5.2 Countervailing, Compelling Public Interest. City and Brennan acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah pursuant to *Utah Code Ann.* § 10-9a-509(1)(a)(ii) (2020). Nothing in this Agreement shall limit the future exercise of power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement. This Agreement is not intended to and does not bind the City or its City



Council in the independent exercise of its legislative discretion, except to the extent specifically set forth in this Agreement. Notwithstanding the retained power of City to enact such legislation, such legislation shall only modify Brennan's vested rights as set forth herein or to the extent that facts and circumstances are present which require application of the exceptions to the vested rights doctrine as articulated in Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980).

5.3 City's Future Laws. The restrictions on the applicability of the City's Future Laws to the Project, as referenced in Section 5.1, are subject to the following exceptions:

5.3.1 Agreement. City's Future Laws that Brennan agrees in writing to the application thereof to the Project.

5.3.2 Compliance with State and Federal Laws. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and federal laws and regulations affecting the Project.

5.3.3 Safety Code Updates. City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or federal governments and are required to meet legitimate concerns related to public health, safety or welfare.

5.3.4 Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.

5.3.5 Fees. Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

5.3.6 Countervailing, Compelling Public Interest. Laws, rules or regulations that the City Council finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to *Utah Code Ann.* § 10-9a-509(1)(a)(ii) (2020).

5.3.7 Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

5.3.8 Procedural Requirements. Revisions and amendments to the City's procedures for submission, review and action on land use or development-related applications, as long as the same do not substantively interfere with Brennan's vested rights under Section 5.1.

5.4 Invalidity. Brennan covenants not to bring suit to have any of the City's Vested Laws declared to be unlawful, unconstitutional or otherwise unenforceable. If any of the City's Vested Laws are declared to be unlawful, unconstitutional or otherwise unenforceable, then Brennan will, nonetheless comply with the terms of this Agreement. Brennan shall also in that event cooperate with the City in adopting and agreeing to comply with a new enactment by the City which is materially similar to any such stricken provisions and which implements the intent of the Parties in that regard as manifested by this Agreement.

5.5 Moratoria. The Project and the rights and obligations of Brennan under this Agreement shall be subject to any regulation, ordinance or moratorium 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 represent a compelling, countervailing public interest adopted pursuant to *Utah Code Ann.* § 10-9a-504 (2020).

**6. Development of the Project.**

6.1 Project Maximum Density. Absent amendment of the PCD Plan, this Agreement, or the enactment of laws, rules or regulations required to comply with State or federal laws, rules or regulations, or that the City Council finds are necessary to avoid jeopardizing a compelling, countervailing public interest, at Buildout of the Project, Brennan shall be entitled to have developed the Maximum Residential Units and to have developed the other Intended Uses, as specified in the PCD Plan.

6.2 Parcels Intended Uses and Densities. The Property will consist of a number of “Parcels,” with the locations and details of the Parcels’ configuration and design, public improvements and any other similar items regarding development of the Parcels to be materially consistent with the PCD Plan. Intended Uses and Densities are shown on the PCD Plan, however the Parties acknowledge that the most efficient and economic development of the Project depends on numerous factors, such as market orientation and demand, interest rates, competition, and similar factors. Accordingly, the timing, sequencing, and phasing of development of the various Parcels in the Project shall be as determined by Brennan, and to the extent that a Development Application is materially consistent with the PCD Plan, the same may be approved as an Administrative Amendment.

6.3 Use of Density. Intended Uses and Densities are shown on the PCD Plan, and the Design Guidelines have established the allowable building heights, building setbacks and other requirements for each type of Intended Use. Upon approval of the City as an Administrative Amendment, Brennan may adjust the relative location of all Intended Uses and may use any of the Maximum Residential Units in the development of any Parcel so long as adjusted Density within a Parcel does not exceed One Hundred and Fifteen Percent (115%) of the Density designated for such Parcel in the then-current PCD Plan. These Section 6.3 adjustments of relative locations and increase of Density(ies) shall not apply (nor may such adjustments be approved/permitted as an Administrative Amendment) within Parcels 14 and 15 (nor any other Parcels in the PCD Plan for which the Intended Uses are designated as “condominiums” or “multi-family apartments”). An adjustment of the relative locations of, or increase in the Density of, Parcels 14 and 15 (including any Parcels for which the Intended Use is designated as “condominiums” or “multi-family apartments”) may be approved only upon the amendment of the PCD Plan pursuant to a Modification Application. In no event shall the Maximum Residential Units be exceeded. Excepting Parcels 14 and 15 (or Parcels designated for use as “condominiums” or “multi-family apartments”), any of these Section 6.3 adjustments constitute an Administrative Amendment, if approved by the Administrator pursuant to Section 22.1.3 of this Agreement.

6.4 Accounting for Density for Parcels Developed by Brennan. At the recordation of a Final Plat for any Parcel(s) developed by Brennan, Brennan shall provide City a Development Report showing any Density used with the Parcel(s) and the Density remaining for the Project.

6.5 Parcel Sales. City agrees that, if consistent with the provisions of *Utah Code Ann.* § 10-9a-103(65)(c)(v) (2020), Brennan may convey portions of the Project by metes and bounds prior to recordation of a plat of subdivision for such portion. Pursuant to the provisions of *Utah Code Ann.* § 10-9a-103(65)(c)(v) (2020), City agrees to execute an acknowledgment on such deeds of conveyance (each a “**Transfer Deed**”) for the purposes of acknowledging only City’s consent to the conveyance by metes and bounds of the real property that is the subject of the applicable Transfer Deed and that such transfer does

not constitute subdivision under said statute. The Parties expressly acknowledge that City's execution of a Transfer Deed shall not in any way be deemed a waiver of the requirement that the property transferred pursuant to such Transfer Deed shall be subject to the approval process set forth in this Agreement, including without limitation, the requirement regarding recordation of a Final Plat. Approval and recording of a Transfer Deed shall not result in waiver of any requirement in the City's Vested Laws or, if applicable pursuant to Section 5.3, City's Future Laws, to complete any Brennan Municipal Improvements under *Utah Code Ann. § 10-9a-604.5* (2020).

6.5.1 Accounting for Density for Parcels Conveyed to Subdevelopers. Any Parcel sold by Brennan to a Subdeveloper without a Final Plat recorded shall include the transfer of a specified portion of the Maximum Residential Units and, for any non-residential use, shall specify the amount and type of any such other use sold with the Parcel. At the recordation of a Final Plat or other document of conveyance for any such Parcel sold to a Subdeveloper, Brennan shall provide City a Sub-Development Report showing the portion of the Maximum Residential Units and/or other type of use for the Parcel(s), and any unused portion of the transferred Maximum Residential Units.

6.5.2 Return of Unused Density. If any portion of the Maximum Residential Units transferred to a Subdeveloper are unused by the Subdeveloper at the time the Parcel(s) transferred with such Density receives approval for a Final Plat for the final portion of such transferred Parcel(s), the unused portion of the transferred Maximum Residential Units shall automatically revert back to Brennan and Brennan shall file with the City a Development Report. In no event shall the Maximum Residential Units be exceeded.

## 7. Approval Process for Development Applications.

7.1 Phasing. The City acknowledges that Brennan and any other Applicants who have purchased Parcels of the Project may submit multiple applications from time-to-time to develop Parcels or portions thereof.

7.2 Processing. Approval processes for Development Applications shall be as provided in the City's Vested Laws, except as otherwise provided in this Agreement. Development Applications shall be approved by the City if they comply with the City's Vested Laws, City's Future Laws, if applicable pursuant to Section 5.3, and conform to this Agreement.

7.3 City's Cooperation in Processing Development Applications. The City shall cooperate reasonably in promptly and fairly processing Development Applications.

### 7.4 Planning Commission Review of Development Applications.

7.4.1 Unless an Applicant consents to a different schedule, all aspects of a Development Application subject to review by the Planning Commission pursuant to the City's Vested Laws, City's Future Laws, if applicable pursuant to Section 5.3, and this Agreement shall comply with the public hearing and public meeting requirements of City and by Utah State Statutes.

7.4.2 Hearing Schedule. Any public hearing or public meeting relating to a Development Application shall be scheduled in accordance with City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3. City will reasonably cooperate with each Applicant in such scheduling, including the avoidance of unnecessary or unreasonable delays.

7.4.3 Recommendation. At the conclusion of public hearing(s) or public meeting(s) on a Development Application, the Planning Commission shall make its determination and/or recommendation in accordance with City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3.

7.5 City Council Review of Development Applications.

7.5.1 Consideration by the City Council. After the Planning Commission has made or been deemed to have made a recommendation to the City Council on a Development Application, if required under the City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3, and this Agreement, the City Council shall consider the Development Application.

7.5.2 Hearing Schedule. Any public hearing or public meeting required before the City Council shall be scheduled in accordance with City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3. City will reasonably cooperate with each Applicant in such scheduling, including the avoidance of unnecessary or unreasonable delays. Applicant shall respond in good faith to any requests for additional information by the City Council during its consideration of any Development Application.

7.5.3 Decision of the City Council. At the conclusion of the City Council's public hearing(s) and/or public meeting(s) considering any Development Application, or at any time during any subsequent meeting, the City Council shall make a final determination on the granting or denial of the Development Application in accordance with City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3.

7.6 Outsourcing of Processing of Development Applications. Within fifteen (15) business days after delivery of a Development Application Applicant may request that the City Outsource the review of any aspect of the Development Application to ensure that it is processed in an expedited manner. If City, in its sole and absolute discretion, approves such request, then City shall promptly estimate the reasonably anticipated differential cost of Outsourcing in the manner selected by the City in good faith consultation with the Applicant (either overtime to City employees or the hiring of a City Consultant). If the Applicant notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs, then Applicant shall deposit in advance with the City the estimated differential cost and the City shall then promptly precede with the Outsourced work. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by Applicant) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Applicant shall, within ten (10) business days pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

7.7 Non-City Agency Reviews. If any aspect or a portion of a Development Application is governed exclusively by a Non-City Agency an approval for these aspects does not need to be submitted by Applicant for review by any body or agency of the City. The Applicant shall timely notify the City of any such submittals and promptly provide the City with a copy of the requested submissions. The City may only grant final approval for any Development Application subject to compliance by Applicant with any conditions required for such Non-City Agency's approval.

7.8 Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, or certification and/or other action by a person holding a license or professional certification required by the State or other governmental authority in a particular discipline, shall be so signed, endorsed, certified or otherwise acted upon signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The Development Application shall thus generally be deemed to meet the specific standards which are the subject of the

opinion or certification without further review by the City or any other agency of the City. It is not the intent of this Section to preclude the normal process of the City's "redlining", commenting on or suggesting alternatives to the proposed designs or specifications in the Development Application. Generally, the City should endeavor to make all of its redlines, comments or suggestions at the time of the first review of the Development Application unless changes to the Development Application raise new issues that need to be addressed.

7.9 Expert Review of Certifications Required for Development Applications. If the City, notwithstanding certification under Section 7.8 by an expert engaged by Applicant, subjects the Development Application to a review by City Consultants, the City shall bear the costs of such review if the City Consultants determine that the Applicant's expert certification was materially correct and that the City's requiring a review of the certification in the Development Application was unreasonable and not made in good faith. If the City Consultants determine that the City's requirement of a review was reasonable and made in good faith, then payment of the reasonable and actual costs of the City Consultants' review shall be the responsibility of Applicant.

7.9.1 Selection of City Consultants for Review of Certifications Required for Development Applications. The City Consultant undertaking any review by the City required or permitted by this Agreement shall be selected from a list generated by the City for each such City review pursuant to a "request for proposal" process or as otherwise allowed by City ordinances or regulations. Applicant may, in its sole discretion, strike from the list of qualified proposers any of such proposed consultants so long as at least three (3) qualified proposers remain for selection. The anticipated cost and timeliness of such review may be a factor in striking an expert.

7.10 Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a Development Application such as for structures, water tanks, "threatened and endangered species" and other similar matters which are not required by the City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3, to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants under the processes specified in Section 7.9.1 with the actual and reasonable costs being the responsibility of Applicant. If the City needs any other technical expertise other than as specified above, under extraordinary circumstances specified in writing by the City, the City may engage such experts as City Consultants under the processes in Section 7.9.1 with the actual and reasonable costs being the responsibility of Applicant.

7.11 City Denial of a Development Application. If the City denies a Development Application, the City shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this Agreement, the PCD Plan and/or the City's Vested Laws or, if applicable pursuant to Section 5.3, the City's Future Laws.

7.12 Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of the Denial of any Development Application to attempt to resolve the issues specified in the Denial of a Development Application.

7.13 City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, Applicant shall appeal any such denial through the appropriate procedures of the Non-City Agency for such a decision and not through the processes specified below.

7.14 Mediation of Development Application Denials.

7.14.1 Issues Subject to Mediation. Except as otherwise provided herein, issues resulting from the City's Denial of a Development Application shall be subject to mediation.

7.14.2 Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with expertise regarding the issue in dispute. If the Parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the Parties regarding the mediation issue and promptly attempt to mediate the issue between the Parties. If the Parties are unable to reach agreement, then upon mutual agreement of the Parties they may request that the mediator notify the Parties in writing of the resolution that the mediator deems appropriate; provided that the mediator's opinion shall not be binding on the Parties or admissible in any other proceedings.

7.15 Arbitration of Development Application Objections.

7.15.1 Arbitration. Issues regarding the City's Denial of a Development Application, particularly those that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc., may, by mutual agreement, be submitted to arbitration.

7.15.2 Mediation Required Before Arbitration. Prior to any arbitration the Parties shall first attempt mediation as specified in Section 7.14.

7.15.3 Arbitration Process. If the City and Applicant are unable, through mediation, to resolve an issue regarding the City's Denial of a Development Application and mutually agree to submit any such issue to arbitration, the Parties shall attempt within ten (10) business days of their agreement to appoint as an arbitrator a mutually acceptable expert in the professional discipline(s) of the issue in question. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the Parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties. If the arbitrator determines as a part of the decision that the City's position was not only incorrect but was also maintained unreasonably and not in good faith, then the arbitrator may order the City to pay the arbitrator's fees.

**8. Application Under City's Future Laws.** Without waiving any rights granted by this Agreement, Brennan may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Brennan at any time to submit a Development Application under the City's Future Laws shall not, except where preempted pursuant to Section 5.3, be construed to prevent Brennan from relying on the City's Vested Laws for other Development Applications.

**9. Washington Dam Road Improvements.** In anticipation of developing the Property, Brennan has entered into several agreements under which it has made financial contributions and assisted in acquiring the dedication of lands in connection with the construction of Washington Dam Road and underlying

infrastructure, including storm drain, culinary water, sanitary sewer, telephone, cable TV and natural gas lines. These agreements outline Brennan's responsibility to construct the roadway, including design, grading, asphalt paving, curb and gutters, storm drain improvements and to facilitate the installation of natural gas, TV and telephone improvements. The City agrees to install the culinary water facilities within and along the roadway. In consideration of Brennan's construction of Washington Dam Road, including participation in and accommodating for the installation of the public trail along the Washington Dam Road, Washington City agrees to contribute the Sanitary Sewer funds outlined in its Capital Facilities Plan for this area towards the construction of a Sewer lift Station, pressure line and gravity flow outfall line to the existing line located in 3650 South. This Agreement shall not be interpreted to modify any provision of those agreements.

**10. Southern Parkway Storm Drainage Issues.** The recently constructed Southern Parkway as shown on the PCD Plan has caused storm water flows from the improved roadway to travel under the Southern Parkway onto and through the Property. The City acknowledges that the Property has a bona fide right to allow the historical natural stormwater flows to continue to flow as they naturally have. Brennan acknowledges that all additional storm water flows or changes in the characteristics of the historical storm water flows are its responsibility.

Currently, the storm water flows to an old, undocumented and abandoned irrigation pond located on private land parcels, identified with Washington County tax identification #W-4191-C, W-4191-A-3-B-HV and 4191-A-3-B-HV. To the best of Brennan and the City's knowledge, UDOT has not obtained any agreement or written documentation allowing the storm water generated by the Southern Parkway to flow onto either the Project and/or the privately-owned irrigation pond. Brennan's improvement plans, as shown in the PCD Plan, propose that the historical natural storm water flows be piped as they exist through the Project and that the pipe be extended through the private parcels and along Washington Dam Road to a suitable location that it can be discharged into the Virgin River. Brennan agrees to make its best efforts to obtain the required easements from the private landowners and to work with UDOT to address the storm water flows created by the construction of the Southern Parkway. Brennan does not agree to incur any expenses related to the construction of any such improvements required by the Southern Parkway including without limitation, the foregoing storm water improvements. The City agrees to reasonably assist Brennan in its efforts to obtain the required easements and to work with UDOT to resolve the issues related to the Southern Parkway.

Brennan further agrees to adhere to the master drainage plan and report contained within the PCD Plan. The PCD Plan shows that all "post development flows" defined as any additional flows or changes in the characteristic of flows caused by the Project's planned improvements be totally contained and addressed within the Project. Since the Property has not added to or changed the historical flows and since Brennan is willing to make its best efforts to resolve the issues related to the historical flows, in the event that Brennan installs and constructs portions of the Brennan Municipal Improvements which are System Improvements to the storm drainage system, the City shall ensure that Brennan is either not charged Impact Fees in connection with such System Improvements or that Brennan otherwise receives credits, adjustments or reimbursements for such System Improvements as required by State law.

**11. Brennan Municipal Improvements.** The improvements depicted in the PCD Plan, and set forth in this section, represent additional infrastructure improvements intended to service the Project. This section is intended to obligate Brennan to bring the major infrastructure from the perimeter of the Property internally to the boundary of each individual Parcel. Subject to the performance by the City of its obligations hereunder, Brennan shall cause improvements to be installed, constructed and completed, in conformance with applicable governmental standards and the PCD Plan (the "**Brennan Municipal Improvements**"). The Brennan Municipal Improvements will be installed and constructed in stages or phases as necessary to support development of each Parcel. Brennan shall be responsible for the costs to install, construct and

complete the Brennan Municipal Improvements. The Brennan Municipal Improvements to be constructed include:

11.1 Water Distribution Systems. All pipes, valves, fittings, pressure reducing valve stations, air release valves and other distribution facilities within the Project for the purpose of distributing water to and within the Parcels.

11.2 Sewer Collection System. All pipes, manholes, clean outs and other collection facilities within the Project for the purpose of collecting and transporting sanitary sewer from and within the Parcels.

11.3 Electrical Distribution System. The Project will be serviced by the Dixie REA. Brennan agrees to enter into all required contracts and agreements with Dixie REA to provide electrical service to all lots, units and amenities within the Project. Brennan has already completed an agreement to upgrade the existing transmission line running through the Project and Dixie REA has already completed the required infrastructure to serve the entire Project.

11.4 Roadways. All roadways contained within the Project and shown on the PCD Plan and addressed in the transportation plan and traffic study portion of the PCD Plan, will be constructed by Brennan. With the express exception of the private alleyways used in the Club Cottages (as shown on the PCD Plan), all roadways shown on the PCD Plan are intended to be public roadways and upon completion of construction shall be dedicated to the City, subject to approval and acceptance by City.

11.5 Washington Dam Road. That portion of Washington Dam Road extending from the existing improved section to the perimeter boundary of the Project for approximately 7,179 feet will be constructed as shown on the approved plans for "Washington Dam Road" as approved by the City's Public Works Department. Brennan will initially pay all costs for these improvements.

11.6 Long Valley Parkway Extension. The construction of the extension of Long Valley Parkway from the southern boundary of the Project to the proposed 3650 South Interchange on the Southern Parkway, which will only be required to meet the need for an emergency secondary access or to comply with future traffic needs as determined by subsequent Traffic Impact Studies. Brennan has agreed to assist City in acquiring the required right of way from the BLM and to pay any reasonable costs to acquire this right of way including an environmental assessment and the reasonable costs associated with providing any mitigation required by the BLM.

11.7 Community Trail System. The Long Valley Trail System depicted on the PCD Plan, which includes a variety of paved, gravel and natural trails, shall be constructed by Brennan. The Long Valley Trail System is intended to be a public trail system and upon completion of construction shall be dedicated to the City, subject to approval and acceptance by City. Upon completion, acceptance and dedication of the Long Valley Trail System to the City, the City agrees to enter into an applicable agreement to own and maintain the same. The Long Valley Trail System shall be an integrated part of the City's public park system. The City reserves the right to reject the dedication of these trails if it is determined that these trails do not meet the City's standards.

11.8 Storm Water Drainage/Detention Basins. The offsite storm water issues have been addressed in Section 10 of this Agreement. All storm water flows generated by the development of the Project will be controlled and contained within onsite detention basins, the details of which are contained in the storm water drainage plan and report included in the PCD Plan. All improvements including pipe, inlet and outlet structures, manholes and detention basins will be constructed by Brennan. Upon completion and approval of these facilities, Brennan will convey and/or dedicate these facilities—*excluding* the detention basins—to the City, at which time the City will assume ownership and maintenance of these



facilities. Upon completion and City-approval of the detention basins, Brennan shall convey ownership of the detention basins to the/a Community Home Owners Association (*see* Section 14 of this Agreement), which shall thereafter own, operate and maintain the detention basin(s).

11.9 Community Parks. The Project will include a variety of private and public community parks as described and depicted in the PCD Plan, including the large “central park” described and depicted in the PCD Plan—which the City identifies as a significant future park for residents of the Project and City. These parks and integrated trails will meet the recreational needs of the entire Project. Therefore, after the completion of any public park, Brennan shall dedicate the underlying park property and the park improvements to City. Brennan shall have responsibility for designing and constructing the parks, in consultation and cooperation with the City; provided, however, the design and construction of the parks shall be subject to reasonable approval by the City’s Leisure Services Director or other City designee. The City reserves the right to reject the dedication of any of these parks, if it is determined that any such park does not meet the City’s standards.

12. **Financial Assurance**. To the extent permissible under applicable State law and City’s Vested Laws, or if applicable pursuant to Section 5.3, the City’s Future Laws, the City agrees that this Agreement constitutes the written undertaking of Brennan to cause the offsite improvements that Brennan is required to make under this Agreement to be installed, constructed and completed. To extent that City has adopted or does adopt an amendment to the Planned Community Development Ordinance, Chapter 13A of the Zoning Ordinance, so allowing, the City may exempt Brennan from bond requirements for such offsite improvements. Bonding required under the normal City Subdivision process shall be required.

13. **Builder/Subdeveloper Performance of Brennan Municipal Improvements; Bonding by Builder/Subdeveloper**. Brennan may offer, for sale or lease, Parcels to builders or Subdevelopers in a phased manner. Brennan may enter into different types of transactions, including without limitation, sales, development leases or ground leases. As a condition of such transactions, Brennan may contractually obligate the builder or Subdeveloper to install, complete and dedicate all or any portion of any of the Brennan Municipal Improvements. Such builders or Subdevelopers shall not be permitted to further assign such obligations. The City may require of such builders or Subdevelopers a bond or any other financial assurance allowed by its ordinances for any such Brennan’s Municipal Improvements. At such time as the City either receives or declines to require such financial assurance, Brennan’s obligation shall terminate with respect to such Brennan Municipal Improvements. Anything in the Zoning Ordinance notwithstanding, Brennan may obtain building permits and/or temporary Certificates of Occupancy for model homes, home shows, sales offices, construction trailers or similar temporary uses in accordance with *Utah Code Ann. §10-9a-802(2)(d)* (2020) prior to the installation of all Brennan Municipal Improvements required to be eventually completed so long as such installation is secured pursuant to the City’s Vested Laws or, if applicable pursuant to Section 5.3, the City’s Future Laws.

14. **Dedication of Brennan Municipal Improvements**.

14.1 Process and Conditions. Brennan intends to dedicate, and the City intends to accept the dedication, of the Brennan Municipal Improvements. Brennan shall satisfy the obligation to dedicate the Brennan Municipal Improvements by causing: i) the filing of a dedication plat; ii) the filing of a final subdivision plat including dedication; or iii) a builder/developer/Subdeveloper to be contractually bound to post a satisfactory bond with the City or to complete and perform the improvements in accordance with *Utah Code Ann. §10-9a-604.5* (2020). The City shall approve and accept dedication of any Brennan Municipal Improvements, in whole or in part, as necessary to support the phase of development as long as the Brennan Municipal Improvements are materially consistent with the PCD Plan and the applicable Final Plat, and determined by City to meet its building code or other similar standards for such improvements. The City shall own, operate and maintain the dedicated, approved and accepted Brennan Municipal

Improvements without further charge or cost to Brennan; provided, however, at the request of the City, and to the extent not prohibited by law or contract, Brennan shall assign to the City any contractual warranty rights existing for such Brennan Municipal Improvements. As necessary, Brennan will contractually obligate its Subdevelopers/builders to dedicate any applicable portion of the Brennan Municipal Improvements in accordance with this Agreement. In any event, the following plat dedication language (and or other language required by the City at the time of recording) shall be acceptable to the City:

KNOW ALL MEN BY THESE PRESENTS that the undersigned owner(s) of all the hereon described tract of land, having caused the same to be subdivided into lots, private streets, public streets, common areas, and limited common areas, to be hereafter known as [ *subdivision name* ] for good and valuable consideration received, do(es) hereby dedicate and convey to Washington City for perpetual use of the public, all parcels of land shown on this plat as public roads, parks and trails, [ *and public utility easements* ] and does hereby dedicate and convey to Washington City and to each public utility providing utility services, non-exclusive easements for installation and maintenance of public utilities and drainage facilities over, on, under and across the utility easements as shown on this plat. The Owners do hereby warrant to Washington City, its successors and assigns, title to all property dedicated and conveyed to public use herein against the claims of all persons.

14.2 Storm Water Drainage Systems. Any storm water drainage facilities not accepted by City shall be dedicated to the Community Home Owners Association. Brennan will dedicate an easement to the City for the major drainage systems as shown on the PCD Plan. The dedication will occur either by dedication plat or upon subdivision platting. Thereafter, the City shall maintain any portions of the storm water drainage system located within its easements or rights of way that have been accepted by the City and are not owned by the Community Home Owners Association. Notwithstanding this Section 14.2, upon completion of detention basins within (or as an element of) the Property's storm water drainage system, Brennan shall convey ownership of the detention basins to the Community Home Owners Association (*see* Section 15 of this Agreement), which shall thereafter own, operate and maintain the detention basin(s).

15. Community Association's Responsibilities for Improvements. The PCD Plan calls for the establishment of a Community Home Owners Association to govern and enforce the CC&Rs for each community. The CC&Rs are the mechanism for transferring ongoing maintenance-related obligations to the Community Home Owners Association, including such items as landscaping within the City's rights of way, private roadways, yards, neighborhood parks, ponds, detention basins and certain open spaces. Upon such transfer or dedication, Brennan shall have no further obligations with respect to such items, except as otherwise warranted, agreed or provided between Brennan and the Community Home Owners Association. The CC&Rs may be amended by the processes specified in the CC&Rs without any requirement of approval of such amendments by the City.

16. Open Space. The PCD Plan designates certain areas of the Property as open space. Some of these areas will not be developed except for certain storm water and detention improvements. Brennan intends to convey the open space to the Community Home Owners Association, and the City shall have no obligation toward such areas, with the exception of the storm water drainage system as identified in the PCD Plan and specified in Section 14.2, above. The Community Home Owners Association shall be responsible for the maintenance of these open space areas.

The boundaries of the open space as depicted on the PCD Plan are approximate and the boundaries will be more specifically described at such time as the Parcels are sold or otherwise developed and capable of being described and dedicated by Final Plat.

17. **City Improvements.** The City shall cause the following improvements for the Property to be installed, constructed and maintained, at such time as it becomes necessary for the development of the Project (collectively, the “**City Improvements**”):

17.1 **Electrical Power System.** The electrical power for the Project will be provided by Dixie REA. The City shall have no obligation to provide electrical service beyond their existing agreements with Dixie REA.

17.2 **Culinary Water Supply and Storage.** The City shall cause a sufficient supply of culinary water with adequate flow, quantity, pressure, capacity and quality to service the uses contemplated in the PCD Plan, together with adequate facilities for storage of such water to be delivered to the Project. These improvements may include but are not limited to transmission lines from both the North, along Washington Dam Road and from the South from the 3650 Interchange on the Southern Parkway. A new water storage tank that will also be provided by the City. The initial planned connection point is anticipated to be at the intersection of Washington Dam Road and Long Valley Parkway with additional connections from the South required during the later phases of the PCD Plan.

17.3 **Secondary Irrigation Water.** There currently is no secondary irrigation water available for the Project. However, the City is currently developing a secondary water system master plan which may identify a source of secondary water. Both Parties covenant to work together in good faith to implement this system if it becomes available.

17.4 **Sanitary Sewer.** The City shall make available a sewer collection system of adequate size and capacity to service the Maximum Residential Units and other Intended Uses in the Project. This system will include outfall sewer lines, lift stations, high pressure lines and other facilities as reasonably necessary to accommodate the sanitary sewer requirements of the Project. Some of the City provided Sanitary Sewer facilities will be located within the Project. Brennan shall be responsible for all onsite sewer collection systems and delivery to the City installed facilities within the Project. These improvements may include but are not limited to outfall sewer lines, lift stations, high pressure lines and other facilities.

18. **No Further Exactions.** Subject to the obligations of Brennan set forth herein, the City shall not, directly or indirectly, charge Brennan (excluding as a builder or Subdeveloper) any development fees, Impact Fees, water hookup fees, or any similar fees, charges, assessments or exactions for the development of the Project except as may be otherwise allowed by law.

19. **Impact Fees.** The City may only charge Impact fees at the time and in the course of development of the Property as the City customarily charges to other developers or builders, in a non-discriminatory manner. As a part of the approval of a Development Application the City may require Brennan or a Subdeveloper or builder to build portions of the Brennan Municipal Improvements as shown on the Capital Facilities Plan instead of as shown on the PCD Plan. However, Brennan or a Subdeveloper or builder shall not be required to build any such Brennan Municipal Improvements pursuant to the Capital Facilities Plans that exceeds the facilities shown on the PCD Plan unless the City and Brennan or a Subdeveloper or builder have executed an agreement providing for the reimbursement of the pro rata costs and the time-value-of-money (which may be included in the pricing of the improvement in the Impact Fees) for the construction of any level of Brennan Municipal Improvements in excess of that needed to serve the development proposed by the Development Application. If the Parties cannot reach agreement on the terms of a reimbursement agreement then the terms of such a reimbursement agreement shall be subject to the mediation provisions of Section 7.14 and, if applicable, the arbitration provisions of Section 7.15. If any variation in the level of required Brennan Municipal Improvements is necessitated by an erroneous sizing by Brennan in the creation of the PCD Plan or by changes to the demand needs caused by a material change by Brennan or a Subdeveloper or builder in the intensity of a proposed development, then the above

provision requiring a reimbursement agreement shall not be applicable to the differences caused by Brennan and/or a Subdeveloper or builder. With respect to the Project, the following conditions with regards to Impact Fees shall apply:

19.1 Storm Drain Impact Fees. Neither Brennan nor Subdevelopers or builders will be charged Impact Fees related to storm drainage or water management after the offsite storm drain piping is secured and installed as outlined in Section 10 of this Agreement.

19.2 Park Impact Fees. Brennan will be charged Impact Fees for parks, in accordance with Section 11.9.

19.3 Assignment and Payment of Impact Fee Credits. The Parties agree that, as of the date of this Agreement, there are no impact fee credits anticipated or agreed upon, while recognizing the possibility of storm water System Improvements as referenced in Section 10. To the extent that future law or ordinance permits or requires impact fee credits to Brennan, such impact fee credits are assignable in whole or in part within the Project. To evidence the transfer of Impact Fee credits, Brennan will issue certificates to Subdevelopers or builders. Each certificate will state the specific dollar amount it represents and will set forth the type of Impact Fee credit being utilized thereunder. The Impact Fee will not be allocated on a pro rata basis across all units to be developed, amounting to a partial Impact Fee payment, but rather, shall be utilized as a full Impact Fee payment until the total dollar amount credit available is exhausted. The City and Brennan shall independently maintain ledgers accounting for the Impact Fee credits and agree to reconcile their ledgers annually, commencing 1 year from the first Impact Fee due date.

**20. Term; Extension.**

20.1 Term. The term of this Agreement shall be until December 31, 2035. If as of that date Brennan has not been declared to be in default as provided in Section 26, or if any such declared default has been or is being cured as provided therein, then this Agreement shall be automatically extended until December 31, 2040, and, thereafter, for up to five (5) years upon application and approval. This Agreement shall also terminate automatically at Buildout.

20.2 Initial Development Application. Brennan must submit a Development Application for approval within at least eighteen (18) months from the Agreement Effective Date or this Agreement will expire automatically at that time.

20.3 Extension. The term of this Agreement may be modified upon mutual agreement in writing by the Parties.

**21. On-Site Processing of Natural Materials.** Brennan may use the natural materials located on the Property such as sand, gravel and rock, and may process such natural materials into construction materials such as aggregate or topsoil for use in the construction of infrastructure, homes or other buildings or improvements located in the Project, subject to any/all applicable State or federal laws, City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3. Brennan shall make application for the appropriate permit for all such uses pursuant to the processes provided in the City's Vested Laws or, if applicable pursuant to Section 5.3, the City's Future Laws. In connection with the foregoing, City will review and, as appropriate, approve the temporary grading and exporting of excess dirt material for development of the Project, as necessary to effectuate, and in accordance with, the PCD Plan. Brennan or its grading contractor may export and engage in incidental sales of the excess dirt materials resulting from such activities to extent approved by the City under any/all applicable State or federal laws, City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3. Brennan may also make application for the appropriate permit for the production of concrete and asphalt pursuant to the processes as if it were a

conditional use as provided in the City's Vested Laws or, if applicable pursuant to Section 5.3, the City's Future Laws and any/all applicable State or federal laws. Conditional uses for all uses contemplated in this section shall terminate at Buildout or at the termination or expiration of this Agreement.

**22. Administrative Amendments.**

22.1 Allowable Administrative Applications: The following modifications to this Agreement and the PCD Plan may be considered and approved by the Administrator.

22.1.1 Infrastructure. Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

22.1.2 Design Guidelines. Modifications of the Design Guidelines that affect only aesthetic components of the Project.

22.1.3 Parcel Density and Intended Use. Modifications of the Intended Uses, Densities or Parcel Configuration, as provided for in Sections 6.2 and 6.3.

22.2 Application to Administrator. Applications for Administrative Amendments shall be filed with the Administrator.

22.2.1 Referral by Administrator. If the Administrator, at its sole discretion, determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

22.2.2 Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time.

22.2.3 Notification Regarding Administrator's Approval. If the Administrator approves any Administrative Amendment, the Administrator shall notify the City Council in writing of the proposed approval. Unless the Administrator receives a notice pursuant to Section 22.2.4 requiring that the proposed Administrative Amendment be considered by the City Council as a Modification Application, then approval of the Administrative Amendment by the Administrator shall be conclusively deemed binding on the City.

22.2.4 City Council Requirement of Modification Application Processing. The City Council may, within ten (10) business days after notification by the Administrator, notify the Administrator that the Administrative Amendment must be processed as a Modification Application.

22.2.5 Appeal of Administrator's Denial of Administrative Amendment. If the Administrator denies any proposed Administrative Amendment, the Applicant may process the proposed Administrative Amendment as a Modification Application.

**23. Amendment.** Except for Administrative Amendments, any future amendments to this Agreement and the PCD Plan shall be considered as Modification Applications subject to the following processes.

23.1 Who may Submit Modification Applications? Only the City, Brennan, an assignee that succeeds to all of the rights and obligations of Brennan under this Agreement (excluding a Subdeveloper), may submit a Modification Application.

23.2 Modification Application Contents. Modification Applications shall:

23.2.1 Identification of Property. Identify the Parcel, property or properties affected by the Modification Application.

23.2.2 Description of Effect. Describe the effect of the Modification Application on the affected portions of the Project.

23.2.3 Identification of Non-City Agencies. Identify any Non-City Agencies potentially having jurisdiction over the Modification Application.

23.2.4 Map. Provide a map of any affected Parcel, property and all property within three hundred feet (300') showing the present or Intended Use and Density of all such properties.

23.2.5 Fee. Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

23.3 City Cooperation in Processing Modification Applications. The City shall cooperate reasonably in promptly and fairly processing Modification Applications. The PCD Plan and this Agreement shall not be amended by a Modification Application in a manner that eliminates the vested rights of Brennan as set forth in this Agreement, except as an intended consequence of such Modification Application or as otherwise agreed by Brennan.

23.4 Planning Commission Review of Modification Applications.

23.4.1 Review. All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in light of the nature and/or complexity of the Modification Application, in accordance with the procedures outlined in Section 7.4.

23.4.2 Recommendation. The Planning Commission's vote on the Modification Application shall be, unless otherwise designated by City's Vested Laws or City's Future Laws, if applicable pursuant to Section 5.3, only a recommendation and shall not have any binding or evidentiary effect on the consideration of the Modification Application by the City Council.

23.5 City Council Review of Modification Application. After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the City Council shall consider the Modification Application in accordance with the procedures outlined in Section 7.5.

23.6 City Council's Denial/Objections to Modification Applications. If the City Council denies/objects to the Modification Application, the City Council shall provide a written determination advising Brennan of the reasons for denial/objection including specifying the reasons the City believes that the Modification Application is not consistent with this Agreement and/or the PCD Plan, or City's Vested Laws or, if applicable pursuant to Section 5.3, City's Future Laws.

23.7 Meet and Confer regarding Modification Applications. The City Council and Brennan shall meet within fifteen (15) business days of any denial/objection to attempt to resolve the issues presented by the Modification Application and any of the City Council's denials/objections.

23.8 Mediation of City Council's Objections to Modification Applications. If the City Council and Brennan are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in land planning or such other

discipline as may be appropriate as a mediator. If the Parties are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own individual representative. These two representatives shall, between them, choose the single mediator. Brennan shall pay the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the Parties regarding the mediation issue and promptly attempt to mediate the issue between the Parties. If the Parties are unable to reach agreement, then upon mutual agreement of the Parties they may request that the mediator notify the Parties in writing of the resolution that the mediator deems appropriate; provided that the mediator's opinion shall not be binding on the Parties or admissible in any other proceedings.

**24. Separate Development Agreements.** Brennan, Subdevelopers or successors in title may elect to propose and enter into separate agreements with City to govern the construction or development of a particular Parcel within the Project. Nothing in any separate agreement may conflict with the entitlements obtained by Brennan in this Agreement without the express written consent of City and Brennan.

**25. Assignment and Transfer of Development.** If Brennan assigns, transfers, or otherwise conveys the entire Project or any portion thereof to a subsequent owner, then this Development Agreement shall inure to the benefit and detriment of the subsequent owner, and shall not relieve the subsequent owner from any responsibilities or duties set forth herein. The obligations of Brennan shall automatically be assigned and assumed by subsequent purchasers of the Project or any portion thereof, and Brennan shall be released from the obligations related to such portion as a result of the assignment and the assumption by subsequent purchasers to the extent of City's written consent, which shall not be unreasonably withheld, conditioned or delayed. Subsequent purchasers of the Project or any portion thereof shall expressly assume the obligations of Brennan pursuant to this Agreement. However, in the event that subsequent purchasers of the Project do not expressly assume the obligations of this Agreement, they shall still be bound to the terms of, and obligations of this Agreement.

**26. Default.** Failure by a Party to perform any such Party's obligation under this Agreement for a period of 30 days (the "**Cure Period**") after written notice thereof from the other Party shall constitute a default by such failing Party under this Agreement; provided however, that if the failure cannot reasonably be cured within 30 days, the Cure Period shall be extended for the time period to reasonably required to cure such failure, so long as the failing Party commences its efforts to cure within the initial 30 days period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

**27. Notice and Filings.** All notice, filings, consents, approvals and other communications provided for or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, sent prepaid, or by a national overnight delivery service, freight prepaid, to:

**The City:**

City Manager  
WASHINGTON CITY  
111 North 100 East  
Washington City, Utah 84780  
Attention: City Manager

With a copy to:

City Attorney  
WASHINGTON CITY  
111 North 100 East  
Washington City, UT 84780  
Attention: City Attorney

**Brennan:**

Robert M. Brennan  
Brennan  
P.O. Box 1991  
Sun Valley, ID 83353

With a copy to:

AJ Pepper, Esq.  
Snell and Wilmer  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101-1547

or to such other addresses as either Party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication by delivery or overnight delivery shall be effective upon receipt and if given by mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid as set forth above.

**28. Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Brennan of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

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

**30. Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared by all Parties hereto and shall be interpreted in accordance with State law. The descriptive heading of the sections of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word except where the context requires such limitation. To the extent a general provision of City's Vested Laws, City's Future Laws, or any other law, conflicts with a specific provision of this Agreement or an interpretation necessary to give effect to the Agreement, and such provision or interpretation would not be deemed unlawful, illegal, or contrary to public policy, then this Agreement shall control.

**31. Further Acts.** Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

**32. Estoppel Certificate.** Upon twenty (20) business days' prior written request by Brennan to City, City will execute an estoppel certificate to any third party certifying that Brennan at that time is not in default of the terms of this Agreement, conditioned upon Brennan not being in default of the terms of this Agreement at such time.



33. **Time of the Essence: Force Majeure.** Except as otherwise provided in this section, time is of the essence for this Agreement. If either Party is delayed or hindered in or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war, national or international pandemic, or other reason of a like nature (other than labor disputes) not the fault of the Party delayed in performing work or doing acts required under this Agreement, the performance of such acts will be extended for a period equivalent to the period of such delay.

34. **Termination on Sale to the Public.** In order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually leased (for a period longer than one year) or sold to the purchaser or user thereof (a “**Public Lot**”) and thereupon such Public Lot shall be released from and no longer be burdened by the provisions of this Agreement.

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

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

37. **Good Standing Authority.**

37.1 Brennan hereby represents and warrants to the City that: (i) Brennan is a duly registered limited liability company; (ii) the individual(s) executing this Agreement on behalf of Brennan are duly authorized and empowered to bind Brennan; and (iii) this Agreement is valid, binding, and enforceable against Brennan in accordance with its terms.

37.2 City hereby represents and warrants to Brennan that: (i) the City is a Utah municipal corporation; (ii) the City has power and authority pursuant to the Land Use Act and the Zoning Ordinance to enter into and be bound by this Agreement; (iii) the individual(s) executing this on behalf of the City are duly authorized and empowered to bind the City; and (iv) this Agreement is valid, binding and enforceable against the City, in accordance with its terms.

38. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and the Agreement shall otherwise remain in full force and effect.

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

40. **Recordation.** Within ten (10) business days of the Effective Date of this Agreement, it shall be recorded in its entirety at Brennan’s expense in the Official Records of Washington County, Utah. Each commitment and restriction on development set forth herein shall be a burden on the Property, shall be appurtenant to and for the benefit of City and Brennan and shall run with the land.

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

**42. Attorney's Fees.** In addition to any other relief, the prevailing Party in any action, whether at law, in equity or by arbitration, to enforce any provision of this Agreement, shall be entitled to its costs of action including reasonable attorneys' fees, if so decided and awarded by the judge or arbitrator so empowered under the circumstances of the "action" for which relief was sought.

**43. Entire Agreement.** This Agreement, together with the PCD Plan and other exhibits, constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. All amendments shall be in writing and signed by the City and Brennan and shall be recorded.

*[ ... Signatures on following page ... ]*

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

**BRENNAN FAMILY HOLDINGS, LLC**  
an Idaho Limited Liability Company

*Robert M. Brennan*

Robert M. Brennan, Managing Member

**WASHINGTON CITY**  
A Utah municipal corporation

Attest:

*Kenneth Neilson*  
Kenneth Neilson, Mayor

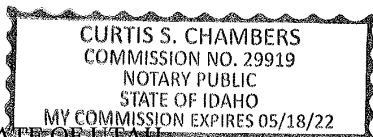


*Danice B. Bulloch*  
Danice Bulloch, MMC, City Recorder

STATE OF ~~UTAH~~ JD  
COUNTY OF WASHINGTON BLAINE )

On the 28 day of DEC., 2020, personally appeared before me Robert M. Brennan, who being by me duly sworn did say that he is the Managing Member of Brennan Family Holdings, LLC and has the authority to sign for said limited liability company and is the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 28 day of DEC 2020.

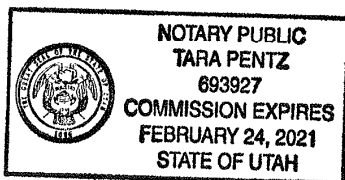


*[Signature]*  
Notary Public

STATE OF ~~UTAH~~ )  
COUNTY OF WASHINGTON )

On the 23<sup>rd</sup> day of December, 2020, personally appeared before me Kenneth Neilson and Danice Bulloch, who being by me duly sworn did say that they are the Mayor and Recorder, respectively, of Washington City and the signers of the above instrument, who duly acknowledged that they executed the same.

Given under my hand and seal this 23<sup>rd</sup> day of December 2020.



*Tara Pentz*  
Notary Public

Exhibit "A"

**Legal Description of the Property**

Salt Lake Meridian, Utah

Township 42 South., Range 14 West

Section 20, lots 13 and 14;

Section 29, lots 2, 4, 5, 7, 9, 12, 14, and 15, NE1/4NW1/4, SW1/4NW1/4; Section 30,  
lots 13, 16, 18, 19, 22, 24, and 25, NE1/4SE1/4;

Section 31, lots 14, 15, 18, 20, and 22, NW1/4NE1/4.

Acreage: 605.61

Parcel No. W-4204

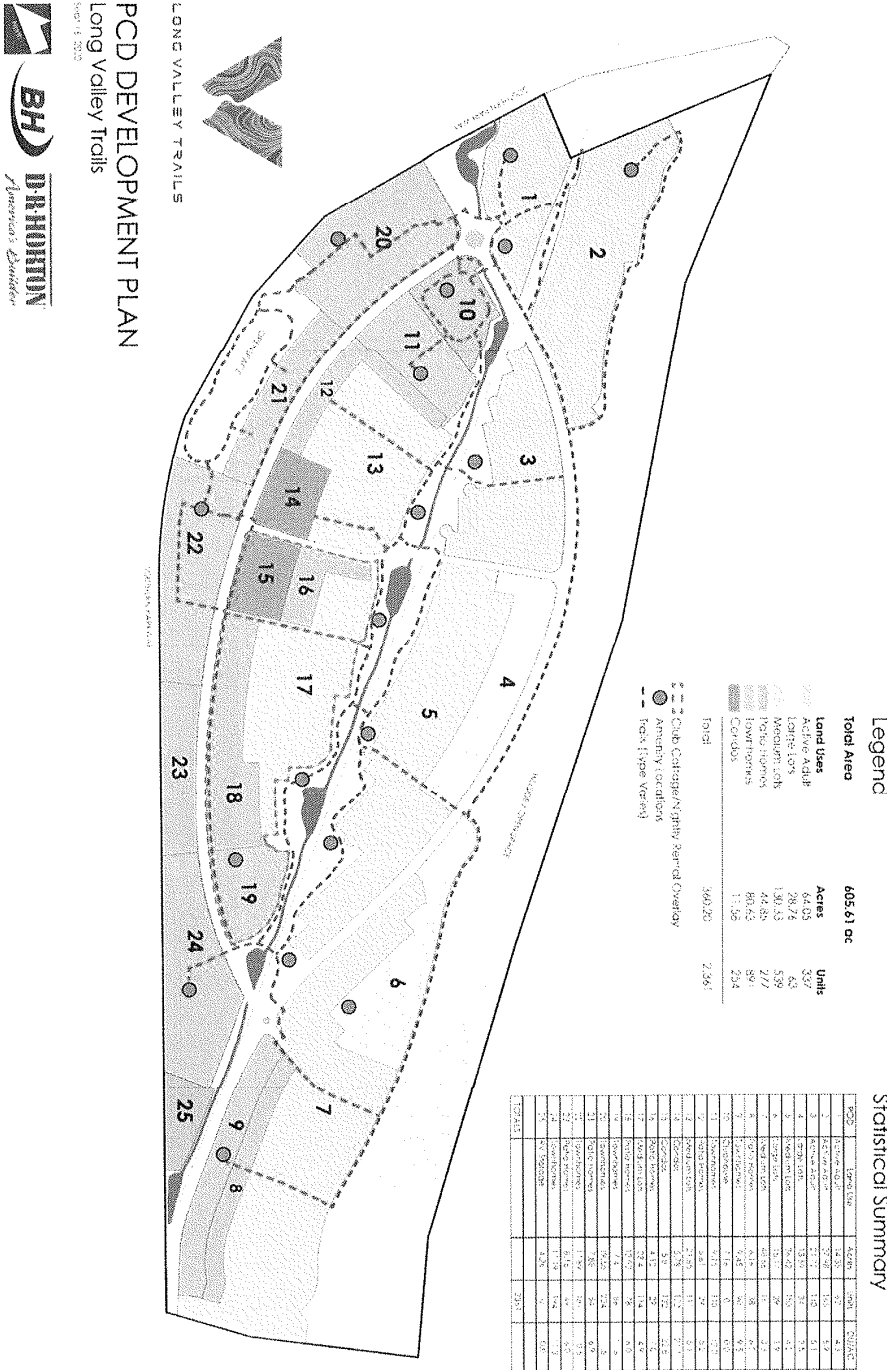
STG\_963924

Exhibit "B"

**City's Vested Laws**

Titles 8, 9 and 10 of the City Code of Washington City, Utah, current as of the Effective Date of the Development Agreement.

Exhibit "C"  
 PCD Plan



LONG VALLEY TRAILS  
 PCD DEVELOPMENT PLAN  
 Long Valley Trails  
 Sept 14, 2020

