

Mayor
Colten Johnson
City Council
Arlon Chamberlain
Scott Colson
Chris Heaton
Kerry Glover
J.D. Wright



KANAB
—UTAH—

City Manager
Kyler Ludwig
City Attorney
Kent Burggraaf
City Recorder
Celeste Cram
City Treasurer
Danielle Ramsay

KANAB CITY COUNCIL
September 26, 2023
Council Chambers, 26 NORTH 100 EAST, KANAB, UTAH

NOTICE is hereby given that the Kanab City Council will hold a regular council meeting on the 26th day of September 2023, in the City Council chambers at the Kanab City Office, 26 N 100 E, Kanab, Utah. The Council Meeting will convene at 6:30 p.m. and the agenda will be as follows:

Work Meeting

1. Liaison Report
2. City Staff Report
3. Other

Business Meeting

1. Call to Order and Roll Call
2. Approval of Minutes of Previous Meeting
3. Approval of Accounts Payable Vouchers.
4. Public Comment Period: Members of the public are invited to address the Council. Participants are asked to keep their comments to 3 minutes and follow the rules of civility outlined in Kanab Ordinance 3-601.
5. Discussion and Consideration of an Ordinance to Change the Zoning of Parcel K-7-2-Annex Located in the Area of Chinle Dr. and Hillside Dr. from Rural Residential (RR-1) to Single Family Zone (R-1-8). (Applicant Michael Stewart / Mike and Jamie Little).
6. Discussion and Consideration of a Resolution Approving a Development Agreement for parcels K-39-41-Annex, K-39-42-Annex, and K-39-43-Annex located at approximately 1250 South US-89A (Applicant Z7 Development).
7. Public Hearing, Discussion, and Consideration of a Resolution Creating the Ventana Resort Village Public Infrastructure District, Approving Governing Documents for the

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District, and Establishing a Board of Trustees (Steve Laski – 6 year, Devin Anderson- 4 year, and Stephenie Nast – 6 year).

8. Discussion and Consideration of a Resolution Cancelling the November 21, 2023 Municipal General Election and Declaring Each Unopposed Candidate Elected to Office. (Arlon Chamberlain, Boyd Corry, and Peter Banks)
9. Discussion and Consideration of a Resolution approving a Cooperation Agreement Between Kanab City and Kane County for Structural Fire Protection in Unincorporated Kane County.
10. Traveling Tour of the Kanab Police Station – No Council Action.

ADDITIONAL NOTICES:

Times listed for each item on the agenda may be accelerated, as time permits, or taken out of order.

The public comment period and public hearings are intended for the public to provide input to the Council or to pose questions individuals believe the Council and City staff should consider. Public hearings are not intended for individual members of the public to engage in conversation. While questions may be posed by a member of the public, the Council and City staff will attempt to refrain from answering or engaging in conversation during the public hearing.

An item listed on the agenda may be discussed in a closed portion of the public meeting, in which the public may be excused, if it meets the criteria outlined in the Open and Public Meetings Act (see Utah Code 52-4-204 and -205).

If you are planning to attend this public meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City eight (8) or more hours in advance of the meeting, and we will try to provide whatever assistance may be required. Please contact Celeste Cram at the Kanab City offices.



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1 **Kanab City Council Meeting**
2 **September 12th, 2023**
3 **Kanab City Council Chambers**
4 **26 North 100 East**
5 **6:30 PM**
6

7 **Work Meeting**

8 **1. Liaison Report**
9

10 **Councilmember Chamberlain** – He reported that the planning commission discussed lot size
11 averaging.

12 **Councilmember Wright** – He stated that there has been discussion with the Kane County
13 school district about school wanting to have the City take over the travel league. The City's
14 stance is that it should be a school district responsibility. He also mentioned that football is
15 going well, and they fertilized the baseball fields, and they look good.

16 **Councilmember Glover – (Not in attendance)** Mr. Ludwig spoke on behalf of
17 Councilmember Glover, and stated that they had National day of service, where they did
18 work at Levi Stewart Memorial. He also mentioned that the museum is open.

19 **Mayor Johnson – Absent**

20 **Councilmember Heaton** – He thanked the first responders for their service and mentioned
21 that there were two 9-11 memorials held. He added that the wildland season is wrapping
22 up, and the new police station is coming along.

23 **Councilmember Colson** – He stated that the fly in was last weekend and they had about 40
24 people in attendance.

25
26 **2. City Staff Report** – Mrs. Chatterley presented a land use chart that included stats on building
27 permits.
28

29 **3. Other – None**
30

31 **Business Meeting**

32 **1. Call to Order and Roll Call** – Mayor Pro-Tem Chamberlain called the meeting to order.
33 Councilmember Colson offered the invocation. Councilmember Heaton led the pledge of
34 allegiance.

35 **In attendance:** Mayor Johnson (7:21), Councilmember Colson, Councilmember Wright (6:34),
36 Councilmember Chamberlain, Councilmember Heaton, City Manager Kyler Ludwig; Recorder Celeste
37 Cram; City Attorney Kent Burggraaf and Building & Land Use Coordinator Janae Chatterley.

38 **Not in attendance** – Councilmember Glover

39 **2. Approval of Minutes of Previous Meeting** – Councilmember Colson made a motion to approve
40 the minutes from August 22nd, 2023 meeting. Councilmember Heaton seconded, unanimous
41 vote. Motion passed.

42
43 **3. Approval of Accounts Payable Vouchers** - A motion was made by Councilmember Heaton and
44 seconded by Councilmember Wright to approve the check registers for August 22nd, 2023 in the
45 amount of \$83,611.23; August 25th, 2023 in the amount of \$720.00; August 29th, 2023 in the
46 amount of \$89,622.22; September 6th, 2023 in the amount of \$107,896.47; and September 12th,
47 2023 in the amount of \$111,620.25. Unanimous vote, motion carried.

48

49 Public Comment Period: Members of the public are invited to address the Council.

50 **4. Participants are asked to keep their comments to 3 minutes and follow the rules of civility.**
51 **outlined in Kanab Ordinance 3-601.**

52

53 **Lynda Marpole:**

54 Mrs. Marpole stated that she wanted to speak on Item #6. She stated that she lives on Hillside
55 drive, across from the parcel in question, and that she is representing herself and her neighbors.
56 She stated that the hill is made up of blue clay along with other sediments, and that they absorb
57 moisture and can expand and potentially destroy homes and roads. She stated that she has
58 personally spoken with engineers that do not recommend building on the hill. Finally, she added
59 that there was an extensive discussion at the planning commission meeting when they discussed
60 this item, and that two of the five commission members voted against it. She respectfully asks
61 that they decline the ordinance change.

62 **-End Public Comment-**

63

64 **5. Discussion and Consideration of a Proposed Plat Amendment to Plum Tree Estates, Lot**
65 **8 (Parcel K-154-8, 809 S. Plum Tree)**

66 Mrs. Chatterley stated that Iron Rock Engineering has applied to amend a plat for Plum Tree
67 Estates, Lot 8, parcel K-154-8 located at 809 S Plum Tree Dr. The amendment includes a lot line
68 adjustment to parcel K-154-8 to clean up property lines. Currently the property lines go over an
69 existing fence and into the driveway to the east. She also added that Plat Amendments are
70 addressed in Utah Code, Title 10, Chapter 9a, Part 6, and the Kanab City Subdivision Ordinance,
71 Chapter 2, upon application that includes a Sketch Plan and Narrative. Chapter 2-4 specifically
72 address the plat amendment process and requirements.

73 **Enter Public Hearing**

74 **Close Public Hearing**

75 Councilmember Wright made a motion to approve the plat amendment to lot 8 of the Plum Tree
76 Estates Subdivision, affecting parcel K-154-8 based on the findings and conditions of approval as
77 outlined in the staff report #2023037. Councilmember Colson seconds. Unanimous vote, motion
78 carries.

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6. Discussion and Consideration of an Ordinance to Change the Zoning of Parcel K-7-2-Annex Located in the Area of Chinle Dr. and Hillside Dr. from Rural Residential (RR-1) to Single Family Zone (R-1-8). (Applicant Michael Stewart / Mike and Jamie Little).

Mrs. Chatterley stated that Property Owner Mike & Jamie Little, represented by Michael Stewart, is requesting a zone change to rezone parcel K-7-2-Annex from Rural Residential (RR-1) to Single Family Residential (R-1-8). The parcel is 7.05 acres and currently vacant land. She added that they would require a Geotech report for anyone to pull a building permit for this land, and they would have to follow whatever they recommended.

Mr. Burggraaf stated that if staff follows our ordinances, we are not susceptible to legal liability. Councilmember Colson asked the developer, Iron Rock Group, why they are asking for R-1-8 zone. Michael Stewart, Iron Rock Group representative, responded that this was what their client thought would be the best use of the space.

Councilmember Wright feels more comfortable with changing it to R-1-20 zones instead of R-1-8. Staff and the Council discussed the street frontage requirements for the different proposed zones. Councilmember Wright is also concerned about flooding, and if the developer starts the project and then decides to quit.

Councilmember Heaton made a motion to approve to assign zone R-1-8 to Parcel K-7-2-Annex and adopt ordinance 9-1-23 O based on the findings and conditions outlined in Staff Report #2023038. Councilmember Colson seconded the motion.

Councilmember Colson – Yes
Councilmember Heaton – Yes
Councilmember Wright – Nay
The motion failed.

Mayor Johnson arrived at the meeting and the council briefly discussed the topic. The commission and Mayor Johnson decided to continue the discussion to the next meeting.

Councilmember Chamberlain made a motion to continue the item for further consideration at the September 26, 2023 meeting. Councilmember Heaton seconded the motion. Unanimous vote, motion carried.

7. Discussion and Consideration of a Resolution Approving a Proposed Ground Lease at the Airport for a 70' by 60' Hangar. (Greg and Eathen Kendrick)

Mr. Ludwig stated that The Airport has a ground lease agreement that was last reviewed by the City Council in February of 2023. Lease agreements allow for development of aeronautical focused development on the City Airport Property. The proposed 70' x 60' ground lease has been reviewed by the Kanab City Airport Manager. The leased space fits within the Airport Master Plan. Some asphalt will need to be placed for this space to be developed, which will come at the expense of the Lessee. Asphalt will be placed per the engineering requirements for the Kanab Airport.

125 Councilmember Heaton made a motion to approve Resolution 9-1-2023 R, A Resolution
126 Approving an Airport Ground Lease Agreement with Greg and Eathen Kendrick. Councilmember
127 Colson seconded the motion.

128

129 Councilmember Colson – Yes

130 Councilmember Heaton – Yes

131 Councilmember Wright – Yes

132 Councilmember Chamberlain – Yes

133 Motion passed.

134

135 **8. Discussion and Consideration to Approve the Purchases Necessary to Complete 6 Miles**
136 **of Road Chip Sealing (Cedar Heights, Coral Cliffs, Cemetery)**

137 Mr. Ludwig stated that to preserve our roads the City of Kanab annually performs chip sealing of
138 roads. The funds to pay for this come through gas taxes revenues from the state. This year the
139 City is estimating \$325,000 in revenues to help pay for this project and other road maintenance.
140 This year approximately 6 miles of chip seal is being proposed; roads to be completed include:
141 Cedar Heights Subdivision, Coral Cliffs Subdivision, the Kanab Cemetery, and a few other roads
142 in the northeast side of town.

143 The City currently has chips that will cover the project. The purchase will include oil to cover the
144 chips and labor to complete the work. The lowest oil bid is \$122,230 for 170 tons of oil. Two bids
145 were received to complete the labor:

146 \$38,318 – Lamb Excavating

147 \$53,250 – Brown Brothers Construction

148

149 Councilmember Chamberlain made a motion to approve \$122,230 to purchase 170 tons of oil
150 and approve the bid from Lamb Excavation for \$38,318 for 6 miles of chip seal work to be
151 completed this fall. Councilmember Colson seconded the motion.

152

153 Councilmember Colson – Yes

154 Councilmember Heaton – Yes

155 Councilmember Wright – Yes

156 Councilmember Chamberlain - Yes

157 Motion passed.

158

159 **9. Discussion on the Draft Preliminary Engineering Report for the Ranchos Sewer Project.**

160 Mr. Ludwig presented a draft preliminary engineering report for the Kanab Ranchos Sewer
161 Project to the council so that they could become familiar with the logistics and price of the
162 project. He added that around December of 2022, the City received a grant from the State of
163 Utah to do the preliminary report to study the options and how to bring sewer to the area. The
164 council and staff discussed the different options at length.

165 Councilmember Heaton thinks it's a good idea to start this process, and to focus on the areas
166 highlighted in red in the packet, majorly in the ranchos. The council discussed different grants
167 they could potentially apply for, for lower income neighborhoods.

168 Mr. Ludwig proposed potentially having a blanket fee on everyone's utility bill to help cover the
169 cost, and Councilmember Wright, Mayor Johnson, and Councilmember Heaton don't think we
170 should have a blanket fee for everyone.

171 Councilmember Colson likes the Gravity fee option because of the O&M. Jake Dutton, Public
172 Works Director, stated that there are grants that will help citizens connect to it if they hit a
173 certain income threshold.

174 The council likes the fact that they are starting a discussion on this topic, and beginning to look
175 into it, even if it will be a lengthy process.

176 **10. Discussion and Consensus on the Development of Approximately 12.5 Acres of**
177 **Commercial Property within the Kanab Municipal Airport.**

178 Mr. Ludwig stated that there is a grant of up to \$600,000 to fund new infrastructure for new
179 businesses to diversify our community. The RCOG empowers eligible entities to take
180 responsibility for economic development planning, projects, and activities, and to manage their
181 own unique opportunities. The grant is designed to address the economic development needs of
182 rural communities, including:

- 183 • Business recruitment, development, and expansion.
- 184 • Workforce training and development; and
- 185 • Infrastructure, industrial building development, and capital facilities improvements for
186 business development.

187 He showed the council a proposal of what it could potentially look like.

188 The council asked how we would manage it, and Mr. Ludwig stated that we could potentially
189 manage it ourselves or bring in a private developer to build it and manage it and we would lease
190 the land to them.

191 They discussed where revenue would go, and Mr. Ludwig would need to investigate the
192 stipulations since the land was purchased with FAA funding. The council wants to do a study and
193 explore their options.

194
195 **11. Discussion on City Personnel Compensation to Include the Character, Professional**
196 **Competence, and Physical or Mental Health of Individuals.**

197 Councilmember Colson made a motion to go into executive session. Councilmember Heaton
198 seconds, unanimous vote.

199
200 The council returned to open session at 9:21 pm.
201

202 Councilmember Heaton made a motion to adjourn, Councilmember Colson seconds. Unanimous vote,
203 meeting adjourned.

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Treasurer
Danielle Ramsay



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Kanab City Council Staff Report
File # 2023038

Date:	September 8, 2023
Meeting Date:	September 12, 2023
Agenda Item:	Discuss approve or deny a zone change from RR-1 [Rural Residential] to R-1-8 [Single Family Residential] for parcel K-7-2-Annex located in the approximate area of Hillside Dr. and Chinle Dr.
Subject Property Address:	N/A
Property Owner:	Mike & Jamie Little
Applicant Agent:	Michael Stewart
General Plan Designation:	Medium Density Residential
Parcel #:	K-7-2-Annex

Attachments:

- Exhibit A: Subject/Vicinity Property**
- Exhibit B: Future Land Use Map (updated)**
- Exhibit C: Zoning Map (updated)**

Summary:

Property Owner Mike & Jamie Little represented by Michael Stewart, is requesting a zone change to rezone parcel K-7-2-Annex from Rural Residential (RR-1) to Single Family Residential (R-1-8). The parcel is 7.05 acres and currently vacant land.

Site Description:

The subject property is 7.05 acres. The parcel is vacant and currently fronts a dedicated city street. Surrounding zoning designations and the density designations are as follows:

North	South	East	West
C-3 with GC designation	RR-1 and C-3 with MDR designation	RR-1 with MDR designation	R-1-8 with MDR designation

Kanab City Land Use Ordinance, General Plan and Zoning Map Analysis:

Zoning designations and zone changes are regulated by the Kanab City Land Use Ordinance, Chapter 15 – Establishment of Zoning Districts regulates zoning designations within Kanab City. Section 15-7 Transitioning and Maintaining Balance, states:

It is the objective of the City to encourage and provide for proper transition and compatibility between zones and intensity of uses, which should be regulated by the

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City Land Use Code, the General Plan, Future Land Use Map and the Kanab City Annexation Policy Plan. The City also seeks to maintain a healthy balance and mix of land uses within the community, representing the atmosphere of existing development. Areas for growth have been planned with a balance for all uses, including agriculture, residential, commercial and industrial uses, as demonstrated in the Kanab City General Plan and Future Land Use Map. Future decisions regarding land use and zoning in Kanab should be guided by this map.

The City promotes orderly growth, with an emphasis for new developments to occur in the core community areas first. Rezoning of adjacent undeveloped property should be compatible with developed property.

Parcel K-7-2-Annex is in an area designated as Medium Density Residential (MDR) on the current Future Land Use Map. The adjacent parcels are zoned C-3, to the north, R-1-8 to the west, RR-1 and C-3 to the south and RR-1 to the east. The parcels to the west, south, and east are developed properties and the properties to the north are not developed. The parcel is located off Chinle and Hillside Dr.

Public Comment:

A public hearing was held on September 5, 2023. Two individuals commented during the public hearing. Linda Marpole lives across the street from this property and is concerned that the zone change and any development would disrupt the quiet neighborhood. She was also concerned with the excavation and amount of clay on the property. Bryant Shakespear, representing Garkane, wanted to comment to make sure there was a public record of Garkane's intentions of the property to the southeast. Garkane still plans on operating their facilities off Chinle Dr. and does not have any future plans of moving or relocating the facility.

Planning Commission:

The planning commission discussed the property and brought up the issues of clay and sensitive lands. Staff explained that a geotechnical report would have to be done with any development of the property and any developer would be required to meet Kanab City's Sensitive Lands ordinance (Chapter 11 of the Land Use Ordinance). Motion was made for a positive recommendation to City Council the vote was three (3) yeah and two (2) nay. The Planning Commission Chair did vote on this item.

Findings:

1. The application was initiated by the owners representative Michael Stewart.
2. The property is zoned as RR-1 and 7.05 acres.

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3. The City Council is the decision-making authority for a zoning application. The Council may adopt or reject the request as it deems appropriate or may assign a different zoning designation.
4. Assigning an R-1-8 zone is consistent with the Kanab City Future Land Use Map designation of MDR.
5. The requested zone of R-1-8 is consistent with the adjacent properties across the street to the west and not consistent with the properties to the south, east and north.

Conditions:

1. Staff did not recommend any conditions.
2. The Planning Commission did not recommend any conditions.

Suggested Motion(s):

I move that we approve to assign zone R-1-8 to Parcel K-7-2-Annex and adopt ordinance 9-x-23 O based on the findings and conditions outlined in Staff Report #2023038.

I move that we deny assign zone R-1-8 to Parcel K-7-2-Annex based on the findings outlined in Staff Report #2023038.

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Exhibit A: Subject Property

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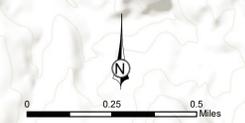


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Exhibit B: Future Land Use Map

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**KANAB CITY
GENERAL PLAN
Land Use Map
City Boundary
December 2022**

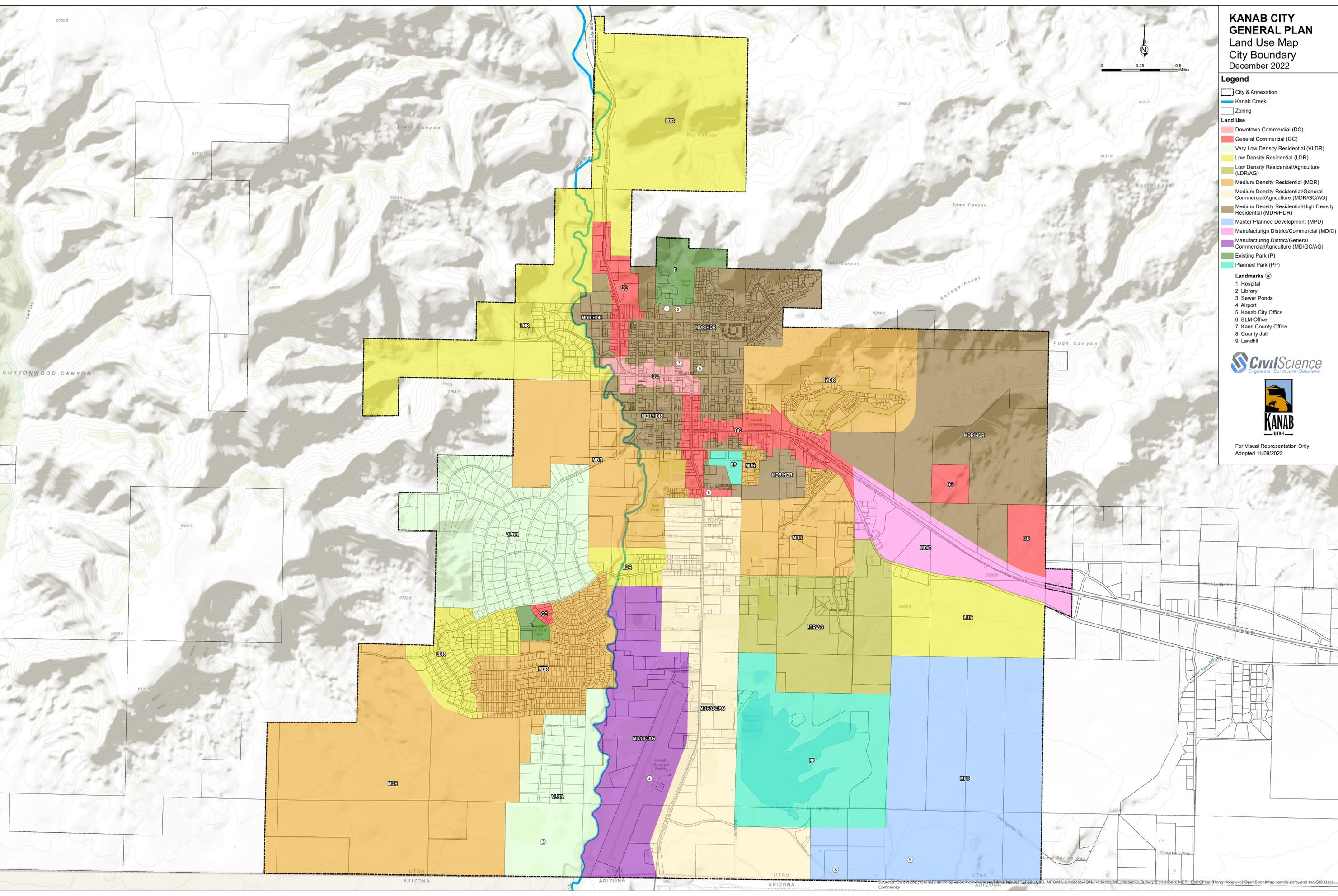


- Legend**
- City & Annexation
 - Kanab Creek
 - Zoning
- Land Use**
- Downtown Commercial (DC)
 - General Commercial (GC)
 - Very Low Density Residential (VLDR)
 - Low Density Residential (LDR)
 - Low Density Residential/Agriculture (LDR/AG)
 - Medium Density Residential (MDR)
 - Medium Density Residential/General Commercial/Agriculture (MDR/GC/AG)
 - Medium Density Residential/High Density Residential (MDR/HDR)
 - Master Planned Development (MPD)
 - Manufacturing District/Commercial (MDC)
 - Manufacturing District/General Commercial/Agriculture (MD/GC/AG)
 - Existing Park (P)
 - Planned Park (PP)

- Landmarks (#)**
1. Hospital
 2. Library
 3. Sewer Ponds
 4. Airport
 5. Kanab City Office
 6. BLM Office
 7. Kane County Office
 8. County Jail
 9. Landfill



For Visual Representation Only
Adopted 11/09/2022



Map data: Esri, DeLorme, Garmin, Intermap, Rockwell, Swire, GEBCO, USGS, FAO, NPS, NRCAN, GeBCO, IGN, Kadaster, NL, Ordnance Survey, Esri, Swire, METI, ESR, China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

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Exhibit C: Zoning Map

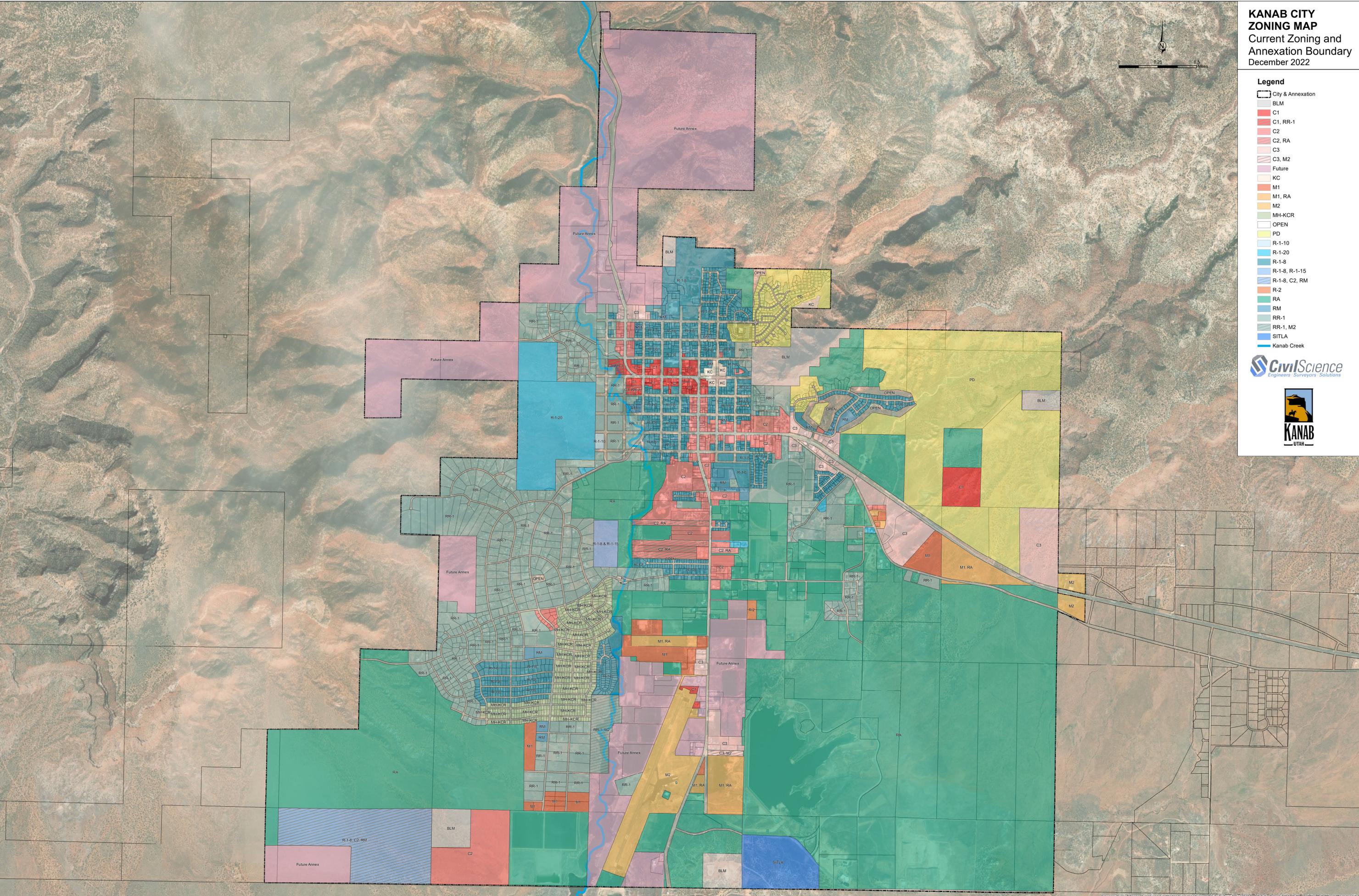
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KANAB CITY ZONING MAP
Current Zoning and
Annexation Boundary
 December 2022



Legend

- City & Annexation
- BLM
- C1
- C1, RR-1
- C2
- C2, RA
- C3
- C3, M2
- Future
- KC
- M1
- M1, RA
- M2
- MH-KCR
- OPEN
- PD
- R-1-10
- R-1-20
- R-1-8
- R-1-8, R-1-15
- R-1-8, C2, RM
- R-2
- RA
- RM
- RR-1
- RR-1, M2
- SITLA
- Kanab Creek



Source: Esri, Maxar, GeoEye, Earthstar, GeoGraphics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

ORDINANCE NO. 9-1-23 O

**AN ORDINANCE APPROVING A ZONE CHANGE FOR PARCEL
K-7-2-Annex**

WHEREAS, pursuant to Utah Code § 10-9a-501, and Kanab City Land Use Ordinance, Chapter 1, Section 17, the City Council is authorized on its own motion or pursuant to an application, to amend and assign zoning district boundaries, after receiving a recommendation from the Kanab City Planning Commission;

WHEREAS, applicant Michael Stewart submitted an application for a zone change on behalf of Mike and Jamie Little for the parcel identified as K-1-10, requesting they be changed from Single Family Residential (RR-1) to Single Family Residential (R-1-8);

WHEREAS, the Future Land Use Map of the Kanab City General Plan has designated the area in which the parcel is located as Medium Density Residential (MDR), for which the zoning designation of R-1-8 would be compatible;

WHEREAS, after proper notice was provided, the Kanab City Planning Commission held a public hearing on September 5, 2023, in which public comments were received, and then reviewed, discussed, and voted on sending its recommendation (positive) to the Kanab City Council; and

WHEREAS, the City Council met during its regularly scheduled and properly noticed meeting on September 12, 2023, received further input from the applicant/applicant's representative and staff, and reviewed and discussed the Kanab City Planning Commission's recommendation and the zoning options for the parcels.

NOW, THEREFORE, BE IT ORDAINED by the Kanab City Council that the parcel identified on the Kane County records as K-7-2-Annex is hereby assigned the zone of R-1-8, a Residential Multi-Family zone under the Kanab City Land Use Ordinance;

All former zoning designations for the subject parcel conflicting or inconsistent with the provisions of this Ordinance hereby adopted are hereby repealed.

The provisions of this Ordinance shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance shall be effective upon the required posting.

[Signatures on the next page.]

PASSED AND ORDERED POSTED this 26th day of September, 2023.

KANAB CITY

ATTEST:

MAYOR

RECORDER

VOTING:

Kerry Glover	Yea	___	Nay	___
J.D. Wright	Yea	___	Nay	___
Arlon Chamberlain	Yea	___	Nay	___
Scott Colson	Yea	___	Nay	___
Chris Heaton	Yea	___	Nay	___

POSTED the ___ day of _____, 2023, as certified by the Recorder: _____.
RECORDER

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City Council
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Kanab City Council Staff Report
File # 20230926

Date:	September 21, 2023
Meeting Date:	September 26, 2023
Agenda Item:	Discuss approve or deny a Resolution for a Development Agreement on parcels K-39-41-Annex, K-39-42-Annex and K-39-43-Annex
Subject Property Address:	N/A
Property Owner:	Z7 Development LLC
Applicant Agent:	Chase Stratton
General Plan Designation:	Medium Density Residential/ General Commercial/Agriculture
Parcel #:	K-39-41-Annex, K-39-42-Annex and K-39-43-Annex

Attachments:

Exhibit A: Development Agreement

Summary:

Property Owner Z7 Development LLC represented by Chase Stratton, requested a zone change to rezone parcel K-39-41-Annex, K-39-42-Annex, and K-39-43-Annex from Residential Agriculture (RR-1) to Single Family Zone (R-1-8), Commercial (C-3), and Manufacturing (M-2). The City Council passed a motion to approve Ordinance 5-4-23 O, 5-5-23 O, and 5-6-23 O An Ordinance Approving the zone change with the conditions that a development agreement is agreed upon by September 26, 2023 between the City and the Applicant.

Planning Commission:

Planning Commission made a motion to send a positive recommendation to City Council to approve a Development Agreement for parcels K-39-41-Annex, K-39-42 Annex and K-39-43 Annex located at approximately 1250 S HWY 89A (Applicant Z7 Development) with the following amendments: decrease density in the P2 & P4 and increase transition for the north boundary of P2. Motion was unanimous.

Suggested Motion(s):

I move that we approve the Development Agreement for parcels K-39-41-Annex, K-39-42-Annex, and K-39-43-Annex and adopt Resolution 9-x-23 R.

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I move that we approve the Development Agreement for parcels K-39-41-Annex, K-39-42-Annex, and K-39-43-Annex and adopt Resolution 9-x-23 R with the following amendments

.

I move that we deny the Development Agreement for parcels K-39-41-Annex, K-39-42-Annex, and K-39-43-Annex.

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Exhibit A: Development Agreement

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Upon recording, return to:
Kanab City
26 N. 100 E.
Kanab, Utah 84741

Tax ID/Parcels: K-39-43-ANNEX; K-39-42-ANNEX; and K-39-41-ANNEX

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter "Agreement"), entered into this 26th day of September 2023, by, between and among, Z7 Development, LLC, a Utah limited liability company (hereinafter "Owner"); and Kanab City, a Utah municipal corporation (hereinafter "City") (collectively hereinafter referred to as the "Parties").

RECITALS

WITNESSETH:

WHEREAS, Owner is the legal owner of the real estate located in Kanab, Utah, more fully described on the attached Exhibit "A" (hereinafter "Property"), which is incorporated herein by this reference and desires to rezone and develop the Property;

WHEREAS, Owner is in the business of real property development and construction and desires to establish and develop the Property in conjunction and cooperation with City;

WHEREAS, there are three (3) distinct parcels of real property which make up the Property. Those three (3) parcels have the following Tax Id Nos: K-39-43-ANNEX; K-39-42-ANNEX; and K-39-41-ANNEX;

WHEREAS, Owner has requested that the City rezone parcel K-39-43-ANNEX from RA to R-1-8, parcel K-39-42-ANNEX from RA to C3, and parcel K-39-41-ANNEX from RA to M2;

WHEREAS, on April 18, 2023, the Kanab City Planning Commission met and considered Owner's requested zone change, thereafter sending its recommendation to the City Council for each parcel;

WHEREAS, on May 23, 2023, after proper notice was provided, the Kanab City Council held a public hearing, in which public input was received and discussed in relation to the Owner's requested zone change;

WHEREAS, on May 23, 2023, the Kanab City Council met and deliberated over the requested zone changes for each parcel of the Property;

WHEREAS, on May 23, 2023, the Kanab City Council conditionally approved the three requested zone changes, conditioned upon the Owner and the City entering into a recordable

development agreement on or before September 26, 2023, governing the permitted uses on the three parcels;

WHEREAS, the conditional zone change for the three parcels making up the Property will require the Owner to adjust the parcel lines as necessary to match the development agreement;

WHEREAS, on September 19, 2023, the Kanab City Planning Commission held a duly noticed public hearing to consider this Agreement, and thereafter considered the Agreement and made a recommendation to the Kanab City Council pertaining thereto;

WHEREAS, on September 26, 2023, having received the Planning Commission's recommendation, the Kanab City Council met during their duly noticed regular meeting, considered the recommendations and input of City staff, the public, and the Planning Commission, and discussed the Agreement;

WHEREAS, the Parties desire to enter into this Agreement to set forth their respective understandings and agreements with regard to the rezoning of the Property and the specific terms and conditions regarding the zone change and the development of the Property;

WHEREAS, to allow development of the Property for the benefit of the Owner, to ensure City that the development will conform to applicable policies set forth in the General Plan and City Ordinances, and to address concerns of property owners in proximity to the Property, Owner and City are each willing to abide by the terms and conditions set forth herein;

WHEREAS, the Owner acknowledges and accepts that as a condition of the zone change of each of the three parcels constituting the Property, and as outlined in this Agreement, the Owner is giving up certain rights and permitted and conditional uses that are otherwise afforded those owners of real property with an assigned zone of R-1-8, C3, and M2;

WHEREAS, acting pursuant to its legislative authority under Utah Code § 10-9a-101, et seq., and after (i) all required public notice and hearings and (ii) execution of this Agreement by Owner, the City Council, in exercising its legislative discretion and authority, has determined that entering into this Agreement furthers the purposes of the City's General Plan and intents expressed in through the City's ordinances;

WHEREAS, as a result of the Kanab City Council's determination, the City concludes that the terms and conditions of this Agreement, the adoption of which will solidify the zone changes previously conditionally approved, will promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, undertakings, agreements, and covenants herein contained, the validity and sufficiency of which and the

consideration therefore is expressly acknowledged by each of the parties, the Parties agree as follows:

A. Recitals. The preceding recitals are herein adopted and incorporated by reference, as if fully set forth herein.

B. Development Plan. Except as otherwise permitted in this Agreement, the Property shall be developed in accordance with Kanab City General Plan and the Kanab City land use and subdivision regulations and design standards, and the terms and conditions of this Agreement. A visual depiction of the Owner's Development Plan is visually depicted in Exhibit B, attached hereto and incorporated by reference. Owner shall develop the parcels as follows:

1. The Development Plan for the Property shall consist of a total of seven (7) planned areas, labeled P-1 through P-7, as depicted in Exhibit B.

2. After approval of this Agreement, within one (1) year and before any development activity shall commence, the Owner shall take the necessary steps to make parcel line adjustments so that:

- a. Planned areas P-1 and P-2 are completely within the boundaries of parcel K-39-43-ANNEX;
- b. Planned areas P-3, P-4, and P-5 are completely within the boundaries of parcel K-39-42-ANNEX; and
- c. Planned areas P-6 and P-7 are completely within the boundaries of parcel K-39-41-ANNEX.

3. Parcel K-39-43-ANNEX consists/will consist of approximately 44.52 acres which contains two (2) planned areas identified as P-1 and P-2 on the attached Exhibit "B".

- a. P-1 shall consist of approximately 10.44 acres. P-1 shall be limited to permitted uses consistent with agricultural property, as governed by Kanab City Land Use Ordinance, Chapter 16 (Land Use Chart, outlining permitted and conditional uses), as adopted as of the effective date of this Agreement, except as otherwise restricted herein.
- b. P-2 shall consists of approximately 34.08 acres. P-2 shall be developed into a residential subdivision, as governed by Kanab City Land Use Ordinance, Chapter 17, as adopted as of the effective date of this Agreement, except as otherwise restricted herein.

4. Parcel K-39-42-ANNEX consists/will consist of approximately 47.27 acres which contains three (3) planned areas identified as P-3, P-4, and P-5 on the attached Exhibit "B".

- a. P-3 shall consist of approximately 15.65 acres. P-3 shall be developed into a commercial development, as governed by Kanab City Land Use Ordinance, Chapter 20 (Land Use Chart, outlining permitted and conditional uses, but excluding residential uses), as adopted as of the effective date of this Agreement, except as otherwise restricted herein.
- b. P-4 shall consist of approximately 15.11 acres. P-4 shall be developed into a multi-family residential development, as governed by Kanab City Land Use Ordinance, Chapters 18 and 20, as adopted as of the effective date of this Agreement, except as otherwise restricted herein.
- c. P-5 shall consist of approximately 16.51 acres. P-5 shall be developed into a RV/Camping/Recreation development, as governed by Kanab City Land Use Ordinance, Chapters 13 and 20, as adopted as of the effective date of this Agreement, except as otherwise restricted herein.

5. Parcel K-39-41-ANNEX consists/will consist of approximately 18.32 acres which contains two (2) planned areas identified as P-6 and P-7 on the attached Exhibit "B".

- a. P-6 shall consist of approximately 6.00 acres. P-6 shall be developed into a light industrial/manufacturing development, consistent with the permitted and conditional uses outlined in the M1 zone, as governed by Kanab City Land Use Ordinance, Chapter 21 (Land Use Chart, outlining permitted and conditional uses for M1), as adopted as of the effective date of this Agreement, except as otherwise restricted herein.

P-7 shall consist of approximately 12.32 acres. P-7 shall be developed into a heavy industrial/manufacturing development, consistent with the permitted and conditional uses outlined in the M2 zone, as governed by Kanab City Land Use Ordinance, Chapter 21 (Land Use Chart, outlining permitted and conditional uses for M2), as adopted as of the effective date of this Agreement, except as otherwise restricted herein.

6. Subject to the provisions of this Agreement and the necessary approvals required for development of the Property, Owner may proceed by developing the Property all at one time or in phases, as elected by the Owner.

C. Duties of Owner and City. The Parties agree to the following as it relates to the construction and development of the Property:

1. Owner will place a deed notification/restriction on all residential lots, commercial units and other parcels developed on P-2, P-3, P-4, P-5, P-6, and P-7 stating the purchaser of any lots in those parcels are purchasing in an active farming community and they accept all real or perceived nuisances from those farming activities and any purchaser will not take any action to hinder or stop those farming activities. By deed restriction, Owner further agrees to

prohibit vacation, nightly or short-term rentals in the residential subdivision to be built in the P-2 and P-4 planned areas.

2. Owner shall limit the number of individual units on P-4 to 12 units per acre.

3. Owner agrees to work with the Kanab Irrigation Company to ensure there is no negative impact on their ability to prove up on Owner's one hundred and eight-six (186) shares as P-2, P-3, P-4, P-5, P-6, and P-7 are developed.

a. If Owner sells or leases its Kanab Irrigation Company shares to a third party, Owner agrees to sell or lease those water shares to individuals or entities that will only use those Kanab Irrigation Company shares for agricultural purposes.

b. Owner acknowledges and agrees that the terms related to shares of water regulated by Kanab Irrigation Company Owner are not negotiated terms of this Agreement being required by Kanab City and these terms do not constitute direct or indirect contractual consideration; nor do these provisions constitute an exaction being required by Kanab City. The Owner's intent by inclusion of this term is to address concerns of local residents and property owners in proximity to the Property and to provide a general public benefit.

4. Owner agrees to donate the use of P-1 planned area to the Kanab City FFA club, or similar formal or informally organized non-profit organization, for their use for a period of fifteen (15) years from the effective date of this Agreement.

a. Owner further agrees to donate the necessary water shares and sprinkler wheel lines needed to farm P-1.

b. Owner also agrees to donate \$20,000.00 towards the onsite improvements on P-1, including a barn, corrals, etc.

c. If the Kanab City FFA club, or similar informal or formally organized non-profit organization, withdraws interest or is continually found in violation of City Code or this Agreement, as determined by the City's Code Enforcement official, in respect to the use of a portion or all of P-1, then Owner shall have the right to terminate Kanab City FFA club's rights, or the rights of a similar non-profit organization, to use P-1 and may lease all the portion of P-1 subject to the termination to a third party for agricultural use.

d. Owner acknowledges and agrees that the provisions of paragraph C(4)(a)-(c) are not a negotiated term of this Agreement being required by Kanab City and these terms do not constitute direct or indirect

contractual consideration; nor do these provisions constitute an exaction (lawful or unlawful) being required by Kanab City. The Owner's intent by inclusion of this term is to address concerns of local residents and property owners in proximity to the Property and to provide a general public benefit.

5. As to P-1, after the initial fifteen (15) year period under this Agreement has expired, the use shall remain agriculture similar to uses in designated in the RA zone, including the use and density of 1 residential dwelling unit per 2 acres, notwithstanding the R-1-8 zoning designation. Owner may request an amendment to this Agreement to specifically alter or amend the use and density of P-1 outlined in this paragraph.

6. Upon approval and execution of this Agreement, the conditional zone change approved on May 23, 2023, by the Kanab City Council, through Ordinances 5-4-23 O, 5-5-23 O, and 5-6-23 O shall be in effect for parcels K-39-43-ANNEX, K-39-42-ANNEX, and K-39-41-ANNEX, thereby facilitating the development of those parcels as detailed herein and on Exhibit "B".

7. An asphalt batch plant shall not be permitted on P-7. A concrete batch plant shall be a conditional use on P-7.

8. The Parties recognize that from time to time, for good and sufficient reasons, it may be necessary to alter the size, location, use or type of the lots or other site improvements on P-2, P-3, P-4, P-5, P-6, and/or P-7. Subject to the applicable substantive and procedural requirements of State Law and Kanab City's ordinances, Owner may apply to make any necessary alternations, modifications, or adjustments to the development, in conformance with the terms of this Agreement. If a proposed alteration would require an amendment to this Agreement, the Owner may apply for and the Parties will consider that amendment using the same process, procedure (including a notice and public hearing), and formality required for amendment to a land use regulation.

9. Owner will adhere to the City's General Plan, including its Transportation Master Plan and Active Transportation goals, plans, and policies. Furthermore, the Owner will provide an active transportation route from Highway 89A to Sherry Belle Trail (Jackson Flat Reservoir).

D. Miscellaneous Provisions

1. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. A facsimile signature shall also constitute an original signature of this Agreement. Owner shall provide City with an original signed copy of the Agreement for recording purposes.

2. Notices. All notices and communications required by or pertaining to this Agreement shall be sent to the parties at the following addresses:

a. To Owner at:

Z7 Development, LLC
42 South 850 West
Hurricane, Utah 84737
Attn: Chase Stratton

b. To City at:

City of Kanab
Attn: City Manager
26 N. 100 E.
Kanab, Utah 84741

3. Authority to Execute Agreement. Each party hereto expressly warrants that it has the necessary authority to execute this Agreement on behalf of its governing board or board of directors that each signatory hereto has authority to execute this Agreement on behalf of the respective named party.

4. Entire Agreement. This Agreement represents the entire agreement between the parties related to the subject matter herein. All other agreements are merged into this Agreement, which cannot be modified except by the written consent of all parties. Any modification to this Agreement shall require the same notice(s) and public hearing required for the modification of a land use regulation.

5. Severability. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

6. Parties to Pay Own Costs. The Parties hereto agree to bear their own legal fees and costs arising out of or related to the negotiation and documentation of this Agreement.

7. Headings and Interpretation. Paragraph headings contained herein are only for the convenience of the Parties. The substance and provisions hereof control without regard to the headings. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City. The Parties acknowledge that this Agreement has been negotiated and prepared in an arms-length transaction and that all Parties have been deemed to have drafted this Agreement and this Agreement shall not be interpreted against any Party as the draftsman.

8. Third-Party Beneficiaries. This Agreement does not create any third-party beneficiary rights. It is specifically understood by the Parties that: (i) all rights of action and

enforcement of the terms and conditions of this Agreement shall be reserved to City and Owner; (ii) the development of the Property is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

9. The Parties agree to undertake such other acts and execute such other documents as may be reasonably necessary to affect the purpose and intent of this Agreement.

10. The Parties each warrant and acknowledge that (i) they have read and understood the terms of this Agreement; (ii) they have had the opportunity to retain legal counsel of their choice throughout the negotiations which preceded the signing of this Agreement; and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other party hereto.

11. Term. The term of this Agreement shall commence upon September 26, 2023. This Agreement shall terminate when certificates of occupancy have been issued for all buildings and/or dwelling units in development of the Property; provided, however, that any covenant included in this Agreement which is intended to run with the land, as set forth in any term or condition, shall survive this Agreement.

12. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

13. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Kanab City Council, taken with the same formality as the vote approving this Agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

E. Applicability of State Law and Kanab City Ordinances

1. This Agreement shall be governed by the laws in the State of Utah.

2. All provisions of State Law and the City ordinances shall be applicable to the development of the Property, except to the extent this Agreement is more restrictive.

3. This Agreement does not exempt nor override any procedure, process, necessary approvals, design standards, provision of applicable State law, building code, fire code, or Kanab City ordinance (e.g., General, Land Use, and Subdivision) except where specifically outlined in this Agreement, and as permitted by law.

4. Owner shall be entitled to application of the relevant local ordinances, laws, and fees in effect at the time a complete application is submitted, except as outlined or restricted herein.

5. Owner shall cause the necessary application(s) with requisite supporting documentation and plans, preliminary and final if required, for administrative consideration and approval. For administrative applications, the City shall approve such application(s), site plan(s), plat(s), etc., if such items meet the standards and requirements outlined in applicable State Law and local ordinances.

6. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the development of the Property is held invalid by a court of competent jurisdiction, this Agreement shall be null and void.

F. Reserved Legislative Powers.

1. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances, and regulations after the date of this Agreement. This Agreement is not intended to bind a future governing body of the City to a specific legislative decision.

2. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Owner's rights as set forth herein, unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (Utah, 1988), or successor case law or statute. Any such proposed change affecting Owner's rights shall be of general application to all development activity in City. Unless City declares an emergency, Owner shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to development of the Property.

G. Default or Breach.

1. Upon the happening of one (1) or more of the following events or conditions Owner or City, as applicable, shall be in default or breach ("Default") under this Agreement:

- a. A warranty, representation or statement made or furnished by Owner under this Agreement is intentionally false or misleading in any material respect when it was made; or

- b. A determination by City made upon the basis of substantial evidence that Owner has not complied in good faith with one (1) or more of the material terms or conditions of this Agreement; or
- c. Any other event, condition, act or omission, either by City or Owner, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

2. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes action to begin curing such Default with such thirty (30) day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the actions outlined in the Remedies provision included herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

3. Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

H. Remedies

1. Defaults or Breach. Upon Default as set forth in the preceding section above, City may declare Owner to be in breach of this Agreement and City: (i) may withhold approval of any or all building permits or certificates of occupancy applied for in development of the Property, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the development until the breach has been corrected by Owner.

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

rectified by Owner. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

3. Any assertions of breach or default asserted Owner against City shall be handled as a Land Use Appeal and addressed in accordance with the administrative appeal process outlined in Utah Code, Title 10, Part 7, and the Kanab City Land Use Ordinance, Chapter 3, and other applicable provisions of the Kanab City ordinances. All administrative process and remedies must be exhausted, prior to seeking judicial review of an appeal authority's final decision.

4. No Monetary Damages. The parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Owner for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined through the Kanab City administrative appeals process (the final decision of which is subject to review by a court of competent jurisdiction) is the only intended remedy for any breach of this Agreement. Accordingly, the Parties waive all other remedies in law or equity, including monetary damages (e.g., actual, future, and speculative damages, including economic, special, punitive, or other monetary damages).

5. In the event of a dispute over or relating to the terms of this Agreement, or any Party's performance under this Agreement, the Parties in any action or proceeding brought in connection with such dispute or the enforcement of this Agreement shall cover their or its own costs, including reasonable attorney fees, whether incurred in litigation or otherwise.

6. The City is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq. (the "Immunity Act"). The City does not waive any defenses or limits of liability available under the Immunity Act and other applicable law. The City maintains all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law. Nothing in this Agreement should be interpreted as a waiver of the City's privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

7. Owner shall provide improvement completion assurances and improvement warranties for public landscaping improvements and public infrastructure improvements as authorized under Utah Code, Title 10, Chapter 9a, and as outlined and required in Kanab City ordinances.

I. Binding Effect

1. This Agreement shall be recorded, putting future prospective purchasers on notice as to the terms and provisions contained herein, and shall bind and inure to the benefit of each party hereto and their successors and assigns in interest. This Agreement shall run with the property, binding all successors, heirs, and assigns to the property.

2. If the Property is transferred ("Transfer") to a third party ("Transferee"), Owner hereunder and the Transferee shall be jointly and severally liable for the performance of

each of the obligations contained in this Agreement unless prior to such Transfer (i) Owner hereunder provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as Owner under this Agreement and the persons and/or entities executing this Agreement as Owner shall be released from any further obligations under this Agreement as to the transferred Property.

3. Notwithstanding the provisions of the preceding paragraph, a transfer by Owner of a lot or dwelling unit located on the Property within a City approved and recorded plat shall not be deemed a Transfer as set forth above so long as Owner's obligations with respect to such lot or dwelling unit have been completed. In such event, Owner shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

J. Hold Harmless.

1. Owner agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any activity connected with the development of the Property, including approval of the development and this Agreement; the direct or indirect operations of Owner or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the development of the Property; or which arises out of claims for personal injury, including health, and claims for property damage.

- a. The agreements of Owner shall not be applicable to (i) any claim arising by reason of the negligence or intentional tort actions of City.
- b. City shall give written notice of any claim, demand, action or proceeding which is the subject of Owner's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Owner shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

K. Owner Acknowledgment

1. Owner affirmatively acknowledges that by entering into this agreement it is giving up some of the rights it has under the existing Kanab City Land Use ordinances, specifically giving up the ability to develop the Property as would otherwise be permitted. Owner further acknowledges that by entering into this Agreement it is accepting the limited permitted and conditional uses and giving up the permitted and conditional uses otherwise listed in the land use chart of Chapters 17, 20, 21, and other applicable sections of the Kanab City Land Use Ordinance. Owner acknowledges that it has been sufficiently advised of the rights and permitted/conditional

uses it might otherwise have under federal, state, and local laws which Owner is giving up by entering into this Agreement.

2. Owner acknowledges that it has been sufficiently advised orally and in writing by the City and Developer's own legal counsel (including by way of this written Agreement) of any and all rights "under clearly established state law" to which Owner is entitled but conceding and giving up by entering into this Agreement, and will therefore be estopped from a future related claim, including claims brought under Utah Code § 10-9a-532(2)(c) (i.e., claim of undisclosed or unknown right forfeited through this Agreement). [If a term of this written agreement could be interpreted or constructed to abridge the rights of the Owner, or seen in a light less favorable to the Owner, it should be considered as notice of a possible if not an outright concession or abridgement of the Developer's "clearly established" statutory right(s).]

3. Owner further acknowledges that this Agreement is not a condition for development of the Property; however, a development agreement has been imposed as a condition for the approval of a requested zone change for the three subject parcels constituting the Property. Owner acknowledges there are other avenues for developing the Property without entering into this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on or before the day and year first above written.

[Signatures on the following pages.]

Kanab City
A Utah municipal corporation

Attest:

Colten Johnson, Mayor

Celeste Cram, City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS
COUNTY OF KANE)

On the ___ day of _____, 2023, personally appeared before me Colten Johnson, who being by me duly sworn did say that he is the Mayor of Kanab City and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this ___ day of _____, 2023.

Notary Public
Commission expires: _____

EXHIBIT A
Legal Description of the Property

Parcel K-39-41-ANNEX:

A PORT OF THE NE¹/₄NE¹/₄ OF SEC 4 T44S R6W, SLB&M, MORE PARTICULARLY DESC'D AS-FOLLOWS:

BEG AT THE N 1/16 COR OF SEC 4 & SEC 3 OF SAID T & R; TH ALG THE N 1/16 LINE OF SAID SEC 4 N 89°19'24" W 775.50 FT; TH N 01°08'04" E 192.80 FT; TH N 89°19'24" W 509.70 FT TO THE E R/W OF US HWY 89A; TH ALG SAID R/W N 01°03'57" E 531.06 FT; TH N 90°00'00" E 1284.50 FT TO THE E LINE OF SAID SEC 4; TH ALG THE SEC LINE S 01°00'50" W 739.02 FT TO THE PT OF BEG CONT 19.32 AC (M/L).

Parcel K-39-42-ANNEX:

A PORT OF THE SE¹/₄SE¹/₄ OF SEC 33 & A PORT OF THE SW¹/₄SW¹/₄ OF SEC 34 T43S R6W, SLB&M, & A PORT OF THE NE¹/₄NE¹/₄ OF SEC 4 T44S, R6W, SLB&M, MORE PARTICULARLY DESC'D AS-FOLLOWS:

BEG AT THE SEC COR COMMON TO SAID SEC'S 33, 34, & 4; TH ALG THE E SEC LINE OF SAID SEC 4, TH S 01°00'51" W 575.78 FT; TH N 90°00'00" W 1284.50 FT TO THE E R/W OF US HWY 89A; TH ALG SAID R/W N 01°03'50" E 1585.32 FT; TH N 90°00'00" E 594.52 FT; TH S 01°08'49" W 148.65 FT; TH N 90°00'00" E 321.87 FT; TH S 00°24'47" W 179.09 FT; TH N 90°00'00" E 310.50 FT; TH S 00°37'09" W 335.02 FT; TH N 89°59'59" E 702.91 FT, TO THE W-W 1/64 LINE OF SAID SEC 34; TH ALG SAID 1/64 LINE S 00°38'57" W 57.55 FT; TH S 89°20'10" E 652.83 FT TO THE W 1/16 LINE OF SAID SEC; TH ALG SAID 1/16 LINE S 00°40'38" W 297.31 FT TO THE N LINE OF SAID SEC 34; TH ALG SAID SEC LINE N 89°18'31" W 1305.37 FT TO THE PT OF BEG. CONT 52.15 AC (M/L).

A R/W EASEMENT FOR INGRESS & EGRESS OVER & ACROSS THE FOLLOWING DESC PROPERTY: BEG AT THE NW COR OF THE SW/4SW/4 OF SEC 34 T43S R6W, SLB&M & RUN TH E 330.0 FT; TH S 16.5 FT; TH W 330.0 FT; TH N 16.5 FT TO THE PT OF BEG. WH EASEMENT WILL BE APPURTENANT TO & RUN WITH THE FOLLOWING DESC PROPERTY: THE SW/4SW/4NW/4SW/4 OF SEC 34 T43S R6W (3-6-34-10B) = DEED 0363-201

BEING IN SEC'S 33 & 34 T43S R6W & SEC 4 T44S R6W

[Continued on next page.]

Parcel K-39-43-ANNEX:

A PORT OF THE W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ OF SEC 34 & A PORT OF THE SE $\frac{1}{4}$ OF SEC 33 T43S R6W, SLB&M, MORE PARTICULARLY DESC'D AS-FOLLOWS:

BEG AT THE S 1/16 COR OF SAID SEC'S 33 & 34; TH ALG THE S 1/16 LINE OF SAID SEC 34 S 89°28'17" E 653.34 FT TO THE C-W-SE 1/64 COR; TH ALG THE W-W 1/64 LINE S 00°38'57" W 964.97 FT; TH S 89°59'59" W 702.91 FT; TH N 00°37'09" E 335.02 FT; TH N 90°00'00" W 310.50 FT; TH N 00°24'47" E 179.09 FT; TH N 90°00'00" W 321.87 FT; TH N 01°08'49" E 148.65 FT; TH N 90°00'00" W 594.52 FT TO THE E R/W OF US HWY 89A; TH ALG SAID R/W N 01°03'50" E 323.41 FT; TH S 89°08'33" E 594.71 FT; TH N 01°18'48" E 643.39 FT; TH N 89°05'23" W 597.44 FT TO SAID R/W; TH ALG SAID R/W N 01°04'10" E 20.00 FT TO THE S-N 1/64 LINE OF SAID SEC 33; TH ALG SAID 1/64 LINE S 89°05'23" E 1268.44 FT TO THE N-S 1/64 COR OF SAID SEC'S 33 & 34; TH ALG THE SEC LINE S 00°37'15" W 658.83 FT TO THE PT OF BEG. CONT 38.44 AC (M/L).

BEING IN SEC'S 33 & 34

EXHIBIT B
Visual Depiction of Planned Areas

Exhibit B

Parcel - P-1
Use - Agriculture Buffer
Zone - R-1-8
10.44 Acres

Parcel - P-2
Use - Single-Family Residential
Zone - R-1-8
34.08 Acres

Parcel - P-4
Use - Multi-Family
Zone - C-3
15.11 Acres

Parcel - P-5
Use - RV / Camping / Recreation
Zone - C-3
16.51 Acres

Parcel - P-6
Use - Light Manufacturing
Zone - M2
6 Acres

Parcel - P-3
Use - Commercial
Zone - C-3
15.65 Acres

Parcel - P-7
Use - Heavy Manufacturing
Zone - M2
12.32 Acres

RESOLUTION NO. 9-2-23 R

**A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT
WITH Z7 DEVELOPMENT, LLC ON PARCELS K-39-43-ANNEX, K-39-42-ANNEX, and K-
39-41-ANNEX**

WHEREAS, the Kanab City Council (the “Council”) met in regular session on September 26, 2023, to discuss, among other things, approving a development agreement between Kanab City (“City”) and Z7 Development, LLC (“Developer”).

WHEREAS, Developer intends to develop, parcels K-39-43-Annex, K-39-42-Annex, and K-39-41-Annex;

WHEREAS, parcels K-39-43-Annex, K-39-42-Annex, and K-39-41-Annex were recently rezoned conditioned upon the City and Developer entering into a development agreement;

WHEREAS, on September 19, 2023 the Kanab Planning Commission held a public hearing, discussed the proposed development agreement;

WHEREAS, the City Council has thoroughly reviewed the development agreement and finds it in the best interest of the community; and

WHEREAS, the attached development agreement outlines the City’s and Developer’s understanding, intent, and terms agreeable to the all parties.

NOW, THEREFORE, BE IT RESOLVED by the Kanab City Council, adopting and approving the Development Agreement attached hereto, and thereby authorizing the signing and recordation of the same.

The Mayor and City staff are authorized to take all steps necessary to effectuate this resolution.

A fully executed copy of the Development Agreement shall be provided to the Developer for their consideration and execution.

The provisions of this Resolution shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this Resolution or the application in a different circumstance.

This Resolution shall be effective upon passage.

PASSED AND RESOLVED this 26th day of September, 2023.

KANAB CITY

ATTEST:

MAYOR

RECORDER

VOTING:

Arlon Chamberlain	Yea	___	Nay	___
J.D. Wright	Yea	___	Nay	___
Kerry Glover	Yea	___	Nay	___
Scott Colson	Yea	___	Nay	___
Chris Heaton	Yea	___	Nay	___

Mayor
Colten Johnson
City Council
Arlon Chamberlain
Scott Colson
Chris Heaton
Kerry Glover
J.D. Wright



KANAB
—UTAH—

City Manager
Kyler Ludwig
City Attorney
Kent Burggraaf
City Recorder
Celeste Cram
City Treasurer
Danielle Ramsay

DATE: September 26, 2023
TO: Mayor and City Council
SUBJECT: Public Infrastructure Districts
PREPARED BY: City Manager, Kyler Ludwig

Background:

In 2019 the State of Utah created PIDs as an economic development tool for cities and counties. PIDs are independent political subdivisions governed by their own boards. PIDs are created by an action of the City Council and require 100% consent of the property owners and voters within the PID boundaries. PIDs have the power to finance public infrastructure (water, sewer, etc.), and they are eligible for tax-exempt financing. The powers of a PID can be limited by the creating entity at the time the PID is created.

Debt taken on by the PID is not a liability or balance sheet item for the City.

During the August 23rd Council Meeting, the City Council expressed interest in moving forward to create a policy for PIDs. A formal City policy was created on September 27, 2022. The Ventana development has started discussions and is ready to propose governing documents for a PID.

Ventana submitted a letter of intent to the City and has worked with the District Advisory Committee (DAC) through the Governing Documents Process. A public notice was sent out notifying the public of a public hearing over the creation of the new district.

The City Council has final approval authority over the creation of a PID.

Analysis:

Ventana Resort has two development agreements for their property; one if the City approves the PID, and an alternate if the PID is not approved. The difference between the two development agreements is that if the City approves the PID it requires the developers to provide attainable housing not to exceed 26% of the Kanab Nonfamily household median income for a studio apartment (1 bedroom = 1.275 times studio rate, 2 bedroom = 1.55 times the studio rate).

Ventana Resort Village has gone through the City's required process for creating a PID. The

— A Western Classic —

Developers have worked with the DAC to create a draft governing body document for the council to review.

100% of the Property Owners have given consent for the creation of the District.

Proposed Trustees of the Board: Steve Laski – 6 year , Devin Anderson – 4 year, Stephenie Nast – 6 year.

Maximum Mill levy of 0.006 per dollar of taxable value of property in the Proposed District (City policy sets a limit of .010)

A proposed aggregate debt limit for the Proposed District of \$12,000,000

Permitting the Proposed District to issue debt repayable from property taxes, special assessments, and other revenues of the District. The PID will require future property owners to pay for the infrastructure through a property tax assessment; it is anticipated that the Ventana Resort will be comprised of mostly non-primary residents.

Financial

The PID is solely responsible for the debt taken out to finance infrastructure.

Application fees and governing document application fees have been paid by the applicant.

Recommendations/Actions:

Approve Resolution 9-3-23 R A Resolution providing for the creation of the Ventana Resort Village Public Infrastructure District and approving a governing document and interlocal agreement; Approving of an annexation area, appointing a board of trustees, authorizing other documents in connection therewith, and related matters.

Attachments:



Kanab, Utah

September 26, 2023

The City Council (the “Council”) of Kanab City, Utah (the “City”), met in regular session (including by electronic means) on September 26, 2023, at its regular meeting place at the Kanab City Council Chambers in Kanab, Utah at 6:30 p.m., with the following members of the Council being present:

Colten Johnson	Mayor
JD Wright	Council Member
Scott Colson	Council Member
Arlon Chamberlain	Council Member
Kerry Glover	Council Member
Chris Heaton	Council Member

Also present:

Kent Burggraaf	City Attorney
Celeste Cram	City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, the City Recorder presented to the Council a Certificate of Compliance with Open Meeting Law with respect to this September 26, 2023, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon, the following Resolution was introduced in writing, read in full and pursuant to motion duly made by Council Member [] and seconded by Council Member [] adopted by the following vote:

AYE:

NAY:

The Resolution was later signed by the Mayor and recorded by the City Recorder in the official records of the City. The Resolution is as follows:

RESOLUTION 9-3-23 R

A RESOLUTION OF THE CITY COUNCIL (THE “COUNCIL”) OF KANAB CITY, UTAH (THE “CITY”), PROVIDING FOR THE CREATION OF VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT (THE “DISTRICT”) AS AN INDEPENDENT DISTRICT; AUTHORIZING AND APPROVING A GOVERNING DOCUMENT AND INTERLOCAL AGREEMENT; APPROVING OF AN ANNEXATION AREA; APPOINTING A BOARD OF TRUSTEES; AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND RELATED MATTERS.

WHEREAS, a petition (the “Petition”) was filed with the City requesting adoption by resolution the approval of the creation of a Public Infrastructure District pursuant to the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953, as amended (the “PID Act”) and relevant portions of Limited Purpose Local Government Entities - Special Districts, Title 17B (together with the PID Act, the “Act”) within the City and approval of the annexation or withdrawal of any portion of the boundaries of the District therefrom without further approval or hearings of the City or the Council, as further described in the Governing Document (as hereinafter defined) for the purpose of financing public infrastructure costs; and

WHEREAS, pursuant to the terms of the Act, the City may create one or more public infrastructure districts by adoption of a resolution of the Council and with consent of 100% of all surface property owners proposed to be included in the District (the “Property Owners”); and

WHEREAS, the City, prior to consideration of this Resolution, held public hearings after 6:30 p.m. to receive input from the public regarding the creation of the District and the Property Owners have waived the 60-day protest period pursuant to Section 17D-4-201 of the PID Act; and

WHEREAS, the hearing on the Petition was held at the Kanab City Council Chambers in Kanab, Utah because there is no reasonable place to hold a public hearing within the District’s boundaries, and the hearing at the Kanab City Council Chambers was held as close to the applicable area as reasonably possible; and

WHEREAS, the City properly posted notice of the public hearing in compliance with Section 17B-1-211(1) of the Act; and

WHEREAS, none of the Property Owners submitted a withdrawal of consent to the creation of the District before the public hearing on the Petition; and

WHEREAS, it is necessary to authorize the creation of the District under and in compliance with the laws of the State of Utah and to authorize other actions in connection therewith; and

WHEREAS, the governance of the District shall be in accordance with the PID Act and the terms of a governing document (the “Governing Document”) attached hereto as Exhibit B and an Interlocal Agreement between the District and the City, attached to the Governing Document as Governing Document Exhibit C; and

WHEREAS, the Utah School and Institutional Trust Lands Administration has reviewed and consented to the form of the Governing Document for the District; and

WHEREAS, pursuant to the requirements of the Act, there shall be signed, authenticated, and submitted to the Office of the Lieutenant Governor of the State of Utah for the District a Notice of Boundary Action attached hereto as Exhibit C (the “Boundary Notice”) and Final Entity Plat attached as Boundary Notice Appendix B (or as shall be finalized in accordance with the boundaries approved hereunder) (the “Plat”).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL, AS FOLLOWS:

1. Terms defined in the foregoing recitals shall have the same meaning when used herein. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Council and by officers of the Council directed toward the creation and establishment of the District, are hereby ratified, approved and confirmed.

2. The District is hereby created as a separate entity from the City in accordance with the Governing Document and the Act. The boundaries of the District shall be as set forth in the Governing Document and the Plat.

3. Pursuant to the terms of the PID Act, the Council does hereby approve the annexation or withdrawal of any area within the Annexation Area (as defined in the Governing Document) into or from the District, as applicable, without any further action, hearings, or resolutions of the Council or the City, upon compliance with the terms of the PID Act and the Governing Document.

4. The Council does hereby authorize the District to provide services relating to the financing and construction of public infrastructure within and without the Annexation Area upon annexation thereof into the District without further request of the District to the City to provide such service under 17B-1-407, Utah Code Annotated 1953 or resolutions of the City under 17B-1-408, Utah Code Annotated 1953.

5. It is hereby found and determined by the Council that the creation of the District is appropriate to the general welfare, order and security of the City, and the organization of the District pursuant to the PID Act is hereby approved.

6. The Governing Document and the Interlocal Agreement in the form presented to this meeting and attached hereto as Exhibit B and Governing Document Exhibit C, are hereby authorized and approved and the District shall be governed by the terms thereof and applicable law.

7. The Trustees of the Board of the District shall be initially composed of the same members. The initial Board of the District is hereby appointed as follows:

- (a) Trustee 1 – Steve Laski, for an initial 6-year term;
- (b) Trustee 2 – Devin Anderson, for an initial 4-year term;

(c) Trustee 3 – Stephenie Nast, for an initial 6-year term;

(d) Such terms shall commence on the date of issuance of a Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

8. The Council does hereby authorize the Mayor or a Council Member to execute the Boundary Notice in substantially the form attached as Exhibit C, the Plats, and such other documents as shall be required to accomplish the actions contemplated herein on behalf of the Council for submission to the Office of the Lieutenant Governor of the State of Utah.

9. Prior to recordation of a certificates of creation for the District, the Council does hereby authorize the Mayor, a Council Member, City Manager, or the City Attorney to make any corrections, deletions, or additions to the Governing Document, the Interlocal Agreement, and the Boundary Notice or any other document herein authorized and approved (including, but not limited to, corrections to the property descriptions therein contained) which may be necessary to conform the same to the intent hereof, to correct errors or omissions therein, to complete the same, to remove ambiguities therefrom, or to conform the same to other provisions of said instruments, to the provisions of this Resolution or any resolution adopted by the Council or the provisions of the laws of the State of Utah or the United States.

10. The Board of Trustees of the District (the “District Board”) is hereby authorized and directed to record such Governing Document with the recorder of Kane County within thirty (30) days of the issuance of the Certificate of Creation by the Office of the Lieutenant Governor of the State of Utah.

11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

12. All acts, orders and resolutions, and parts thereof in conflict with this Resolution be, and the same are hereby, rescinded.

13. This Resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of Kanab City, Utah, this September 26, 2023.

KANAB CITY, UTAH

By: _____
Mayor

ATTEST:

By: _____
City Recorder

VOTING:

Kerry Glover	Yea	_____	Nay	_____
J.D. Wright	Yea	_____	Nay	_____
Arlon Chamberlain	Yea	_____	Nay	_____
Scott Colson	Yea	_____	Nay	_____
Chris Heaton	Yea	_____	Nay	_____

POSTED the ___ day of _____, 2023, as certified by the Recorder: _____

RECORDER

(Here follows other business not pertinent to the above.)

Pursuant to motion duly made and seconded, the meeting of the Council of the City adjourned.

By: _____
Mayor

ATTEST:

By: _____
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF KANE)

I, Celeste Cram, the undersigned duly qualified and acting City Recorder of Kanab City, Utah (the “City”), do hereby certify as follows:

The foregoing pages are a true, correct, and complete copy of the record of proceedings of the City Council (the “Council”), had and taken at a lawful meeting of the Council on September 26, 2023, commencing at the hour of 6:30 p.m., as recorded in the regular official book of the proceedings of the Council kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

All members of the Council were duly notified of said meeting, pursuant to law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this September 26, 2023.

(SEAL)

By: _____
 City Recorder

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Celeste Cram, the undersigned City Recorder of Kanab City, Utah (the “City”), do hereby certify that I gave written public notice of the agenda, date, time and place of the regular meeting held by the City Council of the City (the “Council”) on September 26, 2023, not less than twenty-four (24) hours in advance of the meeting. The public notice was given in compliance with the requirements of the Utah Open and Public Meetings Act, Section 52-4-202, Utah Code Annotated 1953, as amended:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City’s principal offices at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be published on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting; and

(c) By causing a copy of such notice, in the form attached hereto as Schedule 1 to be posted on the City’s official website at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2023 Annual Meeting Schedule for the Board (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the City Council to be held during the year, by causing said Notice to be posted at least annually (a) on the Utah Public Notice Website created under Section 63A-16-601, Utah Code Annotated 1953, as amended, (b) on the City’s official website and (c) in a public location within the City that is reasonably likely to be seen by residents of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this September 26, 2023.

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING AND AGENDA

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B
GOVERNING DOCUMENT

EXHIBIT C

NOTICE OF BOUNDARY ACTION

NOTICE OF IMPENDING BOUNDARY ACTION

TO: The Lieutenant Governor, State of Utah

NOTICE IS HEREBY GIVEN that the City Council of Kanab City, Utah (the “Council”), acting in its capacity as the creating entity for Ventana Resort Village Public Infrastructure District (the “District”), at a regular meeting of the Council, duly convened pursuant to notice, on September 26, 2023 adopted a Resolution Providing for the Creation of a Public Infrastructure District, a true and correct copy of which is attached as APPENDIX “A” hereto and incorporated by this reference herein (the “Creation Resolution”).

A copy of the Final Local Entity Plat satisfying the applicable legal requirements as set forth in Utah Code Ann. §17-23-20, approved as a final local entity plat by the Surveyor of Kane County, Utah, is attached as APPENDIX “B” hereto and incorporated by this reference. The Council hereby certifies that all requirements applicable to the creation of the District, as more particularly described in the Creation Resolution, have been met. The District is not anticipated to result in the employment of personnel.

WHEREFORE, the Council hereby respectfully requests the issuance of a Certificate of Incorporation pursuant to and in conformance with the provisions of Utah Code Ann. §17B-1-215 upon annexation of the subject property into the boundaries of the City.

DATED this 26th day of September, 2023.

CITY COUNCIL OF KANAB CITY, UTAH, acting in its capacity as the creating authority for VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT

By: _____
AUTHORIZED REPRESENTATIVE

VERIFICATION

STATE OF UTAH)

 :ss.

COUNTY OF KANE)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023.

NOTARY PUBLIC

APPENDIX “A” TO NOTICE OF BOUNDARY ACTION

Copy of the Creation Resolution

APPENDIX “B” TO NOTICE OF BOUNDARY ACTION

Final Local Entity Plat

**GOVERNING DOCUMENT
FOR
VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT
KANAB, UTAH**

Prepared

by

Gilmore & Bell, P.C.
15 West South Temple, Suite 1450
Salt Lake City, Utah 84101

[], 2023

TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	Purpose and Intent.....	1
B.	Need for the District.....	1
C.	Objective of the City Regarding District’s Governing Document.....	1
II.	DEFINITIONS.....	2
III.	BOUNDARIES.....	4
IV.	PROPOSED LAND USE	5
V.	DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES.....	5
A.	Powers of the District and Governing Document Amendment.	5
1.	Improvements	5
2.	Reserved.....	5
3.	Construction Standards Limitation	5
4.	Procurement.	6
5.	Privately Placed Debt Limitation.....	6
6.	Annexation and Withdrawal.	6
7.	Overlap Limitation.....	7
8.	Initial Debt Limitation	7
9.	Total Debt Issuance Limitation.....	7
10.	Bankruptcy Limitation	7
11.	Governing Document Amendment Requirement	7
B.	Preliminary Engineering Survey.....	8
VI.	THE BOARD OF TRUSTEES	8
A.	Board Composition.	8
B.	Reelection and Reappointment.	9
C.	Vacancy.....	9
D.	Compensation.	9
E.	Conflicts of Interest.....	9
VII.	REGIONAL IMPROVEMENTS.....	9
VIII.	FINANCIAL PLAN.....	9
A.	General.....	9
B.	Maximum Voted Interest Rate and Maximum Underwriting Discount.	10
C.	Maximum Debt Mill Levy.....	10
D.	Maximum Debt Mill Levy Imposition Term.	10
E.	Debt Repayment Sources.....	10
F.	Debt Instrument Disclosure Requirement.....	11
G.	Security for Debt.....	11
H.	District’s Operating Costs.....	11
I.	Bond and Disclosure Counsel; Municipal Advisor.	11

IX.	ANNUAL REPORT	12
	A. General.....	12
	B. Reporting of Significant Events.....	12
X.	DISSOLUTION	13
XI.	DISCLOSURE TO PURCHASERS.....	13
XII.	INTERLOCAL AGREEMENT	13

LIST OF EXHIBITS

EXHIBIT A	Legal Descriptions
EXHIBIT B	Initial District and Annexation Area Boundary Map
EXHIBIT C	Interlocal Agreement between the District and Kanab

I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide any ongoing operations and maintenance services.

B. Need for the District.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected on commercial and residential properties for no longer than the Maximum Debt Mill Levy Imposition Term and at a tax mill levy no higher than the Maximum Debt Mill Levy, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate commercial and residential property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational activities are allowed, but only through an Interlocal Agreement with the City or other relevant public entity with written consent of the City.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a determination that adequate provision has been made for the payment of all Debt.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy which shall not exceed the Maximum Debt Mill Levy on taxable properties and which shall not

exceed the Maximum Debt Mill Levy Imposition Term on taxable properties (or repaid from a combination of Assessments and a mill levy). It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Annexation Area Boundaries: means the boundaries of the area described in the Annexation Area Boundary Map and as particularly described in **Exhibit A-2** which are approved by the City for annexation or withdrawal from or into the District upon the meeting of certain requirements.

Annexation Area Boundary Map: means the map attached hereto as **Exhibit B**, describing the property proposed for annexation within the District.

Approved Development Plan: means a Preliminary Development Plan, Development Agreement, or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Area as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time. An infrastructure plan approved by the City Manager or Planning Director shall constitute an Approved Development Plan for purposes of Section V.A.8. For purposes of this Governing Document, the Master Development Agreement dated [REDACTED], 2023 shall constitute an Approved Development Plan. [PLEASE PROVIDE MDA DATE]

Assessment: means (i) the levy of an assessment secured by a lien on property within a District to pay for the costs of Public Improvements benefitting such property or (2) an assessment by a District levied on private property within such District to cover the costs of an energy efficient upgrade, a renewable energy system, or an electric vehicle charging infrastructure, each as may be levied pursuant to the Assessment Act.

Assessment Act: means collectively, (i) Title 11, Chapter 42, Utah Code as may be amended from time to time and (ii) the C-PACE Act.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an *ad valorem* property tax mill levy, and/or collect Assessments.

City: means Kanab, Utah.

City Code: means the City Code of Kanab, Utah.

City Council: means the City Council of the City.

C-PACE Act: means title 11, Chapter 42a of the Utah Code, as amended from time to time.

C-PACE Bonds: means bonds, loans, notes, or other structures and obligations of the District issued pursuant to the C-PACE Act, including refunding C-PACE Bonds.

C-PACE Assessments: means assessments levied under the C-PACE Act.

District: means the Ventana Resort Village Public Infrastructure District.

District Act: means the Local District Act and the PID Act.

District Area: means the property within the Initial District Boundary Map and the Annexation Area Boundary Map.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map and as particularly described in **Exhibit A-1**.

Initial District Boundary Map: means the map attached hereto as **Exhibit B**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Debt Mill Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below.

Maximum Debt Mill Levy Imposition Term: means the maximum term for imposition of a mill levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Project: means the development or property commonly referred to as the Ventana Resort Village Development.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below to serve the future taxpayers of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately 98.28 acres and the total area proposed to be included in the Annexation Area Boundaries is approximately 101.33 acres.

A legal description of the Initial District Boundaries and the Annexation Area Boundaries is attached hereto as **Exhibit A**. A map of the Initial District Boundaries and Annexation Area Boundaries is attached hereto as **Exhibit B**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17D-4-201, Utah Code, subject to Article V below.

IV. PROPOSED LAND USE

The District Area consists of mostly undeveloped land. The 2023 estimated assessed valuation of the District Area within the Initial District Boundaries was \$0, due to ownership by SITLA. This valuation is solely for purposes of this Governing Document, and at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of units or the total site/floor area of commercial, residential, or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is separately approved by the City in accordance with the City Code.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the District Act and other applicable statutes, common law and the Constitution, subject to any limitations set forth herein.

1. Improvements.

(a) The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

(b) Provision, ownership, and maintenance of such Public Improvements will be as provided by the Approved Development Plan, including relating to the pavilion, parking structures, and trails.

2. Reserved.

3. **Construction Standards Limitation.** The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction

and installation of Public Improvements prior to performing such work. Public Improvements shall be subject to the ordinary inspection and approval procedures of the City and other governmental entities having proper jurisdiction.

4. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the Districts may acquire completed or partially completed improvements for fair market value as reasonably determined by an engineer that such District employs or engages to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

5. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Annexation and Withdrawal.

(a) The District shall not include within its boundaries any property outside the District Area without the prior written consent of the City. The City, by approval of this Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District, provided that the District is not permitted to annex any property which is anticipated to be utilized for attainable housing, as described in an Approved Development Plan. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, approval of this Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

7. Overlap Limitation. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

8. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

9. Total Debt Issuance Limitation. The District shall not issue Limited Tax Debt in excess of an aggregate amount of Twelve Million Dollars (\$12,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of Limited Tax debt by the District. In addition, any Assessment Debt or C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of Assessment Debt or C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the applicable Assessment Act.

10. Bankruptcy Limitation. All of the limitations contained in the Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

11. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth

in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City Council and the District Board approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, as specified application materials relating to the District and as may be further defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Area and is approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition. The Board shall be composed of three Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall be at large seats. Trustee terms shall be staggered with initial terms as follows: Trustees 1 and 3 shall serve an initial term of six (6) years; Trustee 2 shall serve an initial term of four (4) years. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District.

(a) The respective board seats for the Board shall transition from appointed to elected seats according to the following milestones:

(i) Trustee 1. Trustee 1 shall transition to an elected seat upon the earlier to occur of 100 Registered Voters within the District, or January 1, 2033.

(ii) Trustee 2. Trustee 2 shall transition to an elected seat upon 150 Registered Voters within the District.

(iii) Trustee 3. Trustee 3 shall not transition to an elected seat, and shall continue to be appointed by owners of commercial property within the District as provided in B below.

(b) Registered Voters: For purposes of this Section VI “Registered Voters” shall mean registered voters whose “principal place of residence,” as that term is defined under Utah Code Section 20A-2-105(1)(a), as may be amended, is in the District.

B. Reelection and Reappointment. Upon the expiration of a Trustee's respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled pursuant to the Local District Act and in accordance with the Local District Act. Any owner of land constituting more than 50% of the commercial taxable value within a District shall be entitled to nominate for appointment Trustee 3 of the Board, otherwise the City Council may choose Trustee 3 from nominations of any owners of non-permanent residential property within the District.

C. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act and in accordance with the PID Act.

D. Compensation. Unless otherwise permitted by the PID Act, only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

E. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

VIII. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. In addition, the District shall be permitted to finance the prepayment of impact fees for the Project. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Assessments, or both, and other legally available revenues. The District shall not issue Debt in excess of an aggregate amount of Twelve Million Dollars (\$12,000,000). The total Debt shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. In addition, any Assessment Debt or C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of Assessment Debt or C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the applicable Assessment Act. All bonds and other Debt issued by the District may

be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District may also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Applicable Debt Requirements.

Debt, when issued, will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.006 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

D. Maximum Debt Mill Levy Imposition Term.

Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, absent written consent of the City, no mill levy may be imposed for the repayment of Debt after a period exceeding Forty (40) years from the first date of imposition of the mill levy for any Debt (the “Maximum Debt Mill Levy Imposition Term”).

E. Debt Repayment Sources.

(a) The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law. At the District’s discretion, these may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service mill levy in the District shall not exceed the Maximum Debt Mill Levy or, the Maximum Debt Mill Levy Imposition Term, except for repayment of General Obligation Debt.

(b) All Assessments (other than Assessments under the C-PACE Act) imposed by any District on a parcel shall be payable at or before the time a building permit is issued with respect to such parcel. Any Assessments issued under the C-PACE Act may be repayable in accordance with the provisions of such act.

(c) The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of mill levy, Assessment, or impact fee. This provision

shall not prohibit the division of costs between mill levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

F. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

G. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be One Hundred Thousand Dollars (\$100,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The first year's operating budget is estimated to be approximately Fifty Thousand Dollars (\$50,000) which is anticipated to be derived from property taxes and other revenues.

I. Bond and Disclosure Counsel; Municipal Advisor.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. Accordingly, absent written consent of the City, the District agrees to utilize Gilmore & Bell, P.C. as bond and

disclosure counsel and Zions Public Finance, Inc. as Municipal Advisor with respect to District Bonds as permitted by law.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than 210 days following the end of the District's fiscal year.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of last day of the prior fiscal year, if changed;
2. List of current interlocal agreements, if changed (to be delivered to the City upon request);
3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
4. District office contact information, if changed;
5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
6. A summary of any litigation which involves the District Public Improvements as of the last day of the prior fiscal year, if any;
7. Status of the District's construction of the Public Improvements as of December 31 of the prior year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of the last day of the prior fiscal year;
8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;
9. Official statements of current outstanding bonded indebtedness, if not previously provided to the City;
10. Current year budget including a description of the Public Improvements to be constructed in such year;
11. Financial statements of the District for the most recent completed fiscal year (such statements shall be audited if required by bond documents or statute);

12. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

13. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

X. DISSOLUTION

Upon an independent determination of each District Board that the purposes for which such District was created have been accomplished, the District shall file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until such District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes and disbursed of all assets of such District.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the Office of the Lieutenant Governor of the State of Utah issuing a certificate of creation, each Board shall record a notice with the recorder of Kane County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (e) if applicable, state that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial or residential developers, and commercial or residential lessors, as applicable, disclose the following information to End Users:

- (1) All of the information in the first paragraph of this XI;
- (2) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$600** for the duration of the District’s Bonds.”

- (3) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement required by the City Code, relating to the limitations imposed on the District’s activities, is attached hereto as **Exhibit C**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit C** at its first Board meeting after its

creation. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall approve the Interlocal Agreement in the form attached as **Exhibit C** at the public hearing approving the Governing Document.

EXHIBIT A

Legal Description of the Initial District Boundaries

[PLEASE PROVIDE WORD VERSION OF LEGAL FROM PLAT]

PID Legal Description:

A portion of Sectional Lots 3, 4, 5, and 6 of Section 10, Township 44 South, Range 6 West, Salt Lake Base and Meridian, Utah, more particularly described as-follows:

BEGINNING at the Northwest Corner of said Lot 5; thence, along the West Line of said section, North 00° 44' 04" East 698.56 feet, to the northerly right-of-way of Kaneplex Drive and the beginning of a non-tangential curve; thence, along said right-of-way and curve to the left, 27.20 feet, having a radius of 471.00 feet, a central angle of 03° 18' 30" and whose long chord bears South 84° 56' 04" East 27.19 feet; thence South 86° 35' 19" East 1501.24 feet, to the beginning of a curve; thence, along the curve to the right, 512.86 feet, having a radius of 650.00 feet, a central angle of 45° 12' 26" and whose long chord bears South 63° 59' 06" East 499.66 feet; thence South 41° 22' 53" East 840.42 feet, to the beginning of a curve; thence, along the curve to the left, 103.91 feet, having a radius of 1450.00 feet, a central angle of 04° 06' 21" and whose long chord bears South 43° 26' 03" East 103.89 feet, to the East Line of said Lot 6; thence, departing said right-of-way and along said line, South 00° 25' 39" West 898.66 feet, to the Southeast Corner of said Lot 6; thence, along the South Section Line, North 89° 31' 37" West 2619.50 feet, to the Southwest Section Corner; thence, along the West Section Line, North 00° 44' 27" East 1195.52 feet, to the POINT OF BEGINNING, containing 101.33 acres (more or less).

LESS THAN EXCEPTING the following described parcel:

Commencing at the Southeast Corner of said Lot 6; thence, along the East Lot Line, North 00° 25' 39" East 50.00 feet, to the POINT OF BEGINNING, and running; thence North 89° 31' 09" West 356.05 feet, to the beginning of a curve; thence, along the curve to the right, 36.75 feet, having a radius of 25.00 feet, a central angle of 84° 13' 33" and whose long chord bears North 47° 24' 22" West 33.53 feet; thence North 05° 17' 35" West 33.57 feet, to the beginning of a curve; thence, along the curve to the right, 39.29 feet, having a radius of 175.00 feet, a central angle of 12° 51' 46" and whose long chord bears North 01° 08' 18" East 39.20 feet; thence North 07° 34' 11" East 130.45 feet, to the beginning of a curve; thence, along the curve to the left, 95.65 feet, having a radius 459.55 feet, a central angle of 11° 55' 34" and whose long chord bears North 01° 36' 24" East 95.48 feet, to a non-tangent curve; thence, along the curve to the right, 39.49 feet, having a radius of 25.00 feet, a central angle of 90° 30' 02" and whose long chord bears North 40° 53' 39" East 35.51 feet; thence North 86° 08' 40" East 98.20 feet, to the beginning of a curve; thence, along the curve to the right, 124.36 feet, having a radius of 1848.07 feet, a central angle of 03° 51' 20" and whose long chord bears North 88° 04' 20" East 124.34 feet; thence North 90° 00' 00" East 120.38 feet, to said East Lot Line; thence, along said line, South 00° 25' 39" West 360.70 feet, to the POINT OF BEGINNING; containing 3.05 acres (more or less).

LEAVING 98.28 acres (more or less).

EXHIBIT A-2

Annexation Area Boundaries

A portion of Lot 3, 4, 5, and 6 of Section 10, Township 44 South, Range 6 West, Salt Lake Base and Meridian, Utah, more particularly described as-follows:

BEGINNING at the North 1/16 corner of Section 10 and 9 of said township and range; thence, along the west line of said Section 10, thence North 00° 44' 04" East 698.56 feet, to the north right-of-way of Kaneplex Drive and the beginning of a non-tangential curve; thence, along said right-of-way as-follows, running along said curve to the left, 27.20 feet, having a radius of 471.00 feet, a central angle of 03° 18' 30" and whose long chord bears South 84° 56' 04" East 27.19 feet; thence South 86° 35' 19" East 1501.24 feet, to the beginning of a curve; thence, along the curve to the right, 512.86 feet, having a radius of 650.00 feet, a central angle of 45° 12' 26" and whose long chord bears South 63° 59' 06" East 499.66 feet; thence South 41 ° 22' 53" East 840.42 feet, to the beginning of a curve; thence, along the curve to the left, 103.91 feet, having a radius of 1450.00 feet, a central angle of 04° 06' 21" and whose long chord bears South 43° 26' 03" East 103.89 feet, to the north-south¹/₄ section line of said Section 10; thence, leaving said right-of-way along said¹/₄ section line, South 00° 25' 39" West 898.66 feet, to the southeast corner of said Lot 6; thence, along the south line of said Section 10, North 89° 31' 37" West 2619.50 feet, to the southwest corner of said Lot 5; thence, along the west line of said Section 10, North 00° 44' 27" East 1195.52 feet, to the POINT OF BEGINNING, containing 101.33 acres (more or less).

EXHIBIT B

Initial District and Annexation Area Boundary Map

Initial District Boundaries are the area in the center of the map, labeled “INCLUDED IN THE PID”

Annexation Area is the area in the south-east corner, labeled “NOT INCLUDED IN THE PID”

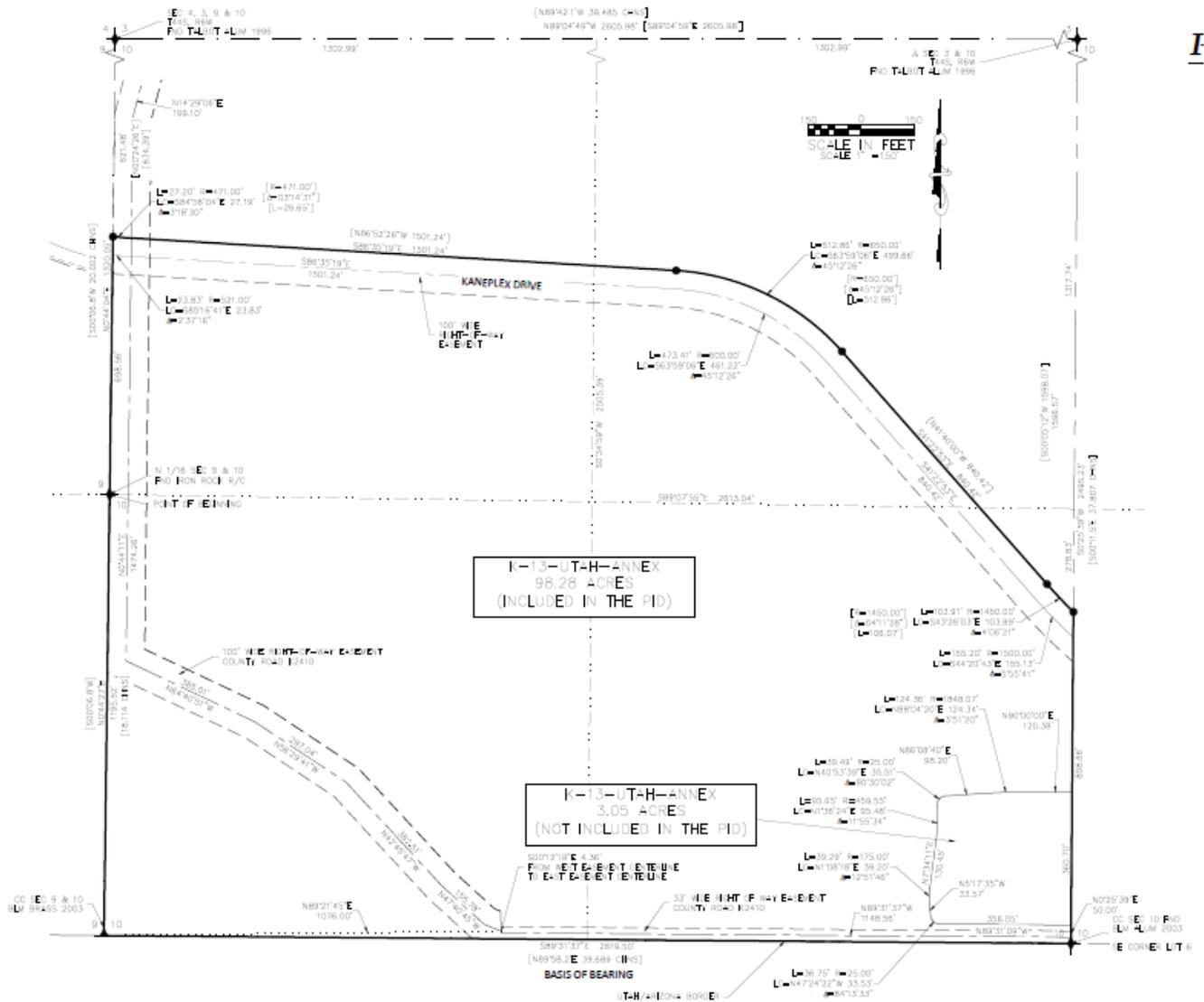


EXHIBIT C

INTERLOCAL AGREEMENT BETWEEN THE KANAB, UTAH AND VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between the KANAB, a political subdivision of the State of Utah (“City”), and VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision of the State of Utah (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District’s Governing Document approved by the City on _____, 2023 (“Governing Document”); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Improvements.

(a) The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District shall dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity.

(b) Provision, ownership, and maintenance of such Public Improvements will be as provided by the Approved Development Plan, including relating to the pavilion, parking structures, and trails.

2. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

3. Procurement. The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the Districts may acquire completed or partially completed improvements for fair market value as reasonably determined by an engineer that such District employs or engages to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

4. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.

We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Annexation and Withdrawal.

(a) The District shall not include within its boundaries any property outside the District Area without the prior written consent of the City. The City, by approval of the Governing Document, has consented to the annexation of any area within the Annexation Area Boundaries into the District, provided that the District is not permitted to annex any property which is anticipated to be utilized for attainable housing, as described in an Approved Development Plan. Such area may only be annexed upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be annexed and the passage of a resolution of the Board approving such annexation.

(b) The City, approval of the Governing Document, has consented to the withdrawal of any area within the District Boundaries from the District. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such annexation.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of the Governing Document.

6. Overlap Limitation. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

7. Initial Debt Limitation. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt.

8. Total Debt Issuance Limitation. The District shall not issue Limited Tax Debt in excess of an aggregate amount of Twelve Million Dollars (\$12,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of Limited Tax debt by the District. In addition, any Assessment Debt or C-PACE Bonds do not count against the foregoing limitation and there is no limit to the amount of Assessment Debt or C-PACE Bonds the District may issue so long as such issuances are in accordance with the provisions of the applicable Assessment Act.

9. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

10. Dissolution. Upon an independent determination of each District Board that the purposes for which the District was created have been accomplished, the District agrees to file petitions for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution

occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes and disbursed of all assets of such District.

11. Disclosure to Purchasers. Within thirty (30) days of the Office of the Lieutenant Governor of the State of Utah issuing a certificate of creation, each Board shall record a notice with the recorder of Kane County. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Debt Mill Levy of the District; and (e) if applicable, state that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

In addition, the Applicant and the Board shall ensure that the Applicant, commercial or residential developers, and commercial or residential lessors, as applicable, disclose the following information to End Users:

(a) All of the information in the first paragraph of 11 of this Agreement;

(b) A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, **for every \$100,000 of taxable value**, there would be an **additional annual property tax of \$600** for the duration of the District’s Bonds.”

(c) Such disclosures shall be contained on a separate-colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.

12. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Manager’s Office no later than 210 days following the end of the District’s fiscal year, containing the information set forth in Section IX of the Governing Document.

14. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

15. Maximum Debt Mill Levy.

(a) The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Limited

Tax Debt shall be 0.006 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8), Utah Code.

(b) Such Maximum Debt Mill Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

16. Maximum Debt Mill Levy Imposition Term. Each bond issued by the District shall mature within Thirty-One (31) years from the date of issuance of such bond. In addition, absent written consent of the City, no mill levy may be imposed for the repayment of Debt after a period exceeding Forty (40) years from the first date of imposition of the mill levy for any Debt (the “Maximum Debt Mill Levy Imposition Term”).

17. Prepayment of Assessments. All Assessments (other than Assessments under the C-PACE Act) imposed by any District on a parcel shall be payable at or before the time a building permit is issued with respect to such parcel. Any Assessments issued under the C-PACE Act may be repayable in accordance with the provisions of such act.

18. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Ventana Resort Village Public Infrastructure
District
[PID Address]
Attn:
Phone:

To the City: Kanab City
26 North 100 East
Kanab, UT 84741
Attn: District Advisory Committee
Phone: (435) 644-2534

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

19. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Governing Document.

20. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

21. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

22. Term. This Agreement shall terminate upon the earlier to occur of dissolution of the District or fifty (50) years from the date hereof.

23. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

24. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

25. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

26. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

27. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

29. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

30. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

VENTANA RESORT VILLAGE PUBLIC
INFRASTRUCTURE DISTRICT

By: _____
President

Attest:

Secretary

APPROVED AS TO FORM: _____

KANAB, UTAH

By: _____
_____ Mayor

Attest:

By: _____

Its: _____

APPROVED AS TO FORM: _____

Upon recording, return to:

MW – Kanab LLC
782 S. River Road, Suite 154
St. George, Utah 84790
Attn: Steve Laski

Tax ID/Parcel K-13-UTAH-ANNEX

**DEVELOPMENT AGREEMENT
([Ventana Resort Village])**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into as of the 14th day of March, 2023 (the “**Effective Date**”), by and between Kanab City, a Utah municipal corporation (the “**City**”), and MW - Kanab LLC, a Utah limited liability company (“**Developer**”). The City and Developer may be hereinafter collectively referred to as “**Parties**,” and individually as a “**Party**.”

RECITALS

A. Pursuant to the terms of a Development Lease Agreement between Developer and The State of Utah School and Institutional Trust Lands Administration (“**SITLA**”), Developer has the right to develop approximately 101 acres of land located within Kanab City and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”), also commonly identified as parcel K-13-UTAH-ANNEX. No additional land shall be added to the Property without the express, written amendment of this Agreement, executed and approved by Developer and the City.

B. Developer desires to develop the Property as a planned unit development in a manner consistent with the City’s General Plan, its Planned Development Overlay Ordinance (the “**PD Ordinance**”), *Uniform Zoning Ordinance of the City of Kanab, Utah*, Chapter 23, and the City’s ordinances, policies, guidelines and regulations.

C. Developer desires to develop the Property as a planned development project plan (the “**PD Plan**”), to be known as [**Ventana Resort Village**] (the “**Project**”), comprised of various resort hospitality, residential, commercial, and public uses, all as set forth in the PD Plan, attached hereto as **Exhibit B**.

D. Developer and the City desire to enter into this Agreement for the purpose of vesting the development rights of the Property in order to implement the PD Plan and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable State law, City code, policies, guidelines and regulations. 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* (2022).

E. The City desires the Project be developed, to the extent practicable, as a sustainable mixed-use neighborhood within the City, comprised of a harmonious and balanced mix of new residential, commercial, hospitality, and public uses, with the further objectives of:

- (i) promoting water conservation and sustainable development;
- (ii) creating a greater diversity in housing stock (types of housing available), including Attainable Housing;
- (iii) creating a mix of commercial property generating tax revenues;
- (iv) creating private amenities along with Developer's Density, with ownership and maintenance by one or more Community Home Owners' Associations; and
- (v) providing greater diversity in ownership of parks and other open space areas while maintaining a desired level of public park and trailhead areas.

F. The City is acting pursuant to its authority under *Utah Code Ann. § 10-9a-101, et. seq.* (2022), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, guidelines, and regulations, and in the exercise of its legislative discretion, and has elected to approve this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions.

1.1. **"Administrative Amendment"** means and includes any minor amendment to the PD Plan or this Agreement or other minor modifications and action that may be approved by the Administrator, in writing, as provided herein, including without limitation, under Sections 4.2 and 18.

1.2. **"Administrator"** means the person designated from time to time by the City as the Administrator of this Agreement. If not formally designated otherwise by the City, the Land Use Administrator, also referenced as the Zoning Administrator, or his/her designee shall serve as the Administrator.

1.3. **"Attainable Housing Unit"** means, for purposes of calculating Density, a multi-family residential unit intended to be occupied for residential (primary home) living purposes, which has annual base rent for the studio apartments that initially does not exceed 26% of the Kanab Utah Nonfamily households median incomes as indicated by https://data.census.gov/profile/Kanab_city,_Utah?q=1600000US4939920. Annual base rent for 1-

bedroom apartments will not exceed 1.275 times the studio rate and 2-bedroom units will not exceed 1.55 times the studio rate. In years that census bureau information is not updated, rents can be increased based on the Employment Cost Index Summary as indicated by www.bls.gov. These rent limits are provided that following the tenth (10th) anniversary of this Agreement, the Parties may, as appropriate and by mutual written agreement, modify the criteria for determining affordability of the Attainable Housing Units and/or modify the permitted uses of some or all of the Attainable Housing Units. Each separate dwelling unit within a multi-family apartment building equals one Attainable Housing Unit.

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

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

1.6. **“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, including Developer’s Infrastructure Improvements.

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

1.8. **“Capital Facilities Plan”** means a current plan adopted by the City or as may be amended in the future which governs the construction of certain public facilities and the collection of Impact Fees as required by State law.

1.9. **“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.

1.10. **“City”** means Kanab City, a Utah municipal corporation.

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

1.12. **“City Improvements”** means the improvements described in Section 14.

1.13. **“City’s Future Laws”** means the ordinances, policies, standards, procedures, and fee schedules of the City which may be adopted and thereafter in effect after a complete 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.

1.14. **“City’s Vested Laws”** means the ordinances, policies, standards, procedures, and fee schedules of the City related to zoning, subdivisions, development, public improvements, and other similar or related matters that were in existence at the time a complete application is submitted

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

1.16. **“Denial”** means a formal administrative decision 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 the City staff.

1.17. **“Density or Densities”** means the number of Townhome Units, Single Family Residential Units, Attainable Housing Units and Hotel Units allowed in the Project.

1.18. **“Developer”** means MW - Kanab LLC, a Utah limited liability company, and its respective assignees or transferees as permitted by this Agreement.

1.19. **“Developer’s Infrastructure Improvements”** means the improvements described in Section 9.

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

1.21. **“Final Plat”** means the recordable map or other graphical representation of land prepared in accordance with *Utah Code Ann. § 10-9a-603 (2022)*, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.22. **“General Plan”** means a plan approved by the City that sets forth general guidelines for the proposed future development of property in the City, including the Property, as required and contemplated under *Utah Code Ann. § 10-9a-401, et seq. (2022)*.

1.23. **“Hospitality Facility or Hospitality Facilities”** means those facilities built to support a hotel to include but not limited to service areas, hotel rooms, spa, guest service areas, food and beverage areas, function space, etc.

1.24. **“Hospitality Unit”** means, for purposes of calculating Density, a dwelling unit located within the Hospitality Facility; each separate dwelling unit within the Hospitality Facility equals one Hospitality Unit.

1.25. **“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. (2022)* and Kanab City General Ordinances, Section 7-800, *et seq.* Except as noted herein, this Agreement does not restrict the modification or exercise of legislative authority of the City Council in relation to Impact Fees, which are assessed and applicable at the time a complete building permit application is submitted to the City.

1.26. **“Intended Uses”** means the use of all or portions of the Project for residential and resort residential single-family attached and detached product types, condominiums, multi-family Attainable housing, Hospitality Facility, public parks, private park and amenity facilities, mixed-use commercial areas, pool(s), service and storage buildings, open spaces, trails, and trailheads, recreational vehicle and trailer parking, recreational sport courts, golf putting courses, and other uses as more fully specified in the PD Plan.

1.27. **“Land Use Act”** means the Municipal Land Use, Development, and Management Act, as contained in *Utah Code Ann. § 10-9a-101, et seq.* (2022).

1.28. **“Land Use Ordinance”** means the City’s Land Use Ordinance (“Uniform Zoning Ordinance of the City of Kanab, Utah”), Subdivision Ordinance, and Design Standards adopted and effective 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. Except as noted herein, this Agreement does not restrict the modification or exercise of legislative authority of the City Council in relation to its ordinances and policies, applicable at the time a complete application is submitted to the City.

1.29. **“Maximum Number of Dwelling Units”** means Five Hundred Forty (540) Units, comprised of 200 Townhome Units, 100 Single Family Units, 120 Attainable Housing Units and 120 Hospitality Units, as provided in the PD Plan, subject to any applicable Land Use Ordinance and restriction, unless modified by this Agreement, and any applicable density bonuses that might be available to Developer under the Land Use Ordinance.

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

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

1.32. **“PD Ordinance”** shall have the meaning referenced in Recital B.

1.33. **“PD Plan”** means the planned community development project plan for the Project as defined in Recital C. The Developer may include the Site Plan (preliminary or final) or a draft thereof as part of the PD Plan, or an amendment thereto, but, as used within this Agreement, the PD Plan is not synonymous with the Site Plan, which is separately defined and required by the Land Use Ordinance (i.e., consideration, review, amendment, and approval of the preliminary or final Site Plan is a separate process and governed by the Land Use Ordinance).

1.34. **“Planning Commission”** means the City’s Planning Commission established by the Land Use Ordinance.

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

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

1.37. **“Single Family Residential Unit”** means, for purposes of calculating Density, a detached, single family residential dwelling intended to be occupied for residential (primary home) and resort residential (second home or nightly rental) living purposes.

1.38. **“SITLA”** means State of Utah School and Institutional Trust Lands Administration.

1.39. **“State”** means the State of Utah.

1.40. **“Sub-developer”** means an entity not “related” (as defined by Internal Revenue Service regulations) to Developer which purchases a Parcel for development.

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

1.42. **“Townhome Unit”** means, for purposes of calculating Density, a townhome unit intended to be occupied for residential (primary home) and resort residential (second home or nightly rental) living purposes; each separate dwelling unit within a townhome building equals one Townhome Unit.

1.43. **“Units”** means Townhome Units, Single Family Residential Units, Attainable Housing Units, and Hospitality Units.

2. Incorporation of Recitals; Capitalized Terms. The foregoing Recitals are incorporated by reference into this Agreement, as a substantive part hereof. Capitalized terms used herein and not otherwise defined shall have the meaning given them in the PD Plan.

3. Findings and Authority for Property Development.

3.1. Findings. Concurrent with the execution of this Agreement, the Parties find that: (a) each Party has had reasonable time and opportunity to review and consider, and have legal counsel review and consider, the PD Plan and this Agreement, thereby affording them the opportunity to consider their consistency with the General Plan, the PD 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 PD Plan will result in planning and economic benefits to the Parties 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; (iv) providing Attainable housing; and (v) creating jobs from the construction and development activities located on the Property. All uses set forth in the PD Plan for a particular zone shall be considered allowed uses in such zone, and no amendments to the PD Plan nor any other zoning amendment applications shall be required to implement any such uses or construct corresponding improvements in any phase of the Project located in such zone other than applicable preliminary and final subdivision plats and preliminary and final site plan review and approval.

3.2. Acknowledgements. The City acknowledges Developer is relying on the PD Plan, the execution and continuing validity of this Agreement, and the City's performance of its obligations herein. Developer has expended substantial funds in the development of the Property and, in reliance upon this Agreement, will continue to expend additional funds. Developer acknowledges that the City is relying on the PD Plan, the execution and continuing validity of this Agreement, and Developer's performance of its obligations under this Agreement, in continuing to perform the obligations of Developer herein. 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 PD Plan and Design Guidelines.

4.1 PD Plan. Notwithstanding the submission of the PD Plan, included as Exhibit B, development of the Project is subject to the appropriate applications, reviews, process, and approvals, as required by the Land Use Ordinance, Kanab City General Ordinances, or otherwise contemplated herein. The PD Plan describes the Project as a phased master planned community, which will include residential, resort residential, multi-family Attainable housing, hospitality, commercial, and community-related development activities. The PD Plan shows the portions of the Project that will be developed as well as the portions of the Project that will remain as natural open spaces. The developed areas shall consist of (i) residential and resort residential housing project types in various forms including single attached and detached homes, townhomes, and/or apartments, (ii) commercial project types, and (iii) Hospitality Facilities. Community facilities to be developed may include without limitation, recreational vehicle and trailer parking, pool(s), recreation courts, golf putting course, trails, and park spaces. The PD Plan is an integral part of this Agreement and is fully incorporated into this Agreement.

4.2 Additional PD Plan Contents. The PD Plan generally depicts the Intended Uses, allowed densities, utilities, major roads, community facilities, and public facilities that will be installed and constructed upon the Property. In addition to the foregoing, Developer may request City's approval of minor modifications to the PD Plan to the extent generally consistent with the PD Plan. Examples of such minor modifications shall include the following:

4.2.1 Minor modifications to roadway alignments, provided there is no change in roadway classification or construction standards;

4.2.2 Minor modifications to the location and size of the community facilities;

4.2.3 Minor modifications to the location of Units within the Project as long as the aggregate number of Units does not exceed the Maximum Number of Dwelling Units allowed for use classification for such Units as outlined in Section 6.

4.2.4 Minor modification to permit shifting landscaping for multi-family housing to the perimeter of the multi-family housing areas.

4.2.5 Minor modifications to permit flexibility with respect to minimum parking requirements for various housing types and total number of compact parking spaces: (i) the parking requirements for Attainable Housing Units shall be two (2) parking spaces per Unit for the 2 bedroom Attainable Housing Units and subject to a reduction to 1.5 parking spaces per unit for the 1 bedroom Attainable Housing Units and subject to a reduction to one (1) parking space per unit for the studio Attainable Housing Units; (ii) the parking requirements for Townhome Units shall be two (2) parking spaces per Unit; and (iii) shared parking facilities shall be permitted to accommodate overflow parking, as needed.

4.2.6 The classification of all other modifications, as minor or substantial, shall be determined by the Administrator, when such modifications would be reasonably considered to be of a similar nature as those described above or otherwise specifically contemplated by the PD Plan. The Administrator shall oversee the minor modification process for any minor modifications described above or any other proposed modification which City classifies as minor. Minor modifications are generally considered as changes of 5% or less in a particular category/requirement. All minor modifications to the PD Plan may be made after City consents in writing. All substantial modifications to the PD Plan may be made by an approved amendment to the PD Plan and/or the preliminary or final site plan. If the Developer and Administrator do not agree as to the qualification of a modification as being minor or substantial, then the matter shall be submitted to the City Council for consideration, upon recommendation from the City's Planning Commission, as a proposed amendment to the PD Plan.

4.3 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 Developer will have reasonable certainty in proceeding with development of the Property. Developer shall comply with the terms and conditions of the PD Plan and this Agreement, and the City authorizes Developer to develop the Property as set forth in the PD Plan and this Agreement.

4.4 Plans, Permits and Approvals; Documents. Developer shall prepare detailed construction plans, drawing, and specifications (the "**Construction Plans**") for the Developer's Infrastructure Improvements for the Project, which Construction Plans shall be subject to the City's reasonable approval, following the process and parameters outlined in the City's Ordinances and State Law. Developer shall diligently pursue and obtain any and all necessary governmental approvals, permits and the like as necessary and required for development of the

Project. Developer agrees to provide City with a copy of any and all relevant records and documents relating to the Developer's Infrastructure Improvements, as requested by City.

4.5 Building Permits; Occupancy. At the time that a subdivision plat is recorded, Developer may request issuance of building permits according to City's customary permitting process applicable to developers or builders. Developer may request certificates of occupancy for those structures issued building permits as long as Developer is in compliance with this Agreement, Kanab City Ordinances, and City's guidelines, standards, policies, and regulations.

5. Vested Rights, Exceptions.

5.1. Vested Rights; Reserved Legislative Powers. To the maximum extent permissible under the laws of the State and the United States and at equity, this Agreement grants and vests in Developer all rights, consistent with the PD Plan and City's Vested Laws, to develop the Project according to the PD Plan as provided in this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights and pursuant to *Utah Code Ann. § 10-9a-509 (amended 2022; effective 1/1/2023)*. It is expressly understood by the City that Developer may assign all or portion of its rights under this Agreement and the PD Plan, provided such assignment conforms to the requirements of, and any and all assignees agree to be bound by the terms of this Agreement.

5.2. Countervailing, Compelling Public Interest. The City and Developer acknowledge they are familiar with the "compelling, countervailing public interest" exception to the doctrine of vested rights in the State of Utah pursuant to *Utah Code Ann. § 10-9a-509(1)(a)(ii) (amended 2022; effective 1/1/2023)*. 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 the City to enact such legislation, such legislation shall only modify Developer's vested rights as set forth herein 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) and as further explained and refined by its progeny.

5.3. City's Future Laws. Any restrictions on the applicability of the City's Future Laws to the Project are subject to the following exceptions:

5.3.1. Agreement. City's Future Laws that Developer agrees in writing as being applicable to the Project, contemplated herein or by subsequent writing.

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)* (2022).

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 Developer's vested rights as outlined in the PD Plan and this Agreement.

5.3.9. Moratoria. The Project and the rights and obligations of Developer 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* (2022).

6. Development of Project

6.1. Project Maximum Number of Dwelling Units. Absent a substantial change to the PD Plan or this Agreement requested by Developer and approved by the City, 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, Developer shall be entitled to have developed the Maximum Number of Dwelling Units and to have developed the other Intended Uses, all as specified in the PD Plan and this Agreement.

6.2. Parcels Intended Use 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 PD Plan. The Intended Uses and Densities for each Parcel are shown on the PD 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, and subject to the terms of this Agreement, the City's ordinances, and those terms governing infrastructure, the timing, sequencing, and phasing of development of the various Parcels in the Project shall be as determined by Developer.

6.3. Use of Density. Intended Uses and Densities are shown on the PD Plan. Upon approval by the City as a minor modification through an Administrative Amendment, and subject to any site plan or plat amendment requirements, if applicable, Developer may adjust the relative location of approved Intended Uses and may use approved Density available in the development of any Parcel so long as the Maximum Number of Dwelling Units allowed per the then-current PD Plan is not exceeded.

6.4. Parcel Sales. The City agrees that, if consistent with the provisions of *Utah Code Ann. § 10- 9a-103(65)(c)(v)* (2022), Developer may convey Parcels or a portion of any Parcel by metes and bounds prior to recordation of a plat of subdivision for such portion. A Record of Survey shall be provided to the Administrator for the purpose of verifying such sales and divisions of land by deed will not deviate from the Project as outlined in the PD Plan and this Agreement.

6.4.1. Accounting of Density for Parcel(s) or Portions of a Parcel Conveyed to Sub-developers. Any Parcel sold by Developer to a Sub-developer without a Final Plat recorded shall include the transfer of a specified number of Units with the Parcel and be subject to the terms of this Agreement and PD Plan.

6.4.2. Return of Unused Density. If any Density transferred to a Sub-developer is unused by the Sub-developer 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 Density shall automatically revert back to Developer. In no event shall the Maximum Number of Dwelling Units allowed per the then-current PD Plan be exceeded. When an unused portion of a previously transferred Density (i.e., number of dwelling units) reverts back to the Developer, the Developer must seek approval of the City Council, upon recommendation of the Planning Commission, if the intended use of the reversionary Density is anticipated to deviate from the PD Plan (i.e., considered a substantive modification).

6.4.3. Sub-developer Obligation. Project wide infrastructure components are outlined in the PD Plan. This includes all water (storm, irrigation and culinary), sewer, natural gas, underground utilities, streets, traffic control devices, sidewalks, parks, trails, streetscapes, and all other improvements on and off the Property reasonably required for the Project. All infrastructure projects shall be constructed in phases concurrently and in conjunction with the construction on and development of Parcel(s) or portion of a Parcel to which such infrastructure corresponds, except where otherwise outlined herein. If Developer conveys, assigns, or leases any Parcels in whole or in part by metes and bounds to a Sub-developer (the “**Sub-developer Parcel**”) prior to recording of a Final Plat of subdivision which requires Project wide infrastructure to be completed as part of the Parcel’s development plan, the Sub-developer shall be required to install, construct, complete, and dedicate all infrastructure components as identified in the PD Plan that are either: (i) located within the Sub-developer Parcel, or (ii) located outside the Sub-developer’s Parcel boundary and/or outside the Property’s boundary which are required for the development and construction of improvements inside the Sub-developer’s Parcel. All improvements shall be made by Sub-developer concurrently and in conjunction with development of such Parcel and bonded for by Sub-developer as required for all other subdivisions as set forth in the City’s ordinances and standards. Notwithstanding the foregoing, if any Sub-developer fails to fully construct the improvements as outlined in the PD Plan attributable to Sub-developer’s Parcel, Developer may, but shall not be required to, complete the improvements within a reasonable time following receipt of written notice of such failure by Sub-developer from City and seek restitution from Sub-developer as may be permitted by applicable law or the Sub-developer Parcel conveyance, assignment, or lease to Sub-developer by Developer. Failure to fully construct the improvements as outlined in the PD Plan and this Agreement may impede the future approval of a related Development Application(s), unless a valid Performance Assurance Completion Bond is provided by the Developer or Sub-developer, pursuant to the Land Use Ordinance.

6.5. Donation of Short-Term Rental Revenues. During the initial term of this Agreement, Developer at their sole discretion shall cause a donation equal to one percent (1%) of the gross rental revenue generated by the short-term rentals located within the Project to be made to the youth sports and recreation programs within the city of Kanab. At the Developers choice, funds will be donated to programs such as 4-H, school programs, athletic booster clubs etc. Such donations shall be made [annually in arrears within 90 days of the end of the calendar year to which such donation applies]. Developer shall be entitled to any tax benefits (deductions, etc.) applicable to any such donations, to the extent available under applicable law.

6.5.1. Notwithstanding the foregoing, in the event this provision is declared or rendered invalid by a court of competent jurisdiction or by statute, Developer’s obligations hereunder shall immediately terminate and be of no further force and effect.

6.5.2. The City agrees to hold Developer harmless from any and all third-party claims challenging the validity or enforcement of this provision and/or any allocation of revenue generated by the applicable short-term rentals to the donations required hereunder.

6.5.3. The parties agree that is within the Developer's, its assignee's or transferee's, full discretion to select which youth sports and recreation programs receive the 1% revenue donation, without the necessity of input, direction, further requirement, or enforcement of Kanab City. [I.e., the Developer may provide this donation to one program in a calendar year or may spread it across multiple programs; the Developer may contribute to a youth sport or recreation program(s) ran/sponsored by a governmental entity, or a youth sport or recreation program(s) not ran/sponsored by a governmental entity.]

6.5.4. The Developer shall submit an annual report to Kanab City detailing the donation made. Aspects of this annual report containing any information about gross profits will be treated as proprietary/trade secret information of the Developer, as defined in Utah Code § 63G-2-305, and treated as protected under the Utah Government Records Access and Management Act, Utah Code, Title 63G, Chapter 2. This Agreement shall serve as the written claim of business confidentiality.

7. Approval Process for Development Applications.

7.1. Phasing. The City acknowledges that Developer 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.

7.3. City's Cooperation in Processing Development Applications. The City shall cooperate reasonably in promptly 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, and this Agreement shall comply with the public hearing and public meeting requirements of applicable City ordinances and State law.

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, and, if applicable, pursuant to this Agreement. The City will reasonably cooperate with each Applicant in such scheduling.

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 conformity with the Land Use Act, the Land Use Ordinance and the General Plan.

7.5 City Council Review of Development.

7.5.1 Application 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 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 this Agreement. The City will reasonably cooperate with each Applicant in such scheduling. 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, tabling or denial of the Development Application.

7.6 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.

7.7 City Denial of a Development Application. If the City makes an administrative decision denying a Development Application, the City shall provide a written determination advising the Applicant of the reasons for denial. The City Council shall not be required to provide a written determination advising the Applicant of the reasons for a legislative decision.

7.8 Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of the administrative decision denying any Development Application to attempt to resolve the issues specified in the Denial of a Development Application. Such meetings may be in-person or by electronic means.

7.9 Appeals and Mediation of Development Application Denials.

7.9.1 Appeal. Applicant may exercise its right to appeal the administrative decision denying a Development Application, in accordance with the Land Use Ordinance and General Ordinances.

7.9.2 Mediation Process. Alternatively, any applicable appeal period under the City's ordinances may be tolled if the Parties agree in writing to mediate any dispute related to

an administrative decision denying a Development Application. Such tolling shall be terminated when one Party notifies the other in writing of their unwillingness to mediate the dispute further, or upon completion of mediation, regardless of the outcome. If the City and Applicant agree to mediation, the Parties shall attempt within thirty (30) days to appoint a mutually acceptable mediator, with preference for selecting a mediator having expertise regarding the issue in dispute, and mutually agree to the allocation of the mediator fees between the Parties. The chosen mediator shall within thirty (30) 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.

8. Single Family Residential Units. Developer will include as part of Phase 2 of the Project the development of a minimum of six (6) lots for single family residential units. [This provision may require the Developer to modify the preliminary site plan, and, in accordance thereto, may permissibly modify what is depicted in Exhibit B, without formal amendment.]

9. Developer's Infrastructure Improvements. The improvements depicted in the PD Plan, and set forth in this section, represent the infrastructure and related common improvements to be completed by Developer that are intended to service the Project. This section is intended to obligate Developer to bring applicable infrastructure to the Property, if necessary and including necessary upsizing, and then internally to the boundary of each individual Parcel to serve the needs of the Development. Subject to the performance by the City of its obligations herein, Developer shall cause improvements to be installed, constructed, and completed, in conformance with applicable governmental and City standards, policies and guidelines and the PD Plan (the "**Developer's Infrastructure Improvements**"), and subject to written acceptance by the City. The Developer's Infrastructure Improvements will be installed and constructed in stages or phases as necessary to support the development of each Parcel, except for infrastructure required earlier in the Development by the City Engineer (e.g., sewer or water infrastructure upsizing to the Property). Developer shall be responsible for the costs to install, construct, and complete the Developer's Infrastructure Improvements. As permitted and in compliance with State law and City ordinances, a performance assurance completion bond may be submitted to temporarily satisfy infrastructure requirements for individual phases.

The Developer's Infrastructure Improvements to be constructed include:

9.1. Sewer Collection System. All pipes, manholes, clean-outs, lift stations, and other collection facilities within the Project, or outside the Project boundaries where necessary and related to the Project's projected future needs, for the purpose of collecting and transporting sanitary sewer from and within the Parcels to the existing or upsized sanitary sewer connection points located along Kaneplex Drive. Upsizing of existing sewer infrastructure necessary to serve the project will be determined by the City Engineer, in coordination with the Developer.

9.2. Electrical Distribution System. The Project will be serviced by Garkane Energy. Developer agrees to provide and install all required electrical materials and equipment for installation from the point of the existing distribution system in order to provide electrical service to all Parcels, lots, units, and amenity facilities within the Project. This shall include, but is not limited to, Developer's obligation to provide conduit, cable (primary and secondary), switchgear, sectionalizers, switch basements, secondary boxes, services, and all other material and equipment required for construction of a complete electrical system. Developer will provide easements and all associated documentation for the required transmission and distribution lines within the Project for electrical system improvements to connect to the existing distribution system. Developer will ensure Garkane Energy complies with Kanab City Ordinances in placement of electrical infrastructure, including, but not limited to the placement of underground transmission and distribution lines where required.

9.3. Street Lighting. In consultation with Garkane Energy, standard downward focused street lights will be installed on the major arterial roadways per City ordinances and standards as depicted in the PD Plan. Street lights on the major arterial roadways will be provided and installed by a pre-qualified contractor and installed per City requirements. Any street lights on arterial roadways will be the sole and perennial ownership and maintenance responsibility of the Developer or Community Home Owners Association(s). Developer may install bollard or other low emitting light fixtures to support vehicular and pedestrian movement during non-sunlight hours of the day. All non-standard street lights, bollards, and low emitting light fixtures shall be provided and installed by Developer in compliance with City ordinances and the PD Plan, and will be the sole and perennial ownership and maintenance responsibility of the Developer or Community Home Owners Association(s).

9.4. Roadways. All roadways contained within the Project as shown on the PD Plan will be constructed by Developer. With the exception of the main arterial roads (as shown on the PD Plan), all roadways shown on the PD Plan are intended to be private roadways, subject to necessary public access and utility easements. Upon completion of construction, the main arterial roadways shall be dedicated to the City, subject to any existing easements, and subject to approval and acceptance by the City. Upon dedication, the City shall be responsible for the maintenance, repair, and replacement of all such roadways, except those roads designated as County (i.e., Class B) roads.

9.4.1. Developer shall coordinate with Kane County and UDOT to ensure Kaneplex Drive (i.e., the portion designated as a County owned road) and Highway 89A are improved, if necessary, to a standard sufficient to serve the projected Project traffic needs. Based on current traffic studies from Horrocks and Hales Engineering, Developer will construct and ensure that both left and right turn lanes on Kaneplex Dr going to Highway 89A will be added with Phase 2. In addition, Developer will add a right turn lane into the Project to coincide with the completion of Phase 2. Developer has obtained a professional traffic study for this purpose, coordinating with UDOT, Kane County, and the City to define the scope of the traffic study.

9.4.2. The Developer commits to providing continued access to the BLM land to the west and commonly known as a quarry, specifically maintaining current access along the west side of the Project. The Developer acknowledges that as the area is developed in the future, the city and the Developer may determine that alternative access options better suit the use of the land. The Developer makes no guarantee that access to the land will remain unchanged in the future, but commits to working with SITLA and the city to evaluate and implement access options that align with the land's intended use. The Developer shall honor all valid existing easements, subject to SITLA's authority to modify or relocate existing easements prior to surface rights being transferred to the Developer.

9.5. Parking. All public and common parking improvements contained within the Project as shown on the PD Plan will be constructed by Developer and shall comply with the applicable parking requirements set forth the Land Use Ordinance, except that: (i) the parking requirements for Attainable Housing Units shall be two (2) parking spaces per Unit for the 2 bedroom Affordable Housing Units and subject to a reduction to 1.5 parking spaces per unit for the 1 bedroom Attainable Housing Units and subject to a reduction to one (1) parking space per unit for the studio Attainable Housing; (ii) the parking requirements for Townhome Units shall be two (2) parking spaces per Unit; and (iii) shared parking facilities shall be permitted to accommodate overflow parking, as needed.

9.6. Trails and Trailheads. The Project includes multiple private trails and trailheads as shown in the PD Plan. Although privately owned, Developer shall permit public access to such private trails, subject to Developer's and/or the Community Home Owners Association(s)' right to promulgate and enforce reasonable rules and regulations pertaining to the use and protection of such trails applicable to the public and Development residents alike. Public access shall include a means of access to the trails and trailheads by motor vehicle and appropriate parking inside the Project boundaries. All trails and trailheads as shown in the PD Plan shall be constructed by Developer and maintained by the Community Home Owners Association(s). To the extent permitted by applicable law, Developer shall be entitled to impact fee credit for properly documented costs incurred for all trails and trailheads constructed by Developer for which public access is granted. Upon completion of such trails or trailheads, the City shall grant Developer an impact fee credit for the cost of planning, designing, and constructing such trails and trailheads, applying the credit using the applicable impact fee schedule in effect at the time of subsequent building permit applications. Where reasonably possible, trails and trailheads shall be established to align with trails of adjoining parcels to the Property. Impact fee credits referenced in this provision are specific to impact fees specifically related to the infrastructure (i.e., credit for costs for publicly accessible trails and trailheads would apply only to impact fees imposed and relating to the "Recreation" category).

9.7. Private Amenities and Parks. The Project will include a variety of private amenities, parks, open space areas as described and depicted in the PD Plan. The private parks, private amenities and open space areas will meet the recreational needs of the entire Project. Such private parks, amenities, and open space areas may be made available for public use, subject

to Developer's and/or Community Home Owners Association(s)' right to promulgate and enforce reasonable rules and regulations related to such access and use, including reasonable charges for use of such amenities.

9.8. Stormwater Drainage. It is anticipated that all stormwater flows generated by the development of the Project will generally follow the Property's existing natural drainage and that Developer or Community Home Owners Association(s) will be responsible for the maintenance of any related drainage facilities to the extent located within the Property. Additional stormwater infrastructure, inside or adjacent to the Project boundaries, may be required by the City Engineer, upon review and analysis of the preliminary or final site plan.

10. Builder/Sub-developer Completion of Developer's Infrastructure Improvements; Bonding by Builder/Sub-developer. Developer may offer, for sale or lease, Parcels to builders or Sub-developers in a phased manner. Developer may enter into different types of transactions, including but not limited to, sales, development leases, or ground leases. As a condition of such transactions, Developer may contractually obligate the builder or Sub-developer to install, complete, and dedicate all or any portion of any of the Developer's Infrastructure Improvements. Such builders or Sub-developers shall not be permitted to further assign such obligations. The City may require of such builders or Sub-developers a bond or any other financial assurance allowed by its ordinances for any Developer's Infrastructure Improvements. At such time as the City receives and accepts such financial assurance, Developer's obligation shall terminate with respect to such Developer's Infrastructure Improvements. Developer and any Builder/Sub-developer 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)* (2022).

11. Dedication of Certain Developer's Infrastructure Improvements. Developer intends to dedicate, and the City intends to accept the dedication of certain approved and acceptable Developer's Infrastructure Improvements. Developer shall retain ownership of applicable Developer's Infrastructure Improvements constructed for respective portions of the Project and shall remain solely responsible for all necessary maintenance, repairs, and replacements of such Developer's Infrastructure Improvements prior to final written acceptance thereof by the City. Developer shall satisfy the obligation to dedicate applicable Developer's Infrastructure Improvements by causing: (i) the filing of a dedication plat; or (ii) the filing of a final subdivision plat including dedication. The City shall approve and accept dedication of applicable Developer's Infrastructure Improvements, in whole or in part, as necessary to support the phase of development as long as such Developer's Infrastructure Improvements are materially consistent with the PD Plan and the applicable Final Plat, and determined by the City to meet the requirements of its ordinances, design standards, State law, building code or other similar standards for such improvements. Upon dedication, City shall own, operate, and maintain the dedicated, approved, and accepted Developer's Infrastructure Improvements without further charge or cost to Developer; provided, however, to the extent not prohibited by law or contract, Developer shall provide an Improvement Warranty in accordance with the requirements of the City's ordinances

and Utah Code § 10-9a-604.5, and also assign to the City any contractual warranty rights existing for such Developer's Infrastructure Improvements. As necessary, Developer will contractually obligate its Sub-developers/builders to dedicate any applicable portion of the Developer's Infrastructure Improvements in accordance with this Agreement. Developer agrees that no connections to Developer's Infrastructure Improvements shall occur before City approves and accepts the same, as contemplated herein.

12. Community Association's Responsibilities for Improvements. The PD Plan calls for the establishment of a Community Home Owners Association to govern and enforce conditions, covenants, and restrictions (the "CC&Rs") for the community and sub-neighborhoods within the 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 common areas, private roadways, trails, yards, private parks, and certain open spaces. Developer shall follow the provisions of the Land Use Ordinance, specifically the PD Ordinance, and State law in relation to the establishment of one or more homeowners associations. In the creation of a Community Home Owners Association and in the adoption and recording of any CC&Rs, Developer shall not infringe or remove any right, easement, or other entitlement granted the City, the public, or a public utility under this Agreement or the PD Plan.

13. Open Space. The PD Plan designates a minimum of twenty percent of the Property as open space, including the portion of the Property located on the north side of Kaneplex Drive. Some of these areas will not be developed except for certain recreational trails. Developer intends to convey the open space to the Community Home Owners Association, and the City shall have no obligation with respect to such areas, except as otherwise mutually agreed by the City and Developer. 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 PD 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.

14. City Improvements. The City shall maintain and continue to provide the following improvements to the Property, once the infrastructure has been properly installed and constructed, dedicated to and formally accepted by the City:

14.1. Culinary Water Supply and Storage. The Developer shall propose and, following City approval, cause to be installed or upsized sufficient infrastructure to support the supply of culinary water service with adequate flow, capacity, and quality to satisfy the uses contemplated in the PD Plan, together with adequate facilities for storage of such water to be delivered to the Project. Developer shall also be responsible for all on-site water distribution systems within the Project. In respect to the installation and construction of this infrastructure, the Developer shall adhere to the specifications approved and or otherwise required by the City Engineer, particularly in relation to what constitutes sufficient infrastructure for the Project. The

City's and Developer's engineers shall meet and confer where there is a disagreement about the sufficiency of the infrastructure required.

14.2. Sanitary Sewer. The Developer shall propose, and following City approval, construct and install in key locations at the perimeter of the Project connections to the sewer collection system. If the City Engineer determines the existing sewer collection system to be used to survive the project is not of adequate size and capacity to service the Maximum Number of Dwelling Units and other Intended Uses in the Project, then the Developer propose, and after City approval, install and construct an upsized collection system to sufficiently support the sewer needs contemplated by the PD Plan. This system will include outfall sewer lines, and other facilities as reasonably necessary to accommodate the sanitary sewer requirements of the Project. Some of the sanitary sewer facilities to be proposed, installed, and constructed may be located within the Project. Developer shall be responsible for installation and construction of all on-site sewer collection systems and delivery from those on-site systems to the facilities within the Project anticipated to be dedicated to the City. Developer's sewer improvements may include but are not limited to outfall sewer lines, lift stations, high pressure lines, and other facilities.

15. Further Exactions. The City will only impose further fees and assessments as required by law or contemplated by this Agreement, or as properly adopted and in effect at the time a Development Application is submitted.

16. Impact Fees; Credits.

16.1. Impact Fees. The City may 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. Developer and any applicable Sub-developer, or builder shall pay any and all Impact Fees assessed by City in accordance with the standard applicable City requirements and state law. As a part of the approval of a Development Application, the City may require Developer, Sub-developer, or builder to build portions of infrastructure improvements as shown on City's then-current Capital Facilities Plan instead of Developer's Infrastructure Improvements as depicted in the PD Plan. In such event, the City and Developer, Sub-developer, or builder shall execute an agreement providing for the reimbursement of the impact fee eligible costs incurred by Developer or the applicable Sub-developer or builder to construct any infrastructure improvements required by City in excess of those identified to serve the development in the PD Plan. The reimbursement to be outlined in this separate agreement may be accomplished, at the City's discretion, through the granting of impact fee credits, in accordance with State law and City ordinances. In no circumstance will the Developer be entitled to impact fee credits in excess of those imposed for the applicable impact fee category.

16.2. Assignment and Payment of Impact Fee Credits. To the extent that existing or future law or ordinance permits or requires Impact Fee credits to Developer, or in the circumstances contemplated in Section 16.1, such Impact Fee credits are assignable in whole or in part within the Project. To evidence the transfer of Impact Fee credits, Developer will issue

certificates to Sub-developers or builders, providing a copy to the City at the time of transfer. Each certificate will state the specific dollar amount it represents and will set forth the type of Impact Fee credit being utilized thereunder (i.e., specifying the impact fee category to which it applies). 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, in the impact fee category to which it applies, until the total dollar amount credit available is exhausted. The City and Developer shall independently maintain ledgers accounting for the Impact Fee credits and agree to reconcile their ledgers annually, commencing one (1) year from the first Impact Fee due date, or on a schedule otherwise agreed to by the Parties.

17. Term; Extension.

17.1. Term. The term of this Agreement shall be until December 31, 2040. If as of that date Developer has not been declared to be in default as provided in this Agreement, 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, 2050, and, thereafter, for up to five (5) years upon application and approval. This Agreement shall also terminate automatically at Buildout, except that to the extent any obligations under this Agreement by their nature are intended to survive the termination of this Agreement, such obligations shall survive such termination.

17.2. Initial Development Application. This Agreement shall automatically terminate if Developer fails to submit a subsequent Development Application for approval within at least eighteen (18) months from the Effective Date of this Agreement; provided that nothing contained herein shall prevent Developer from seeking one or more extensions of such deadline by application to the City.

17.3. Extension. The term of this Agreement may be modified upon mutual written agreement of the Parties.

18. Administrative Amendments.

18.1. Allowable Administrative Applications. The following modifications to this Agreement and the PD Plan may be considered and approved by the Administrator. At the time of application, the City will set and collect from the Developer a reasonable fee for the Administrative Application submitted, which fee will be commensurate with the time, personnel, and costs involved or reasonably anticipated to be involved with processing the Application. The City may take up to two (2) business days to determine the appropriate fee to be collected, prior to processing the Administrative Application.

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

18.1.2. Parcel Density and Intended Use. Modifications of the Intended Uses, Densities, or Parcel Configuration, as provided for in Sections 6.2 and 6.3, subject to any site plan

or plat amendment process required by the City's ordinance, if applicable.

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

18.2.1. Referral by Administrator. If the Administrator reasonable determines that a matter is not a minor modification, as outlined in Section 4.2, and therefore not appropriate for an Administrative Amendment, the Administrator shall require the Administrative Amendment to be processed as a Modification Application, considered by the City Council, upon recommendation from the City Planning Commission.

18.2.2. Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time, providing a written decision.

18.2.3. 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 18.2.4 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 binding on the City.

18.2.4. City Council Requirement of Modification Application Processing. The City Council may, within thirty (30) days after receipt of a proposed approval by the Administrator, notify the Administrator that the Administrative Amendment must be processed as a Modification Application.

18.2.5. 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.

19. Amendment.

19.1. Except for Administrative Amendments, any future amendments to this Agreement or the PD Plan shall be considered as Modification Applications subject to the following processes, subject to any additional process required for a site plan or plat amendment, if applicable:

19.1.1. Persons Entitled to Submit Modification Applications. Only the City, Developer, or an assignee that succeeds to all of the rights and obligations of Developer under this Agreement (excluding a Sub-developer), may submit a Modification Application.

19.1.2. Modification Application Contents. Modification Applications shall:

19.1.2.1. Identification of Property. Identify the Parcel,

property, or properties affected by the Modification Application.

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

19.1.2.3. 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, taking into account the time, personnel, and costs involved or reasonably anticipated to be involved with processing the Application. The City may take up to two (2) business days to determine the appropriate fee to be collected, prior to processing the Modification Application.

19.2. City Cooperation in Processing Modification Applications. The City shall cooperate reasonably in promptly processing Modification Applications. The PD Plan and this Agreement shall not be amended by a Modification Application in a manner that eliminates the Vested Rights of Developer as set forth in this Agreement, except as an intended consequence of such Modification Application or as otherwise agreed by Developer.

19.3. Planning Commission Review of Modification Applications.

19.3.1. 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 Planning Commission's schedule and the nature and/or complexity of the Modification Application, in accordance with the procedures outlined in Section 7.4.

19.3.2. Recommendation. The Planning Commission's vote on the Modification Application shall be as designated by City's Vested Laws or City's Future Laws.

19.4. 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.

19.5. City Council's Denial/Objections to Modification Applications. If the City Council denies/objects to the Modification Application, as part of an administrative decision, then the City Council shall provide a written determination advising Developer of the reasons for denial/objection. Written determinations may be provided but are not required for decisions considered to be legislative in nature.

19.6. Meet and Confer regarding Modification Applications. The Developer may request an opportunity to meet and confer with the City Council in a public meeting (being included on the agenda of a regular or special Council meeting) to attempt to resolve the issues presented by the Modification Application and any of the City Council's denials/objections. Such

requests will be addressed pursuant to the City's ordinances and practices.

19.7. Mediation of City Council's Objections to Modification Applications. If the City and Applicant agree to mediation, the Parties shall attempt within thirty (30) days to appoint a mutually acceptable mediator, with preference given to selecting a mediator with expertise regarding the issue in dispute, and mutually agree to the allocation of the mediator fees between the Parties. The chosen mediator shall within thirty (30) 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 subsequent 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.

20. Separate Development Agreements. Developer, Sub-developers, or successors in title may elect to propose and enter into separate agreements with the City to govern the construction or development of a particular Parcel(s) within the Project. Nothing in any separate agreement may conflict with the entitlements obtained by Developer or the City in this Agreement without the express written consent of the City and Developer.

21. Assignment and Transfer of Development. Except as otherwise provide in Section 31 below, if Developer 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 of and be binding upon such subsequent owner. Except as otherwise provide in Section 31 below, the obligations of Developer shall automatically be assigned and assumed by subsequent owners of the Project or any portion thereof, and Developer shall be released from the obligations related to such portion as a result of the assignment and the assumption by subsequent owners. Except as otherwise provide in Section 31 below, subsequent owners of the Project or any portion thereof shall expressly assume the obligations of Developer pursuant to this Agreement; provided that in the event that subsequent owners of the Project do not expressly assume the obligations of this Agreement, they shall still be bound by the terms and obligations of this Agreement. This agreement shall be recorded and run with the land.

22. 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 of failure 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 reasonably required to cure such failure, so long as the failing Party commences its efforts to cure within the initial 30 day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

22.1 Developer shall not knowingly permit its agents, Sub-developer(s), assignee(s), contractors/subcontractors, or those with whom Developer otherwise has a

contractual relationship to perform an act or omission the Developer could not do itself. A violation of this provision shall constitute a default event, subject to the provisions of this Section.

22.2 If a Party fails to cure a default with the time specified in this Section, the non-defaulting Party may exercise any legal remedy otherwise available to them. In the event of an uncured default by the Developer, Sub-developer, or Builder, the City may also:

22.2.1 Enforcement of Security or Financial Assurance. The City may exercise its right to draw on any security or financial assurance posted or provided in connection with the Project, specifically when the security or financial assurance relate to the particular default(s).

22.2.2 Withholding Further Development Approvals. The City may withhold all further reviews, approvals, licenses, building permits, certificates of occupancy, and/or other permits for development of the Project on those properties, parcels, or lots owned by the defaulting Party.

23. 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 by certified mail, or by a national overnight delivery service, freight prepaid, to:

City:

Kanab City
26 N. 100 E.
Kanab, Utah 84741
Attention: City Manager

Developer:

MW – Kanab LLC
782 S. River Road, Suite 154
St. George, Utah 84790
Attn: Steve Laski

and with a copy to:

State of Utah
School and Institutional Trust Lands Administration
102 S. 200 E. Suite 600

Salt Lake City Utah 84111

Attn: Michelle McConkie

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 personal delivery or overnight delivery shall be effective upon receipt and if given by certified mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid as set forth above.

24. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either Party 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.

25. 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 counterparts 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.

26. Captions and Construction. This Agreement shall be construed according to its 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.

27. 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.

28. Estoppel Certificate. Upon twenty (20) business days' prior written request by Developer to the City, the City will execute an estoppel certificate to any third party certifying that Developer at that time is not in default of the terms of this Agreement, conditioned upon Developer not being in default of the terms of this Agreement at such time. Such certificate shall not constitute a waiver of any provisions of this Agreement, nor estoppel from thereafter addressing a matter of default discovered to have occurred before or after the issuance of the certificate. See Section 24.

29. Time of the Essence; Force Majeure. Except as otherwise provided in this section, time is of the essence in this Agreement. If after reasonable and prudent efforts to perform, either Party is delayed, hindered 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.

30. Reserved.

31. No Partnership or Third-Party Beneficiaries. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between Developer and the City. Except as set forth in Section 21 above with respect to any subsequent owner of the Project or any portion thereof or any transferee of any of Developer's rights and obligations hereunder, 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.

32. Names and Plans. Developer 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 the City in connection with the Property and the Project.

33. Good Standing Authority.

33.1. Developer hereby represents and warrants to the City that: (i) Developer is a duly registered limited liability company; (ii) the individual(s) executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms; and (iv) Developer is sufficiently capitalized and insured, or will become sufficiently capitalized and insured within a reasonable time, to undertake what is anticipated by the PD Plan and this Agreement, including, but not limited to potential liabilities that may be incurred.

33.2. City hereby represents and warrants to Developer that: (i) the City is a Utah municipal corporation; (ii) the City has power and authority pursuant to the Land Use Act and the Land Use Ordinance to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement 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.

34. 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.

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

36. Recordation. Subject to the proper execution, within ten (10) business days of the Effective Date of this Agreement, it shall be recorded in its entirety at Developer's expense in the

Kane County Recorder's Office, Kane 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 the City and Developer and, shall run with the land.

37. No Waiver of Governmental Immunity. Each of the Parties agrees and acknowledges that the City is a governmental entity under the Governmental Immunity Act of Utah, *Utah Code Ann. § 63G-7-101, et seq.* (2022) (the "Act"). Developer and City agree that nothing in this Agreement is or shall be construed as a waiver by the City of any protections, rights, immunities, or defenses applicable to the City under the Act, including without limitation, the provisions of Section 604 of the Act regarding limitation of judgments, beyond the express waivers set forth in the Act. Developer acknowledges and City represents and declares that it is not the intent of City, by entering this contract, to incur by or through this contract any liability for the operations, acts, or omissions of Developer and Developer's agents, and nothing in this Agreement shall be so interpreted or construed.

38. Creation of Public Infrastructure District. Subject to the requirements of the Public Infrastructure District Act, *Utah Code Ann. § 17D-4-101, et seq.* (the "PID Act"), City shall cooperate with Developer in the creation of a public infrastructure district (as such term is defined in the PID Act) to finance the costs of certain public infrastructure and improvements (as defined in the PID Act) to be constructed as part of the Project. Developer agrees to retain, at its sole cost and expense, legal counsel and consultants to assist and advise Developer and collaborate with City, with respect to the creation of the public improvement district. The Developer shall bear or reimburse the City within a reasonable time for all costs incurred by the City in relation to the creation of the public improvement district.

39. Indemnity.

39.1. By Developer. Developer agrees to indemnify, defend with counsel of City's choice, and hold harmless City, and its employees, officers, and agents from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any intentional or negligent act or omission of Developer or Developer's agents; or (ii) any breach of this Agreement by Developer.

39.2. By City. City agrees to indemnify, defend with counsel of Developer's choice, and hold harmless Developer, and its employees, officers, and agents from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any intentional or negligent act or omission of the City or City's agents; (ii) any breach of this Agreement by City. Notwithstanding the foregoing, this provision shall not be interpreted to imply explicitly nor implicitly to waive any rights, protections, privileges, and immunities provided the

City by law, as further outlined in Section 37.

40. Entire Agreement. This Agreement, together with the PD 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. All amendments shall be in writing and signed by the City and Developer, and shall be recorded.

41. Non-Liability of City Officials, Officers, Employees, Members, or Agents. No city official, representative, agent, or employee of the City shall be personally liable to the Developer or any of its successors or assigns in the event of any default or breach by the City or for any amount which may become due to the Developer or its successors or assigns for any obligation arising out of the terms of this Agreement. Similarly, no officer, member, manager, or representative, agent, or employee of the Developer shall be personally liable to the City or any of its successors or assigns in the event of any default or breach by the Developer or for any amount which may become due to the City or its successors or assigns for any obligation arising out of the terms of this Agreement, contingent upon compliance with corporate formalities and sufficient capitalization.

42. Reasonableness. Except as otherwise stated to the contrary in this Agreement, when the consent, approval, or agreement of the City and/or the Developer is required or contemplated under this Agreement, such consent, approval, or agreement shall not be unreasonably withheld, conditioned, or delayed; provided, this provision shall not bind the City with respect to its legislative actions.

43. Validity and Effect. Notwithstanding the Effective Date, this Agreement shall not be deemed valid and enforceable until such time as (1) an authorized representative of each Party has properly executed the same, (2) an authorized representative of SITLA has approved and executed the Acknowledgment and Consent of Owner, and (3) the Agreement has been properly recorded.

[Signature Pages to Follow]

Kanab City
A Utah municipal corporation

Colten Johnson
Colten Johnson, Mayor

Attest:

Celeste Cram
Celeste Cram, City Recorder



CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS
COUNTY OF KANE)

On the 21 day of March, 2023, personally appeared before me Colten Johnson, who being by me duly sworn did say that he is the Mayor of Kanab City and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 21 day of March 2023.

Tressa Clark
Notary Public



ACKNOWLEDGEMENT AND CONSENT OF OWNER

The undersigned, having an interest in the Property, more fully described in Exhibit A, that is the subject of the foregoing Agreement, hereby consents to execution and recording of this Agreement.

**THE STATE OF UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION**

By: [Signature]
Name: Kyle A. Pasley
Title: Managing Director

OWNER'S ACKNOWLEDGMENT

STATE OF UTAH)
 :SS
COUNTY OF Washington

On the 14th day of July, 2023, personally appeared before me Kyle Pasley, who being by me duly sworn did say that he is the Managing Director of The State of Utah School And Institutional Trust Lands Administration and has the authority to sign for said agency and is the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 14th day of July 2023.

[Signature]
Notary Public

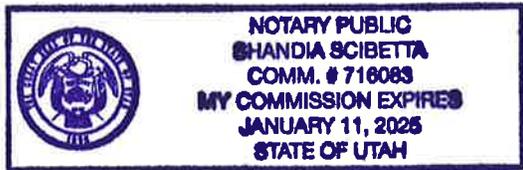


Exhibit A
Legal Description of the Property

Legal Description (updated April 4, 2022):

A portion of Lot 3, 4, 5, and 6 of Section 10, Township 44 South, Range 6 West, Salt Lake Base and Meridian, Utah, more particularly described as-follows:

BEGINNING at the North 1/16 corner of Section 10 and 9 of said township and range; thence, along the west line of said Section 10, thence North 00° 44' 04" East 698.56 feet, to the north right-of-way of Kaneplex Drive and the beginning of a non-tangential curve; thence, along said right-of-way as-follows, running along said curve to the left, 27.20 feet, having a radius of 471.00 feet, a central angle of 03° 18' 30" and whose long chord bears South 84° 56' 04" East 27.19 feet; thence South 86° 35' 19" East 1501.24 feet, to the beginning of a curve; thence, along the curve to the right, 512.86 feet, having a radius of 650.00 feet, a central angle of 45° 12' 26" and whose long chord bears South 63° 59' 06" East 499.66 feet; thence South 41° 22' 53" East 840.42 feet, to the beginning of a curve; thence, along the curve to the left, 103.91 feet, having a radius of 1450.00 feet, a central angle of 04° 06' 21" and whose long chord bears South 43° 26' 03" East 103.89 feet, to the north-south ¼ section line of said Section 10; thence, leaving said right-of-way along said ¼ section line, South 00° 25' 39" West 898.66 feet, to the southeast corner of said Lot 6; thence, along the south line of said Section 10, North 89° 31' 37" West 2619.50 feet, to the southwest corner of said Lot 5; thence, along the west line of said Section 10, North 00° 44' 27" East 1195.52 feet, to the POINT OF BEGINNING, containing 101.33 acres (more or less).

Exhibit B
PD Plan

[see attached]

Ventana Resort Village MASTER SITE PLAN

ON THE SITE

OWN • RENT • VISIT

Townhomes

Over half of the developed area will be dedicated to 3 and 4-bedrooms 2-story townhomes all independently owned.

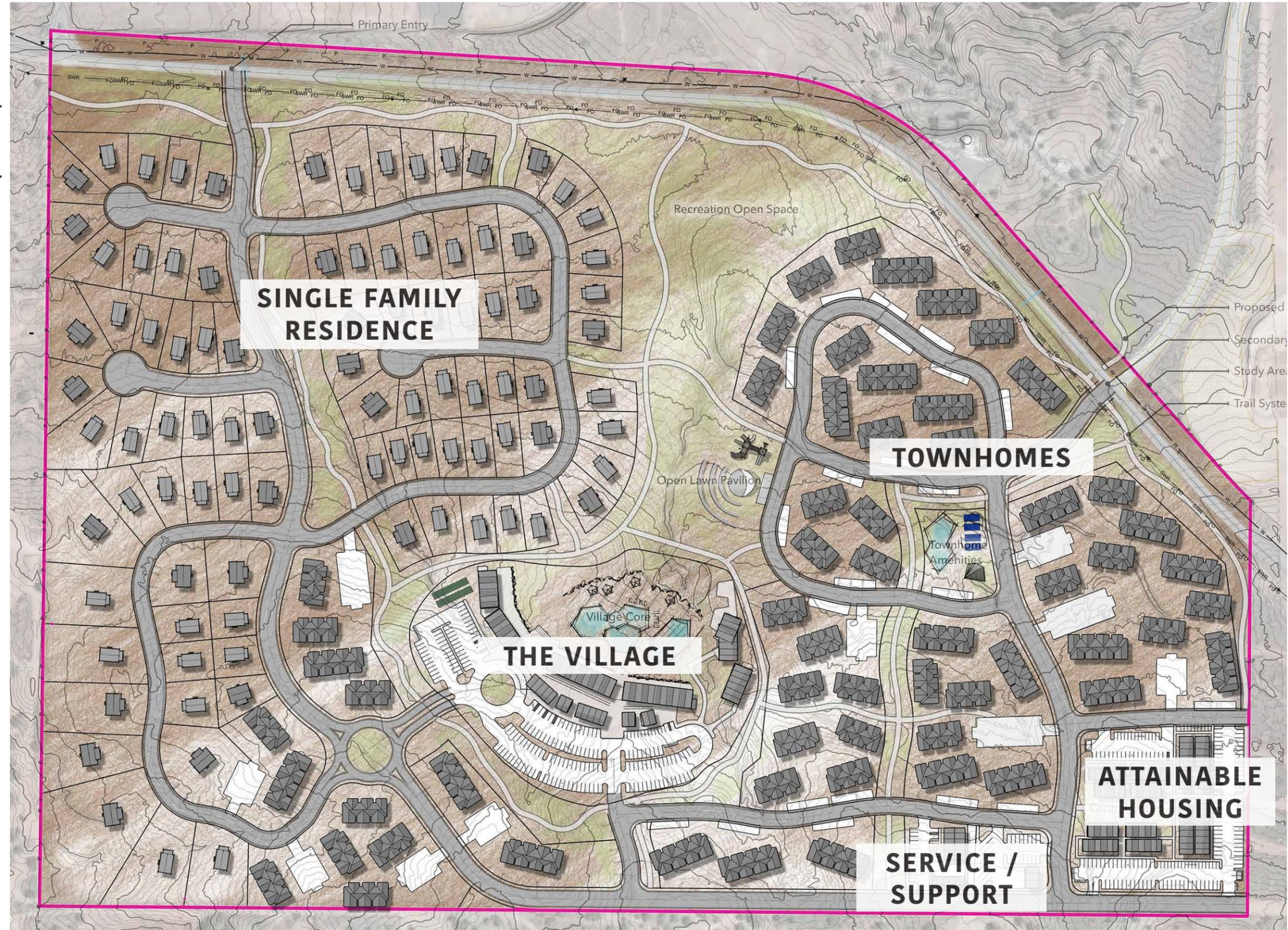
All of them are expected to be available to the public in the rental pool.

Single Family

The next largest component will be the single-family residences, 3 and 4-bedroom.

Each will be unique to each owner's preference, subject to blending in with the overall architectural aesthetic of the resort.

Some will be available in the rental pool.

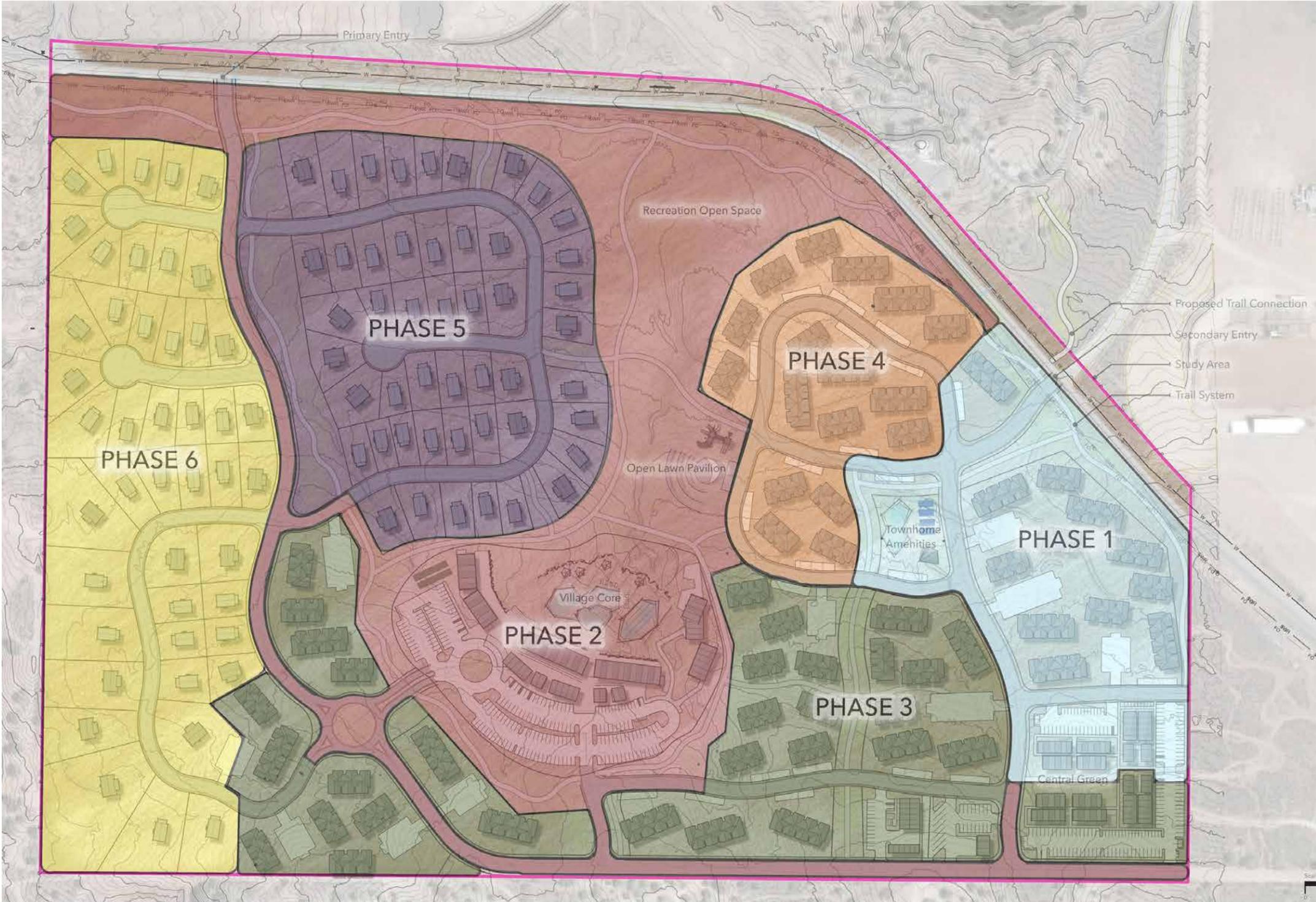


Ventana Resort Village PHASING

The project will be realized in phases over a 10-year period.

Phase 1 will include approximately:

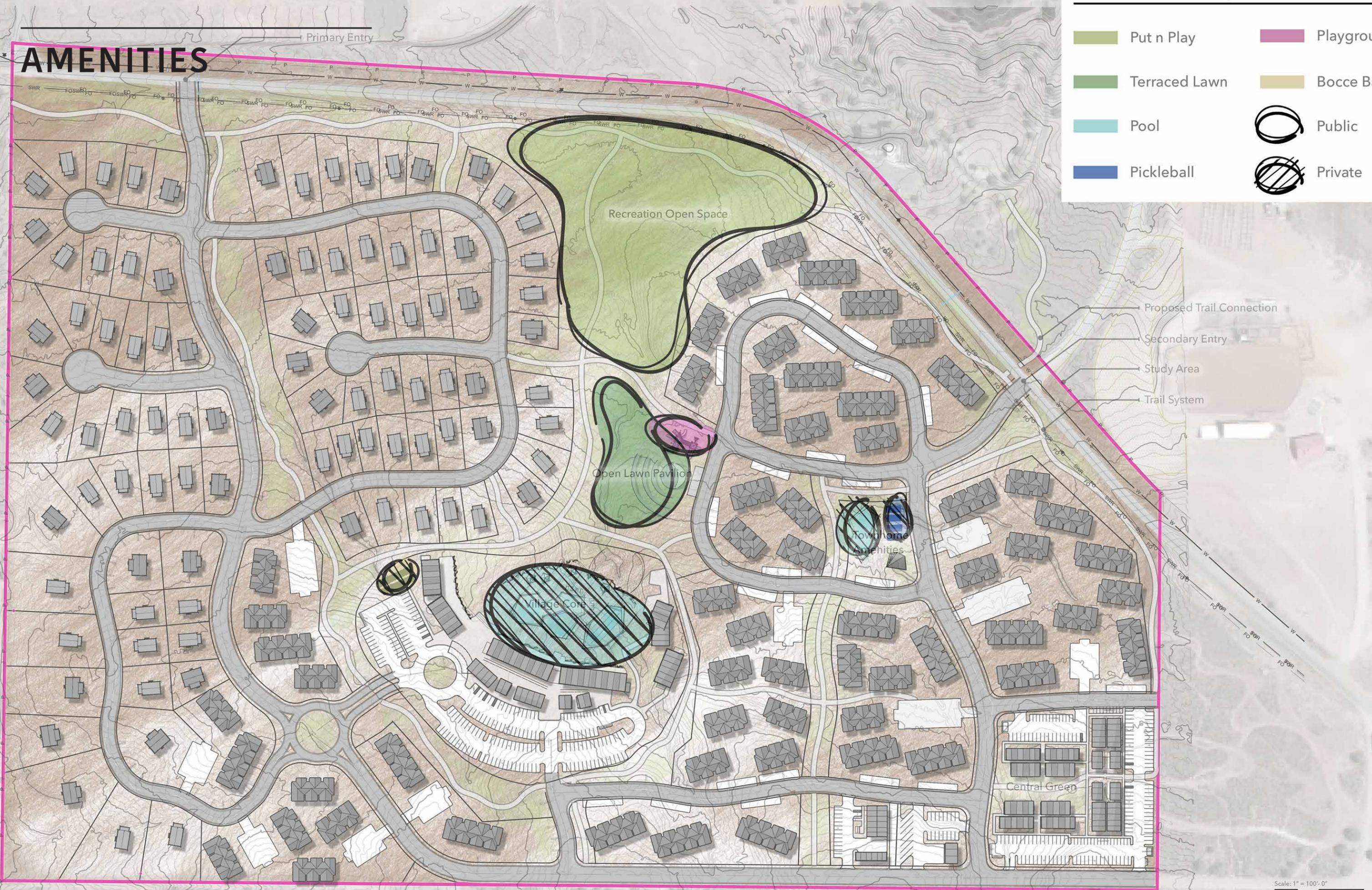
- 43 Townhomes
- 60 Attainable Housing units
- Site amenities for residences



AMENITIES

Legend

	Put n Play		Playground
	Terraced Lawn		Bocce Ball
	Pool		Public
	Pickleball		Private





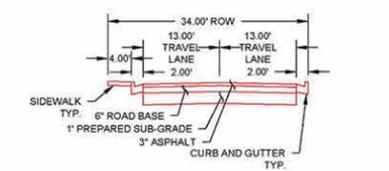
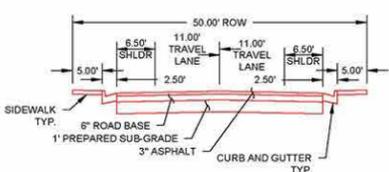
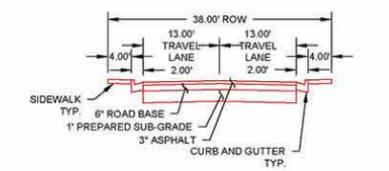
AREA DESIGNATION	TOTAL AREA	NOTES
COMMERCIAL	7.92 ACRES	120 UNITS
MULTI FAMILY	24.45 ACRES	203 UNITS
RESIDENTIAL 1	26.14 ACRES	93 LOTS
WORKFORCE HOUSING	3.05 ACRES	120 UNITS
50' ROW ROADS	9.29 ACRES	
TRAIL	2.73 ACRES	TRAIL AREA INCLUDED IN OPEN SPACE
OPEN SPACE/PARK	24.28 ACRES	
34' & 38' ROW (PRIVATE) ROADS	6.20 ACRES	

NEW DEVELOPMENT SIZE=101.33 ACRES COMBINED OPEN SPACE, TRAIL AND DEDICATED NON-SENSITIVE LAND = 24.80% TOTAL OPEN SPACE

ZONE: R-8 PD
 NUMBER OF TOTAL UNITS: 536
 TOTAL ALLOWABLE UNITS: 551

SETBACKS:
 FRONT: 25 FT
 SIDE: 8 FT
 REAR: 10 FT

OWNER INFORMATION
 MOUNTAIN WEST DEVELOPMENT
 DEVIN ANDERSON
 EMAIL: DEVIN.SJ.ANDERSON@GMAIL.COM



Upon recording, return to:
MW – Kanab LLC
782 S. River Road, Suite 154
St. George, Utah 84790
Attn: Steve Laski

Tax ID/Parcel K-13-UTAH-ANNEX

**DEVELOPMENT AGREEMENT
([Ventana Resort Village])**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into as of the 14th day of March, 2023 (the “**Effective Date**”), by and between Kanab City, a Utah municipal corporation (the “**City**”), and MW - Kanab LLC, a Utah limited liability company (“**Developer**”). The City and Developer may be hereinafter collectively referred to as “**Parties**,” and individually as a “**Party**.”

RECITALS

A. Pursuant to the terms of a Development Lease Agreement between Developer and The State of Utah School and Institutional Trust Lands Administration (“**SITLA**”), Developer has the right to develop approximately 101 acres of land located within Kanab City and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”), also commonly identified as parcel K-13-UTAH-ANNEX. No additional land shall be added to the Property without the express, written amendment of this Agreement, executed and approved by Developer and the City.

B. Developer desires to develop the Property as a planned unit development in a manner consistent with the City’s General Plan, its Planned Development Overlay Ordinance (the “**PD Ordinance**”), *Uniform Zoning Ordinance of the City of Kanab, Utah*, Chapter 23, and the City’s ordinances, policies, guidelines and regulations.

C. Developer desires to develop the Property as a planned development project plan (the “**PD Plan**”), to be known as [**Ventana Resort Village**] (the “**Project**”), comprised of various resort hospitality, residential, commercial, and public uses, all as set forth in the PD Plan, attached hereto as **Exhibit B**.

D. Developer and the City desire to enter into this Agreement for the purpose of vesting the development rights of the Property in order to implement the PD Plan and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable State law, City code, policies, guidelines and regulations. 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* (2022).

E. The City desires the Project be developed, to the extent practicable, as a sustainable mixed-use neighborhood within the City, comprised of a harmonious and balanced mix of new residential, commercial, hospitality, and public uses, with the further objectives of:

- (i) promoting water conservation and sustainable development;
- (ii) creating a greater diversity in housing stock (types of housing available), including Moderate Income Housing;
- (iii) creating a mix of commercial property generating tax revenues;
- (iv) creating private amenities along with Developer’s Density, with ownership and maintenance by one or more Community Home Owners’ Associations; and
- (v) providing greater diversity in ownership of parks and other open space areas while maintaining a desired level of public park and trailhead areas.

F. The City is acting pursuant to its authority under *Utah Code Ann. § 10-9a-101, et. seq.* (2022), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, guidelines, and regulations, and in the exercise of its legislative discretion, and has elected to approve this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions.

1.1. **“Administrative Amendment”** means and includes any minor amendment to the PD Plan or this Agreement or other minor modifications and action that may be approved by the Administrator, in writing, as provided herein, including without limitation, under Sections 4.2 and 18.

1.2. **“Administrator”** means the person designated from time to time by the City as the Administrator of this Agreement. If not formally designated otherwise by the City, the Land Use Administrator, also referenced as the Zoning Administrator, or his/her designee shall serve as the Administrator.

1.3. **“Moderate Income Housing Unit”** means, for purposes of calculating Density, a multi-family residential unit intended to be occupied for residential (primary home) living purposes intended for moderate income households. Each separate dwelling unit within a multi-family apartment building equals one Moderate Income Housing Unit.

- 1.4. **“Agreement”** means this Development Agreement including all its Exhibits.
- 1.5. **“Applicant”** means a person or entity submitting a Development Application or a request for an Administrative Amendment.
- 1.6. **“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, including Developer’s Infrastructure Improvements.
- 1.7. **“Buildout”** means the completion of all of the development on all of the Project.
- 1.8. **“Capital Facilities Plan”** means a current plan adopted by the City or as may be amended in the future which governs the construction of certain public facilities and the collection of Impact Fees as required by State law.
- 1.9. **“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.
- 1.10. **“City”** means Kanab City, a Utah municipal corporation.
- 1.11. **“City Council”** means the elected City Council of the City.
- 1.12. **“City Improvements”** means the improvements described in Section 14.
- 1.13. **“City’s Future Laws”** means the ordinances, policies, standards, procedures, and fee schedules of the City which may be adopted and thereafter in effect after a complete 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.
- 1.14. **“City’s Vested Laws”** means the ordinances, policies, standards, procedures, and fee schedules of the City related to zoning, subdivisions, development, public improvements, and other similar or related matters that were in existence at the time a complete application is submitted.
- 1.15. **“Community Home Owners Association”** means one or more associations formed pursuant to State law to perform the functions of an association of property owners.
- 1.16. **“Denial”** means a formal administrative decision 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 the City staff.
- 1.17. **“Density or Densities”** means the number of Townhome Units, Single Family Residential Units, Moderate Income Housing Units and Hotel Units allowed in the Project.

1.18. **“Developer”** means MW - Kanab LLC, a Utah limited liability company, and its respective assignees or transferees as permitted by this Agreement.

1.19. **“Developer’s Infrastructure Improvements”** means the improvements described in Section 9.

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

1.21. **“Final Plat”** means the recordable map or other graphical representation of land prepared in accordance with *Utah Code Ann. § 10-9a-603 (2022)*, and approved by the City, effectuating a Subdivision of any portion of the Project.

1.22. **“General Plan”** means a plan approved by the City that sets forth general guidelines for the proposed future development of property in the City, including the Property, as required and contemplated under *Utah Code Ann. § 10-9a-401, et seq. (2022)*.

1.23. **“Hospitality Facility or Hospitality Facilities”** means those facilities built to support a hotel to include but not limited to service areas, hotel rooms, spa, guest service areas, food and beverage areas, function space, etc.

1.24. **“Hospitality Unit”** means, for purposes of calculating Density, a dwelling unit located within the Hospitality Facility; each separate dwelling unit within the Hospitality Facility equals one Hospitality Unit.

1.25. **“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. (2022)* and Kanab City General Ordinances, Section 7-800, *et seq.* Except as noted herein, this Agreement does not restrict the modification or exercise of legislative authority of the City Council in relation to Impact Fees, which are assessed and applicable at the time a complete building permit application is submitted to the City.

1.26. **“Intended Uses”** means the use of all or portions of the Project for residential and resort residential single-family attached and detached product types, condominiums, multi-family Moderate Income housing, Hospitality Facility, public parks, private park and amenity facilities, mixed-use commercial areas, pool(s), service and storage buildings, open spaces, trails, and trailheads, recreational vehicle and trailer parking, recreational sport courts, golf putting courses, and other uses as more fully specified in the PD Plan.

1.27. **“Land Use Act”** means the Municipal Land Use, Development, and Management Act, as contained in *Utah Code Ann. § 10-9a-101, et seq. (2022)*.

1.28. **“Land Use Ordinance”** means the City’s Land Use Ordinance (“Uniform Zoning Ordinance of the City of Kanab, Utah”), Subdivision Ordinance, and Design Standards adopted and effective 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. Except as noted herein, this Agreement does not restrict the modification or exercise of legislative authority of the City Council in relation to its ordinances and policies, applicable at the time a complete application is submitted to the City.

1.29. **“Maximum Number of Dwelling Units”** means Five Hundred Forty (540) Units, comprised of 200 Townhome Units, 100 Single Family Units, 120 Moderate Income Housing Units and 120 Hospitality Units, as provided in the PD Plan, subject to any applicable Land Use Ordinance and restriction, unless modified by this Agreement, and any applicable density bonuses that might be available to Developer under the Land Use Ordinance.

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

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

1.32. **“PD Ordinance”** shall have the meaning referenced in Recital B.

1.33. **“PD Plan”** means the planned community development project plan for the Project as defined in Recital C. The Developer may include the Site Plan (preliminary or final) or a draft thereof as part of the PD Plan, or an amendment thereto, but, as used within this Agreement, the PD Plan is not synonymous with the Site Plan, which is separately defined and required by the Land Use Ordinance (i.e., consideration, review, amendment, and approval of the preliminary or final Site Plan is a separate process and governed by the Land Use Ordinance).

1.34. **“Planning Commission”** means the City’s Planning Commission established by the Land Use Ordinance.

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

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

1.37. **“Single Family Residential Unit”** means, for purposes of calculating Density, a detached, single family residential dwelling intended to be occupied for residential (primary home) and resort residential (second home or nightly rental) living purposes.

1.38. **“SITLA”** means State of Utah School and Institutional Trust Lands Administration.

1.39. **“State”** means the State of Utah.

1.40. **“Sub-developer”** means an entity not “related” (as defined by Internal Revenue Service regulations) to Developer which purchases a Parcel for development.

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

1.42. **“Townhome Unit”** means, for purposes of calculating Density, a townhome unit intended to be occupied for residential (primary home) and resort residential (second home or nightly rental) living purposes; each separate dwelling unit within a townhome building equals one Townhome Unit.

1.43. **“Units”** means Townhome Units, Single Family Residential Units, Moderate Income Housing Units, and Hospitality Units.

2. **Incorporation of Recitals; Capitalized Terms.** The foregoing Recitals are incorporated by reference into this Agreement, as a substantive part hereof. Capitalized terms used herein and not otherwise defined shall have the meaning given them in the PD Plan.

3. **Findings and Authority for Property Development.**

3.1. **Findings.** Concurrent with the execution of this Agreement, the Parties find that: (a) each Party has had reasonable time and opportunity to review and consider, and have legal counsel review and consider, the PD Plan and this Agreement, thereby affording them the opportunity to consider their consistency with the General Plan, the PD 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 PD Plan will result in planning and economic benefits to the Parties 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; (iv) providing Moderate Income housing; and (v) creating jobs from the construction and development activities located on the Property. All uses set forth in the PD Plan for a particular zone shall be considered allowed uses in such zone, and no amendments to the PD Plan nor any other zoning amendment applications shall be required to implement any such uses or construct corresponding improvements in any phase of the Project located in such zone other than applicable preliminary and final subdivision plats and preliminary and final site plan review and approval.

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

acknowledges that the City is relying on the PD Plan, the execution and continuing validity of this Agreement, and Developer's performance of its obligations under this Agreement, in continuing to perform the obligations of Developer herein. 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 PD Plan and Design Guidelines.

4.1 PD Plan. Notwithstanding the submission of the PD Plan, included as Exhibit B, development of the Project is subject to the appropriate applications, reviews, process, and approvals, as required by the Land Use Ordinance, Kanab City General Ordinances, or otherwise contemplated herein. The PD Plan describes the Project as a phased master planned community, which will include residential, resort residential, multi-family Moderate Income housing, hospitality, commercial, and community-related development activities. The PD Plan shows the portions of the Project that will be developed as well as the portions of the Project that will remain as natural open spaces. The developed areas shall consist of (i) residential and resort residential housing project types in various forms including single attached and detached homes, townhomes, and/or apartments, (ii) commercial project types, and (iii) Hospitality Facilities. Community facilities to be developed may include without limitation, recreational vehicle and trailer parking, pool(s), recreation courts, golf putting course, trails, and park spaces. The PD Plan is an integral part of this Agreement and is fully incorporated into this Agreement.

4.2 Additional PD Plan Contents. The PD Plan generally depicts the Intended Uses, allowed densities, utilities, major roads, community facilities, and public facilities that will be installed and constructed upon the Property. In addition to the foregoing, Developer may request City's approval of minor modifications to the PD Plan to the extent generally consistent with the PD Plan. Examples of such minor modifications shall include the following:

4.2.1 Minor modifications to roadway alignments, provided there is no change in roadway classification or construction standards;

4.2.2 Minor modifications to the location and size of the community facilities;

4.2.3 Minor modifications to the location of Units within the Project as long as the aggregate number of Units does not exceed the Maximum Number of Dwelling Units allowed for use classification for such Units as outlined in Section 6.

4.2.4 Minor modification to permit shifting landscaping for multi-family housing to the perimeter of the multi-family housing areas.

4.2.5 Minor modifications to permit flexibility with respect to minimum parking requirements for various housing types and total number of compact parking spaces: (i) the parking requirements for Moderate Income Housing Units shall be two (2) parking spaces per Unit

for the 2 bedroom Moderate Income Housing Units and subject to a reduction to 1.5 parking spaces per unit for the 1 bedroom Moderate Income Housing Units and subject to a reduction to one (1) parking space per unit for the studio Moderate Income Housing Units; (ii) the parking requirements for Townhome Units shall be two (2) parking spaces per Unit; and (iii) shared parking facilities shall be permitted to accommodate overflow parking, as needed.

4.2.6 The classification of all other modifications, as minor or substantial, shall be determined by the Administrator, when such modifications would be reasonably considered to be of a similar nature as those described above or otherwise specifically contemplated by the PD Plan. The Administrator shall oversee the minor modification process for any minor modifications described above or any other proposed modification which City classifies as minor. Minor modifications are generally considered as changes of 5% or less in a particular category/requirement. All minor modifications to the PD Plan may be made after City consents in writing. All substantial modifications to the PD Plan may be made by an approved amendment to the PD Plan and/or the preliminary or final site plan. If the Developer and Administrator do not agree as to the qualification of a modification as being minor or substantial, then the matter shall be submitted to the City Council for consideration, upon recommendation from the City’s Planning Commission, as a proposed amendment to the PD Plan.

4.3 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 Developer will have reasonable certainty in proceeding with development of the Property. Developer shall comply with the terms and conditions of the PD Plan and this Agreement, and the City authorizes Developer to develop the Property as set forth in the PD Plan and this Agreement.

4.4 Plans, Permits and Approvals; Documents. Developer shall prepare detailed construction plans, drawing, and specifications (the “**Construction Plans**”) for the Developer’s Infrastructure Improvements for the Project, which Construction Plans shall be subject to the City’s reasonable approval, following the process and parameters outlined in the City’s Ordinances and State Law. Developer shall diligently pursue and obtain any and all necessary governmental approvals, permits and the like as necessary and required for development of the Project. Developer agrees to provide City with a copy of any and all relevant records and documents relating to the Developer’s Infrastructure Improvements, as requested by City.

4.5 Building Permits; Occupancy. At the time that a subdivision plat is recorded, Developer may request issuance of building permits according to City’s customary permitting process applicable to developers or builders. Developer may request certificates of occupancy for those structures issued building permits as long as Developer is in compliance with this Agreement, Kanab City Ordinances, and City’s guidelines, standards, policies, and regulations.

5. Vested Rights, Exceptions.

5.1. Vested Rights; Reserved Legislative Powers. To the maximum extent permissible under the laws of the State and the United States and at equity, this Agreement grants

and vests in Developer all rights, consistent with the PD Plan and City’s Vested Laws, to develop the Project according to the PD Plan as provided in this Agreement. The Parties intend that the rights granted to Developer and the entitlements for the Project under this Agreement are both contractual and provided under the common law concept of vested rights and pursuant to *Utah Code Ann. § 10-9a-509 (amended 2022; effective 1/1/2023)*. It is expressly understood by the City that Developer may assign all or portion of its rights under this Agreement and the PD Plan, provided such assignment conforms to the requirements of, and any and all assignees agree to be bound by the terms of this Agreement.

5.2. Countervailing, Compelling Public Interest. The City and Developer acknowledge they are familiar with the “compelling, countervailing public interest” exception to the doctrine of vested rights in the State of Utah pursuant to *Utah Code Ann. § 10-9a-509(1)(a)(ii) (amended 2022; effective 1/1/2023)*. 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 the City to enact such legislation, such legislation shall only modify Developer’s vested rights as set forth herein 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) and as further explained and refined by its progeny.

5.3. City’s Future Laws. Any restrictions on the applicability of the City’s Future Laws to the Project are subject to the following exceptions:

5.3.1. Agreement. City’s Future Laws that Developer agrees in writing as being applicable to the Project, contemplated herein or by subsequent writing.

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)* (2022).

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 Developer's vested rights as outlined in the PD Plan and this Agreement.

5.3.9. Moratoria. The Project and the rights and obligations of Developer 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* (2022).

6. Development of Project

6.1. Project Maximum Number of Dwelling Units. Absent a substantial change to the PD Plan or this Agreement requested by Developer and approved by the City, 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, Developer shall be entitled to have developed the Maximum Number of Dwelling Units and to have developed the other Intended Uses, all as specified in the PD Plan and this Agreement.

6.2. Parcels Intended Use 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 PD Plan. The Intended Uses and Densities for each Parcel are shown on the PD 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, and subject to the terms of this Agreement, the City's ordinances, and those terms governing infrastructure, the timing, sequencing, and phasing of development of the various Parcels in the Project shall be as determined by Developer.

6.3. Use of Density. Intended Uses and Densities are shown on the PD Plan. Upon approval by the City as a minor modification through an Administrative Amendment, and subject to any site plan or plat amendment requirements, if applicable, Developer may adjust the relative location of approved Intended Uses and may use approved Density available in the development of any Parcel so long as the Maximum Number of Dwelling Units allowed per the then-current PD Plan is not exceeded.

6.4. Parcel Sales. The City agrees that, if consistent with the provisions of *Utah Code Ann. § 10- 9a-103(65)(c)(v)* (2022), Developer may convey Parcels or a portion of any Parcel by metes and bounds prior to recordation of a plat of subdivision for such portion. A Record of Survey shall be provided to the Administrator for the purpose of verifying such sales and divisions of land by deed will not deviate from the Project as outlined in the PD Plan and this Agreement.

6.4.1. Accounting of Density for Parcel(s) or Portions of a Parcel Conveyed to Sub-developers. Any Parcel sold by Developer to a Sub-developer without a Final Plat recorded shall include the transfer of a specified number of Units with the Parcel and be subject to the terms of this Agreement and PD Plan.

6.4.2. Return of Unused Density. If any Density transferred to a Sub-developer is unused by the Sub-developer 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 Density shall automatically revert back to Developer. In no event shall the Maximum Number of Dwelling Units allowed per the then-current PD Plan be exceeded. When an unused portion of a previously transferred Density (i.e., number of dwelling units) reverts back to the Developer, the Developer must seek approval of the City Council, upon recommendation of the Planning Commission, if the intended use of the reversionary Density is anticipated to deviate from the PD Plan (i.e., considered a substantive modification).

6.4.3. Sub-developer Obligation. Project wide infrastructure components are outlined in the PD Plan. This includes all water (storm, irrigation and culinary), sewer, natural gas, underground utilities, streets, traffic control devices, sidewalks, parks, trails, streetscapes, and all other improvements on and off the Property reasonably required for the Project. All infrastructure projects shall be constructed in phases concurrently and in conjunction with the construction on and development of Parcel(s) or portion of a Parcel to which such infrastructure corresponds, except where otherwise outlined herein. If Developer conveys, assigns, or leases any Parcels in whole or in part by metes and bounds to a Sub-developer (the “**Sub-developer Parcel**”) prior to recording of a Final Plat of subdivision which requires Project wide infrastructure to be completed as part of the Parcel’s development plan, the Sub-developer shall be required to install, construct, complete, and dedicate all infrastructure components as identified in the PD Plan that are either: (i) located within the Sub-developer Parcel, or (ii) located outside the Sub-developer’s Parcel boundary and/or outside the Property’s boundary which are required for the development and construction of improvements inside the Sub-developer’s Parcel. All improvements shall be made by Sub-developer concurrently and in conjunction with development of such Parcel and

bonded for by Sub-developer as required for all other subdivisions as set forth in the City's ordinances and standards. Notwithstanding the foregoing, if any Sub-developer fails to fully construct the improvements as outlined in the PD Plan attributable to Sub-developer's Parcel, Developer may, but shall not be required to, complete the improvements within a reasonable time following receipt of written notice of such failure by Sub-developer from City and seek restitution from Sub-developer as may be permitted by applicable law or the Sub-developer Parcel conveyance, assignment, or lease to Sub-developer by Developer. Failure to fully construct the improvements as outlined in the PD Plan and this Agreement may impede the future approval of a related Development Application(s), unless a valid Performance Assurance Completion Bond is provided by the Developer or Sub-developer, pursuant to the Land Use Ordinance.

6.5. Donation of Short-Term Rental Revenues. During the initial term of this Agreement, Developer at their sole discretion shall cause a donation equal to one percent (1%) of the gross rental revenue generated by the short-term rentals located within the Project to be made to the youth sports and recreation programs within the city of Kanab. At the Developers choice, funds will be donated to programs such as 4-H, school programs, athletic booster clubs etc. Such donations shall be made [annually in arrears within 90 days of the end of the calendar year to which such donation applies]. Developer shall be entitled to any tax benefits (deductions, etc.) applicable to any such donations, to the extent available under applicable law.

6.5.1. Notwithstanding the foregoing, in the event this provision is declared or rendered invalid by a court of competent jurisdiction or by statute, Developer's obligations hereunder shall immediately terminate and be of no further force and effect.

6.5.2. The City agrees to hold Developer harmless from any and all third-party claims challenging the validity or enforcement of this provision and/or any allocation of revenue generated by the applicable short-term rentals to the donations required hereunder.

6.5.3. The parties agree that is within the Developer's, it's assignee's or transferee's, full discretion to select which youth sports and recreation programs receive the 1% revenue donation, without the necessity of input, direction, further requirement, or enforcement of Kanab City. [I.e., the Developer may provide this donation to one program in a calendar year or may spread it across multiple programs; the Developer may contribute to a youth sport or recreation program(s) ran/sponsored by a governmental entity, or a youth sport or recreation program(s) not ran/sponsored by a governmental entity.]

6.5.4. The Developer shall submit an annual report to Kanab City detailing the donation made. Aspects of this annual report containing any information about gross profits will be treated as proprietary/trade secret information of the Developer, as defined in Utah Code § 63G-2-305, and treated as protected under the Utah Government Records Access and Management Act, Utah Code, Title 63G, Chapter 2. This Agreement shall serve as the written claim of business confidentiality.

7. Approval Process for Development Applications.

7.1. Phasing. The City acknowledges that Developer 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.

7.3. City's Cooperation in Processing Development Applications. The City shall cooperate reasonably in promptly 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, and this Agreement shall comply with the public hearing and public meeting requirements of applicable City ordinances and State law.

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, and, if applicable, pursuant to this Agreement. The City will reasonably cooperate with each Applicant in such scheduling.

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 conformity with the Land Use Act, the Land Use Ordinance and the General Plan.

7.5. City Council Review of Development.

7.5.1. Application 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 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 this Agreement. The City will reasonably cooperate with each Applicant in such scheduling. 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, tabling or denial of the Development Application.

7.6 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.

7.7 City Denial of a Development Application. If the City makes an administrative decision denying a Development Application, the City shall provide a written determination advising the Applicant of the reasons for denial. The City Council shall not be required to provide a written determination advising the Applicant of the reasons for a legislative decision.

7.8 Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of the administrative decision denying any Development Application to attempt to resolve the issues specified in the Denial of a Development Application. Such meetings may be in-person or by electronic means.

7.9 Appeals and Mediation of Development Application Denials.

7.9.1 Appeal. Applicant may exercise its right to appeal the administrative decision denying a Development Application, in accordance with the Land Use Ordinance and General Ordinances.

7.9.2 Mediation Process. Alternatively, any applicable appeal period under the City’s ordinances may be tolled if the Parties agree in writing to mediate any dispute related to an administrative decision denying a Development Application. Such tolling shall be terminated when one Party notifies the other in writing of their unwillingness to mediate the dispute further, or upon completion of mediation, regardless of the outcome. If the City and Applicant agree to mediation, the Parties shall attempt within thirty (30) days to appoint a mutually acceptable mediator, with preference for selecting a mediator having expertise regarding the issue in dispute, and mutually agree to the allocation of the mediator fees between the Parties. The chosen mediator shall within thirty (30) 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.

8. Single Family Residential Units. Developer will include as part of Phase 2 of the Project the development of a minimum of six (6) lots for single family residential units. [This provision may require the Developer to modify the preliminary site plan, and, in accordance thereto, may permissibly modify what is depicted in Exhibit B, without formal amendment.]

9. **Developer's Infrastructure Improvements.** The improvements depicted in the PD Plan, and set forth in this section, represent the infrastructure and related common improvements to be completed by Developer that are intended to service the Project. This section is intended to obligate Developer to bring applicable infrastructure to the Property, if necessary and including necessary upsizing, and then internally to the boundary of each individual Parcel to serve the needs of the Development. Subject to the performance by the City of its obligations herein, Developer shall cause improvements to be installed, constructed, and completed, in conformance with applicable governmental and City standards, policies and guidelines and the PD Plan (the "**Developer's Infrastructure Improvements**"), and subject to written acceptance by the City. The Developer's Infrastructure Improvements will be installed and constructed in stages or phases as necessary to support the development of each Parcel, except for infrastructure required earlier in the Development by the City Engineer (e.g., sewer or water infrastructure upsizing to the Property). Developer shall be responsible for the costs to install, construct, and complete the Developer's Infrastructure Improvements. As permitted and in compliance with State law and City ordinances, a performance assurance completion bond may be submitted to temporarily satisfy infrastructure requirements for individual phases.

The Developer's Infrastructure Improvements to be constructed include:

9.1. **Sewer Collection System.** All pipes, manholes, clean-outs, lift stations, and other collection facilities within the Project, or outside the Project boundaries where necessary and related to the Project's projected future needs, for the purpose of collecting and transporting sanitary sewer from and within the Parcels to the existing or upsized sanitary sewer connection points located along Kaneplex Drive. Upsizing of existing sewer infrastructure necessary to serve the project will be determined by the City Engineer, in coordination with the Developer.

9.2. **Electrical Distribution System.** The Project will be serviced by Garkane Energy. Developer agrees to provide and install all required electrical materials and equipment for installation from the point of the existing distribution system in order to provide electrical service to all Parcels, lots, units, and amenity facilities within the Project. This shall include, but is not limited to, Developer's obligation to provide conduit, cable (primary and secondary), switchgear, sectionalizers, switch basements, secondary boxes, services, and all other material and equipment required for construction of a complete electrical system. Developer will provide easements and all associated documentation for the required transmission and distribution lines within the Project for electrical system improvements to connect to the existing distribution system. Developer will ensure Garkane Energy complies with Kanab City Ordinances in placement of electrical infrastructure, including, but not limited to the placement of underground transmission and distribution lines where required.

9.3. **Street Lighting.** In consultation with Garkane Energy, standard downward focused street lights will be installed on the major arterial roadways per City ordinances and standards as depicted in the PD Plan. Street lights on the major arterial roadways will be provided and installed by a pre-qualified contractor and installed per City requirements. Any street lights

on arterial roadways will be the sole and perennial ownership and maintenance responsibility of the Developer or Community Home Owners Association(s). Developer may install bollard or other low emitting light fixtures to support vehicular and pedestrian movement during non-sunlight hours of the day. All non-standard street lights, bollards, and low emitting light fixtures shall be provided and installed by Developer in compliance with City ordinances and the PD Plan, and will be the sole and perennial ownership and maintenance responsibility of the Developer or Community Home Owners Association(s).

9.4. Roadways. All roadways contained within the Project as shown on the PD Plan will be constructed by Developer. With the exception of the main arterial roads (as shown on the PD Plan), all roadways shown on the PD Plan are intended to be private roadways, subject to necessary public access and utility easements. Upon completion of construction, the main arterial roadways shall be dedicated to the City, subject to approval and acceptance by the City. Upon dedication, the City shall be responsible for the maintenance, repair, and replacement of all such roadways.

9.4.1. Developer shall coordinate with Kane County and UDOT to ensure Kaneplex Drive (i.e., the portion designated as a County owned road) and Highway 89A are improved, if necessary, to a standard sufficient to serve the projected Project traffic needs. Based on current traffic studies from Horrocks and Hales Engineering, Developer will construct and ensure that both left and right turn lanes on Kaneplex Dr going to Highway 89A will be added with Phase 2. In addition, Developer will add a right turn lane into the Project to coincide with the completion of Phase 2. Developer has obtained a professional traffic study for this purpose, coordinating with UDOT, Kane County, and the City to define the scope of the traffic study.

9.4.2. The Developer commits to providing continued access to the BLM land to the west and commonly known as a quarry, specifically maintaining current access along the west side of the Project. The Developer acknowledges that as the area is developed in the future, the city and the Developer may determine that alternative access options better suit the use of the land. The Developer makes no guarantee that access to the land will remain unchanged in the future, but commits to working with SITLA and the city to evaluate and implement access options that align with the land's intended use. The Developer shall honor all valid existing easements, subject to SITLA's authority to modify or relocate existing easements prior to surface rights being transferred to the Developer.

9.5. Parking. All public and common parking improvements contained within the Project as shown on the PD Plan will be constructed by Developer and shall comply with the applicable parking requirements set forth the Land Use Ordinance, except that: (i) the parking requirements for Moderate Income Housing Units shall be two (2) parking spaces per Unit for the 2 bedroom Moderate Income Housing Units and subject to a reduction to 1.5 parking spaces per unit for the 1 bedroom Moderate Income Housing Units and subject to a reduction to one (1) parking space per unit for the studio Moderate Income Housing; (ii) the parking requirements for Townhome Units shall be two (2) parking spaces per Unit; and (iii) shared parking facilities shall

be permitted to accommodate overflow parking, as needed.

9.6. Trails and Trailheads. The Project includes multiple private trails and trailheads as shown in the PD Plan. Although privately owned, Developer shall permit public access to such private trails, subject to Developer’s and/or the Community Home Owners Association(s)’ right to promulgate and enforce reasonable rules and regulations pertaining to the use and protection of such trails applicable to the public and Development residents alike. Public access shall include a means of access to the trails and trailheads by motor vehicle and appropriate parking inside the Project boundaries. All trails and trailheads as shown in the PD Plan shall be constructed by Developer and maintained by the Community Home Owners Association(s). To the extent permitted by applicable law, Developer shall be entitled to impact fee credit for properly documented costs incurred for all trails and trailheads constructed by Developer for which public access is granted. Upon completion of such trails or trailheads, the City shall grant Developer an impact fee credit for the cost of planning, designing, and constructing such trails and trailheads, applying the credit using the applicable impact fee schedule in effect at the time of subsequent building permit applications. Where reasonably possible, trails and trailheads shall be established to align with trails of adjoining parcels to the Property. Impact fee credits referenced in this provision are specific to impact fees specifically related to the infrastructure (i.e., credit for costs for publicly accessible trails and trailheads would apply only to impact fees imposed and relating to the “Recreation” category).

9.7. Private Amenities and Parks. The Project will include a variety of private amenities, parks, open space areas as described and depicted in the PD Plan. The private parks, private amenities and open space areas will meet the recreational needs of the entire Project. Such private parks, amenities, and open space areas may be made available for public use, subject to Developer’s and/or Community Home Owners Association(s)’ right to promulgate and enforce reasonable rules and regulations related to such access and use, including reasonable charges for use of such amenities.

9.8. Stormwater Drainage. It is anticipated that all stormwater flows generated by the development of the Project will generally follow the Property’s existing natural drainage and that Developer or Community Home Owners Association(s) will be responsible for the maintenance of any related drainage facilities to the extent located within the Property. Additional stormwater infrastructure, inside or adjacent to the Project boundaries, may be required by the City Engineer, upon review and analysis of the preliminary or final site plan.

10. Builder/Sub-developer Completion of Developer’s Infrastructure Improvements; Bonding by Builder/Sub-developer. Developer may offer, for sale or lease, Parcels to builders or Sub-developers in a phased manner. Developer may enter into different types of transactions, including but not limited to, sales, development leases, or ground leases. As a condition of such transactions, Developer may contractually obligate the builder or Sub-developer to install, complete, and dedicate all or any portion of any of the Developer’s Infrastructure Improvements. Such builders or Sub-developers shall not be permitted to further assign such obligations. The City

may require of such builders or Sub-developers a bond or any other financial assurance allowed by its ordinances for any Developer's Infrastructure Improvements. At such time as the City receives and accepts such financial assurance, Developer's obligation shall terminate with respect to such Developer's Infrastructure Improvements. Developer and any Builder/Sub-developer 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)* (2022).

11. Dedication of Certain Developer's Infrastructure Improvements. Developer intends to dedicate, and the City intends to accept the dedication of certain approved and acceptable Developer's Infrastructure Improvements. Developer shall retain ownership of applicable Developer's Infrastructure Improvements constructed for respective portions of the Project and shall remain solely responsible for all necessary maintenance, repairs, and replacements of such Developer's Infrastructure Improvements prior to final written acceptance thereof by the City. Developer shall satisfy the obligation to dedicate applicable Developer's Infrastructure Improvements by causing: (i) the filing of a dedication plat; or (ii) the filing of a final subdivision plat including dedication. The City shall approve and accept dedication of applicable Developer's Infrastructure Improvements, in whole or in part, as necessary to support the phase of development as long as such Developer's Infrastructure Improvements are materially consistent with the PD Plan and the applicable Final Plat, and determined by the City to meet the requirements of its ordinances, design standards, State law, building code or other similar standards for such improvements. Upon dedication, City shall own, operate, and maintain the dedicated, approved, and accepted Developer's Infrastructure Improvements without further charge or cost to Developer; provided, however, to the extent not prohibited by law or contract, Developer shall provide an Improvement Warranty in accordance with the requirements of the City's ordinances and Utah Code § 10-9a-604.5, and also assign to the City any contractual warranty rights existing for such Developer's Infrastructure Improvements. As necessary, Developer will contractually obligate its Sub-developers/builders to dedicate any applicable portion of the Developer's Infrastructure Improvements in accordance with this Agreement. Developer agrees that no connections to Developer's Infrastructure Improvements shall occur before City approves and accepts the same, as contemplated herein.

12. Community Association's Responsibilities for Improvements. The PD Plan calls for the establishment of a Community Home Owners Association to govern and enforce conditions, covenants, and restrictions (the "CC&Rs") for the community and sub-neighborhoods within the 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 common areas, private roadways, trails, yards, private parks, and certain open spaces. Developer shall follow the provisions of the Land Use Ordinance, specifically the PD Ordinance, and State law in relation to the establishment of one or more homeowners associations. In the creation of a Community Home Owners Association and in the adoption and recording of any CC&Rs, Developer shall not infringe or remove any right, easement, or other entitlement granted the City, the public, or a public utility under this Agreement or the PD Plan.

13. Open Space. The PD Plan designates a minimum of twenty percent of the Property as open space, including the portion of the Property located on the north side of Kaneplex Drive. Some of these areas will not be developed except for certain recreational trails. Developer intends to convey the open space to the Community Home Owners Association, and the City shall have no obligation with respect to such areas, except as otherwise mutually agreed by the City and Developer. 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 PD 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.

14. City Improvements. The City shall maintain and continue to provide the following improvements to the Property, once the infrastructure has been properly installed and constructed, dedicated to and formally accepted by the City:

14.1. Culinary Water Supply and Storage. The Developer shall propose and, following City approval, cause to be installed or upsized sufficient infrastructure to support the supply of culinary water service with adequate flow, capacity, and quality to satisfy the uses contemplated in the PD Plan, together with adequate facilities for storage of such water to be delivered to the Project. Developer shall also be responsible for all on-site water distribution systems within the Project. In respect to the installation and construction of this infrastructure, the Developer shall adhere to the specifications approved and or otherwise required by the City Engineer, particularly in relation to what constitutes sufficient infrastructure for the Project. The City's and Developer's engineers shall meet and confer where there is a disagreement about the sufficiency of the infrastructure required.

14.2. Sanitary Sewer. The Developer shall propose, and following City approval, construct and install in key locations at the perimeter of the Project connections to the sewer collection system. If the City Engineer determines the existing sewer collection system to be used to survive the project is not of adequate size and capacity to service the Maximum Number of Dwelling Units and other Intended Uses in the Project, then the Developer propose, and after City approval, install and construct an upsized collection system to sufficiently support the sewer needs contemplated by the PD Plan. This system will include outfall sewer lines, and other facilities as reasonably necessary to accommodate the sanitary sewer requirements of the Project. Some of the sanitary sewer facilities to be proposed, installed, and constructed may be located within the Project. Developer shall be responsible for installation and construction of all on-site sewer collection systems and delivery from those on-site systems to the facilities within the Project anticipated to be dedicated to the City. Developer's sewer improvements may include but are not limited to outfall sewer lines, lift stations, high pressure lines, and other facilities.

15. Further Exactions. The City will only impose further fees and assessments as required by law or contemplated by this Agreement, or as properly adopted and in effect at the time a Development Application is submitted.

16. Impact Fees; Credits.

16.1. Impact Fees. The City may 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. Developer and any applicable Sub-developer, or builder shall pay any and all Impact Fees assessed by City in accordance with the standard applicable City requirements and state law. As a part of the approval of a Development Application, the City may require Developer, Sub-developer, or builder to build portions of infrastructure improvements as shown on City's then-current Capital Facilities Plan instead of Developer's Infrastructure Improvements as depicted in the PD Plan. In such event, the City and Developer, Sub-developer, or builder shall execute an agreement providing for the reimbursement of the impact fee eligible costs incurred by Developer or the applicable Sub-developer or builder to construct any infrastructure improvements required by City in excess of those identified to serve the development in the PD Plan. The reimbursement to be outlined in this separate agreement may be accomplished, at the City's discretion, through the granting of impact fee credits, in accordance with State law and City ordinances. In no circumstance will the Developer be entitled to impact fee credits in excess of those imposed for the applicable impact fee category.

16.2. Assignment and Payment of Impact Fee Credits. To the extent that existing or future law or ordinance permits or requires Impact Fee credits to Developer, or in the circumstances contemplated in Section 16.1, such Impact Fee credits are assignable in whole or in part within the Project. To evidence the transfer of Impact Fee credits, Developer will issue certificates to Sub-developers or builders, providing a copy to the City at the time of transfer. Each certificate will state the specific dollar amount it represents and will set forth the type of Impact Fee credit being utilized thereunder (i.e., specifying the impact fee category to which it applies). 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, in the impact fee category to which it applies, until the total dollar amount credit available is exhausted. The City and Developer shall independently maintain ledgers accounting for the Impact Fee credits and agree to reconcile their ledgers annually, commencing one (1) year from the first Impact Fee due date, or on a schedule otherwise agreed to by the Parties.

17. Term; Extension.

17.1. Term. The term of this Agreement shall be until December 31, 2040. If as of that date Developer has not been declared to be in default as provided in this Agreement, 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, 2050, and, thereafter, for up to five (5) years upon application and approval. This Agreement shall also terminate automatically at Buildout, except that to the extent any obligations under this Agreement by their nature are intended to survive the termination of this Agreement, such obligations shall survive such termination.

17.2. Initial Development Application. This Agreement shall automatically

terminate if Developer fails to submit a subsequent Development Application for approval within at least eighteen (18) months from the Effective Date of this Agreement; provided that nothing contained herein shall prevent Developer from seeking one or more extensions of such deadline by application to the City.

17.3. Extension. The term of this Agreement may be modified upon mutual written agreement of the Parties.

18. Administrative Amendments.

18.1. Allowable Administrative Applications. The following modifications to this Agreement and the PD Plan may be considered and approved by the Administrator. At the time of application, the City will set and collect from the Developer a reasonable fee for the Administrative Application submitted, which fee will be commensurate with the time, personnel, and costs involved or reasonably anticipated to be involved with processing the Application. The City may take up to two (2) business days to determine the appropriate fee to be collected, prior to processing the Administrative Application.

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

18.1.2. Parcel Density and Intended Use. Modifications of the Intended Uses, Densities, or Parcel Configuration, as provided for in Sections 6.2 and 6.3, subject to any site plan or plat amendment process required by the City's ordinance, if applicable.

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

18.2.1. Referral by Administrator. If the Administrator reasonable determines that a matter is not a minor modification, as outlined in Section 4.2, and therefore not appropriate for an Administrative Amendment, the Administrator shall require the Administrative Amendment to be processed as a Modification Application, considered by the City Council, upon recommendation from the City Planning Commission.

18.2.2. Administrator's Review of Administrative Amendment. The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time, providing a written decision.

18.2.3. 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 18.2.4 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 binding on the City.

18.2.4. City Council Requirement of Modification Application Processing. The City Council may, within thirty (30) days after receipt of a proposed approval by the Administrator, notify the Administrator that the Administrative Amendment must be processed as a Modification Application.

18.2.5. 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.

19. Amendment.

19.1. Except for Administrative Amendments, any future amendments to this Agreement or the PD Plan shall be considered as Modification Applications subject to the following processes, subject to any additional process required for a site plan or plat amendment, if applicable:

19.1.1. Persons Entitled to Submit Modification Applications. Only the City, Developer, or an assignee that succeeds to all of the rights and obligations of Developer under this Agreement (excluding a Sub-developer), may submit a Modification Application.

19.1.2. Modification Application Contents. Modification Applications shall:

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

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

19.1.2.3. 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, taking into account the time, personnel, and costs involved or reasonably anticipated to be involved with processing the Application. The City may take up to two (2) business days to determine the appropriate fee to be collected, prior to processing the Modification Application.

19.2. City Cooperation in Processing Modification Applications. The City shall cooperate reasonably in promptly processing Modification Applications. The PD Plan and this Agreement shall not be amended by a Modification Application in a manner that eliminates the Vested Rights of Developer as set forth in this Agreement, except as an intended consequence of such Modification Application or as otherwise agreed by Developer.

19.3. Planning Commission Review of Modification Applications.

19.3.1. 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 Planning Commission's schedule and the nature and/or complexity of the Modification Application, in accordance with the procedures outlined in Section 7.4.

19.3.2. Recommendation. The Planning Commission's vote on the Modification Application shall be as designated by City's Vested Laws or City's Future Laws.

19.4. 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.

19.5. City Council's Denial/Objections to Modification Applications. If the City Council denies/objects to the Modification Application, as part of an administrative decision, then the City Council shall provide a written determination advising Developer of the reasons for denial/objection. Written determinations may be provided but are not required for decisions considered to be legislative in nature.

19.6. Meet and Confer regarding Modification Applications. The Developer may request an opportunity to meet and confer with the City Council in a public meeting (being included on the agenda of a regular or special Council meeting) to attempt to resolve the issues presented by the Modification Application and any of the City Council's denials/objections. Such requests will be addressed pursuant to the City's ordinances and practices.

19.7. Mediation of City Council's Objections to Modification Applications. If the City and Applicant agree to mediation, the Parties shall attempt within thirty (30) days to appoint a mutually acceptable mediator, with preference given to selecting a mediator with expertise regarding the issue in dispute, and mutually agree to the allocation of the mediator fees between the Parties. The chosen mediator shall within thirty (30) 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 subsequent 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.

20. Separate Development Agreements. Developer, Sub-developers, or successors in title may elect to propose and enter into separate agreements with the City to govern the construction or development of a particular Parcel(s) within the Project. Nothing in any separate agreement may conflict with the entitlements obtained by Developer or the City in this Agreement without the express written consent of the City and Developer.

21. Assignment and Transfer of Development. Except as otherwise provide in Section 31 below, if Developer 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 of and

be binding upon such subsequent owner. Except as otherwise provide in Section 31 below, the obligations of Developer shall automatically be assigned and assumed by subsequent owners of the Project or any portion thereof, and Developer shall be released from the obligations related to such portion as a result of the assignment and the assumption by subsequent owners. Except as otherwise provide in Section 31 below, subsequent owners of the Project or any portion thereof shall expressly assume the obligations of Developer pursuant to this Agreement; provided that in the event that subsequent owners of the Project do not expressly assume the obligations of this Agreement, they shall still be bound by the terms and obligations of this Agreement. This agreement shall be recorded and run with the land.

22. 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 of failure 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 reasonably required to cure such failure, so long as the failing Party commences its efforts to cure within the initial 30 day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

22.1 Developer shall not knowingly permit its agents, Sub-developer(s), assignee(s), contractors/subcontractors, or those with whom Developer otherwise has a contractual relationship to perform an act or omission the Developer could not do itself. A violation of this provision shall constitute a default event, subject to the provisions of this Section.

22.2 If a Party fails to cure a default with the time specified in this Section, the non-defaulting Party may exercise any legal remedy otherwise available to them. In the event of an uncured default by the Developer, Sub-developer, or Builder, the City may also:

22.2.1 Enforcement of Security or Financial Assurance. The City may exercise its right to draw on any security or financial assurance posted or provided in connection with the Project, specifically when the security or financial assurance relate to the particular default(s).

22.2.2 Withholding Further Development Approvals. The City may withhold all further reviews, approvals, licenses, building permits, certificates of occupancy, and/or other permits for development of the Project on those properties, parcels, or lots owned by the defaulting Party.

23. 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 by certified mail, or by a national overnight delivery service, freight prepaid, to:

City:
Kanab City
26 N. 100 E.
Kanab, Utah 84741
Attention: City Manager

Developer:
MW – Kanab LLC
782 S. River Road, Suite 154
St. George, Utah 84790
Attn: Steve Laski

and with a copy to:

State of Utah
School and Institutional Trust Lands Administration
102 S. 200 E. Suite 600

Salt Lake City Utah 84111

Attn: Michelle McConkie

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 personal delivery or overnight delivery shall be effective upon receipt and if given by certified mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid as set forth above.

24. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either Party 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.

25. 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 counterparts 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.

26. Captions and Construction. This Agreement shall be construed according to its 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.

27. 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.

28. Estoppel Certificate. Upon twenty (20) business days’ prior written request by Developer to the City, the City will execute an estoppel certificate to any third party certifying that Developer at that time is not in default of the terms of this Agreement, conditioned upon Developer not being in default of the terms of this Agreement at such time. Such certificate shall not constitute a waiver of any provisions of this Agreement, nor estoppel from thereafter addressing a matter of default discovered to have occurred before or after the issuance of the certificate. See Section 24.

29. Time of the Essence; Force Majeure. Except as otherwise provided in this section, time is of the essence in this Agreement. If after reasonable and prudent efforts to perform, either Party is delayed, hindered 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.

30. Reserved .

31. No Partnership or Third-Party Beneficiaries. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between Developer and the City. Except as set forth in Section 21 above with respect to any subsequent owner of the Project or any portion thereof or any transferee of any of Developer’s rights and obligations hereunder, 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.

32. Names and Plans. Developer 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 the City in connection with the Property and the Project.

33. Good Standing Authority.

33.1. Developer hereby represents and warrants to the City that: (i) Developer is a duly registered limited liability company; (ii) the individual(s) executing this Agreement on behalf

of Developer are duly authorized and empowered to bind Developer; (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms; and (iv) Developer is sufficiently capitalized and insured, or will become sufficiently capitalized and insured within a reasonable time, to undertake what is anticipated by the PD Plan and this Agreement, including, but not limited to potential liabilities that may be incurred.

33.2. City hereby represents and warrants to Developer that: (i) the City is a Utah municipal corporation; (ii) the City has power and authority pursuant to the Land Use Act and the Land Use Ordinance to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement 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.

34. 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.

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

36. Recordation. Subject to the proper execution, within ten (10) business days of the Effective Date of this Agreement, it shall be recorded in its entirety at Developer's expense in the Kane County Recorder's Office, Kane 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 the City and Developer and, shall run with the land.

37. No Waiver of Governmental Immunity. Each of the Parties agrees and acknowledges that the City is a governmental entity under the Governmental Immunity Act of Utah, *Utah Code Ann. § 63G-7-101, et seq.* (2022) (the "Act"). Developer and City agree that nothing in this Agreement is or shall be construed as a waiver by the City of any protections, rights, immunities, or defenses applicable to the City under the Act, including without limitation, the provisions of Section 604 of the Act regarding limitation of judgments, beyond the express waivers set forth in the Act. Developer acknowledges and City represents and declares that it is not the intent of City, by entering this contract, to incur by or through this contract any liability for the operations, acts, or omissions of Developer and Developer's agents, and nothing in this Agreement shall be so interpreted or construed.

38. Indemnity.

38.1. By Developer. Developer agrees to indemnify, defend with counsel of City's choice, and hold harmless City, and its employees, officers, and agents from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any intentional or negligent act or omission of Developer or Developer's agents; or (ii) any breach of this Agreement

by Developer.

38.2. By City. City agrees to indemnify, defend with counsel of Developer's choice, and hold harmless Developer, and its employees, officers, and agents from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any intentional or negligent act or omission of the City or City's agents; (ii) any breach of this Agreement by City. Notwithstanding the foregoing, this provision shall not be interpreted to imply explicitly nor implicitly to waive any rights, protections, privileges, and immunities provided the City by law, as further outlined in Section 37.

39. Entire Agreement. This Agreement, together with the PD 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. All amendments shall be in writing and signed by the City and Developer, and shall be recorded.

40. Non-Liability of City Officials, Officers, Employees, Members, or Agents. No city official, representative, agent, or employee of the City shall be personally liable to the Developer or any of its successors or assigns in the event of any default or breach by the City or for any amount which may become due to the Developer or its successors or assigns for any obligation arising out of the terms of this Agreement. Similarly, no officer, member, manager, or representative, agent, or employee of the Developer shall be personally liable to the City or any of its successors or assigns in the event of any default or breach by the Developer or for any amount which may become due to the City or its successors or assigns for any obligation arising out of the terms of this Agreement, contingent upon compliance with corporate formalities and sufficient capitalization.

41. Reasonableness. Except as otherwise stated to the contrary in this Agreement, when the consent, approval, or agreement of the City and/or the Developer is required or contemplated under this Agreement, such consent, approval, or agreement shall not be unreasonably withheld, conditioned, or delayed; provided, this provision shall not bind the City with respect to its legislative actions.

42. Validity and Effect. Notwithstanding the Effective Date, this Agreement shall not be deemed valid and enforceable until such time as (1) an authorized representative of each Party has properly executed the same, (2) an authorized representative of SITLA has approved and executed the Acknowledgment and Consent of Owner, and (3) the Agreement has been properly recorded.

[Signature Pages to Follow]

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

MW - Kanab, LLC

a Utah limited liability company

By: Steve Laski

Name: Steve Laski

Title: Manager

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

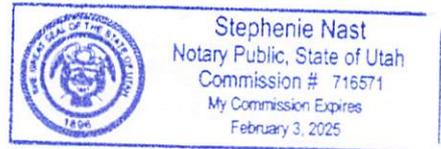
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COUNTY OF Washington)

On the 28 day of March, 2023, personally appeared before me Steve Laski, who being by me duly sworn did say that he is the Manager of MW - Kanab, 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 March 2023.

Stephenie Nast
Notary Public



Kanab City

A Utah municipal corporation

Colten Johnson
Colten Johnson, Mayor

Attest:

Celeste Cram
Celeste Cram, City Recorder



CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS
COUNTY OF KANE)

On the 21 day of March, 2023, personally appeared before me Colten Johnson, who being by me duly sworn did say that he is the Mayor of Kanab City and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 21 day of March 2023.

Tressa Clark
Notary Public

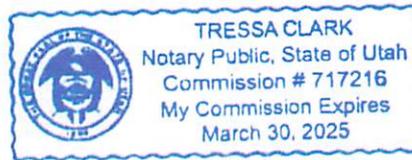


Exhibit A
Legal Description of the Property

Exhibit B
PD Plan

[see attached]

Property Owner Consent to Bonds

The State of Utah School and Institutional Trust Lands Administration (“SITLA”) hereby consents to Ventana Resort Village Public Infrastructure District (the “District”) issuing Limited Tax Bonds (the “Bonds”) (to be issued from time to time as one or more series and with such other series or title designation(s) as may be determined by the District) in a principal amount not to exceed Twelve Million Dollars (\$12,000,000) for the purpose of paying all or a portion of the costs of public infrastructure, as permitted under Title 17B and Title 17D, Chapter 4 of the Utah Code Annotated 1953, as amended (collectively, the “Act”), and the authorization and issuance of the Bonds due and payable with a term not to exceed forty (40) years from the date of issuance of the Bonds. I acknowledge and consent to the Bonds being repaid from property taxes assessed against properties within the boundaries of the District, subject to a maximum mill levy of 0.006 per dollar of taxable value of taxable property in the District, which may be imposed for a period of up to forty (40) years from the first date of imposition thereof. SITLA further acknowledges that this consent is binding upon successors in interest and is valid for ten (10) years. SITLA consents to the recordation of a notice of this Consent by the District.

SITLA acknowledges that pursuant to Section 17D-4-301 of the Act, this consent to the issuance of the Bonds is sufficient to meet any statutory or constitutional election requirement necessary for the issuance of the limited tax bond.

SITLA is the owner of 100% of the parcels listed in Exhibit A (the “Subject Property”). There are no registered voters residing within the boundaries of the Subject Property. The undersigned is authorized to execute this Consent on behalf of SITLA.

This Consent shall not constitute or be construed as a waiver by SITLA of any claim related to its status as a tax-exempt entity.

(SIGNATURE PAGE FOLLOWS)

Utah State and Institutional Trust Lands
Administration, on behalf of the State of
Utah, as property owner of the Subject
Property


By: Kyle A. Pasley
Its: Managing Director

STATE OF UTAH)

ss:

COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 20th day of July,
2023, by Kyle A Pasley.

Joni Matthews

NOTARY PUBLIC

Residing at: Salt Lake County

My Commission Expires: June 16, 2024



EXHIBIT A
SUBJECT PROPERTY

Parcels comprising the Subject Property:

Disclosure of Substantial Business

Pursuant to Sections 17D-4-202 and 67-16-7 of the Utah Code, I hereby disclose my interest in MW-Kanab relating to my appointment to the Board of Trustees of the Ventana Resort Village Public Infrastructure District No. 1. The nature and value of my interest is listed below.

MW-Kanab Managing Partner, 50% ownership, estimated value of \$1,500,000

I further certify that I am (i) an owner of land or an agent or officer of an owner of land within the District(s) and (ii) a registered voter at my primary residence.

Devin Anderson



STATE OF UTAH)

ss:

COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 10TH day of SEPTEMBER, 2023, by Devin Anderson.

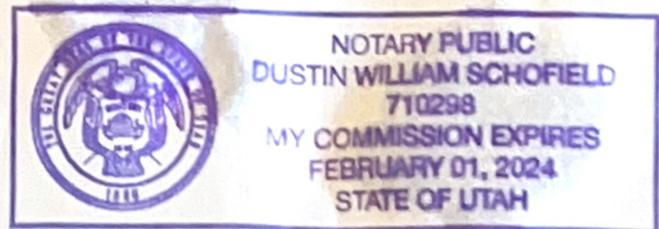


NOTARY PUBLIC

Residing at: WASHINGTON, UT

My Commission Expires:

FEBRUARY 1, 2024



Disclosure of Substantial Business

Pursuant to Sections 17D-4-202 and 67-16-7 of the Utah Code, I hereby disclose my interest in MW-Kanab relating to my appointment to the Board of Trustees of the Ventana Resort Village Public Infrastructure District No. 1. The nature and value of my interest in listed below.

MW-Kanab [Corporate Secretary, 0% OWNERSHIP, \$0.00 ESTIMATED VALUE OF THAT INTEREST]

I further certify that I am (i) an owner of land or an agent or officer of an owner of land within the District(s) and (ii) a registered voter at my primary residence.

Stephenie Nast

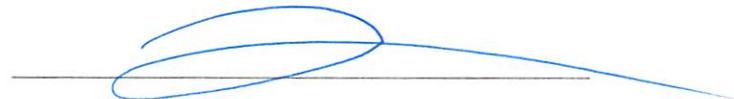


STATE OF UTAH)

ss:

COUNTY OF Washington

The foregoing instrument was acknowledged before me this 8th day of September, 2023, by Stephenie Nast.

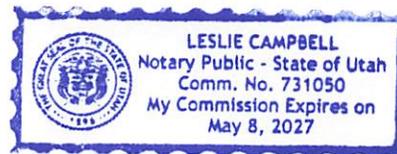


NOTARY PUBLIC

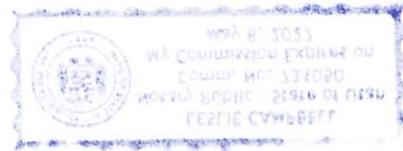
Residing at: IVINS, UTAH

My Commission Expires:

5/8/2027



2/2/2005



Wales Commission Exports

Cardiff

Disclosure of Substantial Business

Pursuant to Sections 17D-4-202 and 67-16-7 of the Utah Code, I hereby disclose my interest in MW-Kanab relating to my appointment to the Board of Trustees of the Ventana Resort Village Public Infrastructure District No. 1. The nature and value of my interest in listed below.

MW-Kanab **Managing Principal 50% OWNERSHIP, 1.5 Million ESTIMATED VALUE OF THAT INTEREST]**

I further certify that I am (i) an owner of land or an agent or officer of an owner of land within the District(s) and (ii) a registered voter at my primary residence.

Steve Laski

Steve Laski

STATE OF UTAH)

ss:

COUNTY OF Washington

The foregoing instrument was acknowledged before me this 5 day of September, 2023, by Steve Laski.

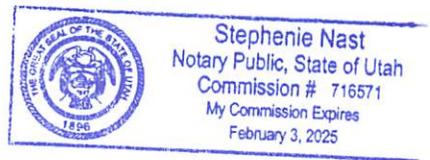
Stephenie Nast

NOTARY PUBLIC

Residing at: 2116 Shadow Point Dr.

My Commission Expires:

February 3, 2025



**NOTICE OF PUBLIC HEARING REGARDING THE CREATION OF A PUBLIC
INFRASTRUCTURE DISTRICT BY KANAB CITY, UTAH**

August __, 2023

This notice is furnished to you by the City Council (the “Council”) of Kanab City, Utah (the “City”) to provide notice of a public hearing to be held by the Council on **September 26, 2023 at or after 6:30 P.M.** The public hearing is regarding the proposed creation of Ventana Resort Village Public Infrastructure District (the “Proposed District”) and to allow for public input on (i) whether the requested service (described below) is needed in the area of the applicable Proposed District, (ii) whether the service should be provided by the City or the Proposed District, and (iii) all other matters relating to the Proposed District.

Because consent to the creation of the Proposed District and waiver of the protest period has been obtained from all property owners and registered voters within the boundaries of the Proposed District, pursuant to Section 17D-4-201 of the Utah Code, the City may adopt a resolution creating the Proposed District immediately after holding the public hearing described herein or on any date thereafter. **Any withdrawal of consent to creation or protest of the creation of the Proposed District by an affected property owner must be submitted to the City prior to the public hearing described herein.**

Meeting Information:

Held By: The City Council of Kanab City, Utah
Date and Time: September 26, 2023 at or after 6:30 P.M.
Location:
Kanab City Council Chambers
26 North 100 East
Kanab, UT 84741

Proposed District Boundaries:

The legal description and map for the Proposed District is attached as **Appendix A**. A legal description and map of the Annexation Area Boundaries is attached as **Appendix B**. In addition, it is anticipated that the Proposed District would be authorized to adjust their boundaries through annexation and withdrawal of properties, so long as such properties are within the proposed inclusion area, as shown on the map attached as **Appendix C** and certain requirements as established in a governing document have been met.

Summary of Proposed Resolutions:

The proposed resolutions regarding the creation of the Proposed District contain consideration of approval of the following items:

- Creation of the Proposed District with the initial boundaries as described herein
- Approval of the annexation of or withdrawal from the boundaries of the Proposed District of any area within the Annexation Area without additional approvals or hearings of the City, subject to the conditions of the Governing Document
- Establishment of a Board of Trustees for the District, comprised as follows:
 - Trustee 1 – Steve Laski, for an initial 6-year term;
 - Trustee 2 – Devin Anderson, for an initial 4-year term;
 - Trustee 3 – Stephenie Nast, for an initial 6-year term
- Authorization for execution by the City of the Notice of Boundary Action and Final Entity Plat
- Approval of a Governing Document and Interlocal Agreement for the Proposed District:
 - Permitting a mill levy of 0.006 per dollar of taxable value of property in the Proposed District
 - A proposed aggregate debt limit for the Proposed District of \$12,000,000
 - Permitting the Proposed District to issue debt repayable from property taxes, special assessments, and other revenues of the District

Proposed Service:

Ventana Resort Village Public Infrastructure District is proposed to be created for the purpose of financing the construction of public infrastructure relating to the Ventana Resort Village Development (the “Project”), as permitted under the Special District Act, Title 17B, Chapter 1, Utah Code Annotated 1953 and the Public Infrastructure District Act, Title 17D, Chapter 4, Utah Code Annotated 1953.

Sincerely,

The City Council of Kanab City,
Utah

APPENDIX A

PROPOSED DISTRICT BOUNDARIES

Legal Description (Initial District Boundaries)

PID Legal Description:

A portion of Sectional Lots 3, 4, 5, and 6 of Section 10, Township 44 South, Range 6 West, Salt Lake Base and Meridian, Utah, more particularly described as-follows:

BEGINNING at the Northwest Corner of said Lot 5; thence, along the West Line of said section, North 00° 44' 04" East 698.56 feet, to the northerly right-of-way of Kaneplex Drive and the beginning of a non-tangential curve; thence, along said right-of-way and curve to the left, 27.20 feet, having a radius of 471.00 feet, a central angle of 03° 18' 30" and whose long chord bears South 84° 56' 04" East 27.19 feet; thence South 86° 35' 19" East 1501.24 feet, to the beginning of a curve; thence, along the curve to the right, 512.86 feet, having a radius of 650.00 feet, a central angle of 45° 12' 26" and whose long chord bears South 63° 59' 06" East 499.66 feet; thence South 41° 22' 53" East 840.42 feet, to the beginning of a curve; thence, along the curve to the left, 103.91 feet, having a radius of 1450.00 feet, a central angle of 04° 06' 21" and whose long chord bears South 43° 26' 03" East 103.89 feet, to the East Line of said Lot 6; thence, departing said right-of-way and along said line, South 00° 25' 39" West 898.66 feet, to the Southeast Corner of said Lot 6; thence, along the South Section Line, North 89° 31' 37" West 2619.50 feet, to the Southwest Section Corner; thence, along the West Section Line, North 00° 44' 27" East 1195.52 feet, to the POINT OF BEGINNING, containing 101.33 acres (more or less).

LESS THAN EXCEPTING the following described parcel:

Commencing at the Southeast Corner of said Lot 6; thence, along the East Lot Line, North 00° 25' 39" East 50.00 feet, to the POINT OF BEGINNING, and running; thence North 89° 31' 09" West 356.05 feet, to the beginning of a curve; thence, along the curve to the right, 36.75 feet, having a radius of 25.00 feet, a central angle of 84° 13' 33" and whose long chord bears North 47° 24' 22" West 33.53 feet; thence North 05° 17' 35" West 33.57 feet, to the beginning of a curve; thence, along the curve to the right, 39.29 feet, having a radius of 175.00 feet, a central angle of 12° 51' 46" and whose long chord bears North 01° 08' 18" East 39.20 feet; thence North 07° 34' 11" East 130.45 feet, to the beginning of a curve; thence, along the curve to the left, 95.65 feet, having a radius of 459.55 feet, a central angle of 11° 55' 34" and whose long chord bears North 01° 36' 24" East 95.48 feet, to a non-tangent curve; thence, along the curve to the right, 39.49 feet, having a radius of 25.00 feet, a central angle of 90° 30' 02" and whose long chord bears North 40° 53' 39" East 35.51 feet; thence North 86° 08' 40" East 98.20 feet, to the beginning of a curve; thence, along the curve to the right, 124.36 feet, having a radius of 1848.07 feet, a central angle of 03° 51' 20" and whose long chord bears North 88° 04' 20" East 124.34 feet; thence North 90° 00' 00" East 120.38 feet, to said East Lot Line; thence, along said line, South 00° 25' 39" West 360.70 feet, to the POINT OF BEGINNING; containing 3.05 acres (more or less).

LEAVING 98.28 acres (more or less).

APPENDIX B

Legal Description (Annexation Area Boundaries)

A portion of Lot 3, 4, 5, and 6 of Section 10, Township 44 South, Range 6 West, Salt Lake Base and Meridian, Utah, more particularly described as-follows:

BEGINNING at the North 1/16 corner of Section 10 and 9 of said township and range; thence, along the west line of said Section 10, thence North 00° 44' 04" East 698.56 feet, to the north right-of-way of Kaneplex Drive and the beginning of a non-tangential curve; thence, along said right-of-way as-follows, running along said curve to the left, 27.20 feet, having a radius of 471.00 feet, a central angle of 03° 18' 30" and whose long chord bears South 84° 56' 04" East 27.19 feet; thence South 86° 35' 19" East 1501.24 feet, to the beginning of a curve; thence, along the curve to the right, 512.86 feet, having a radius of 650.00 feet, a central angle of 45° 12' 26" and whose long chord bears South 63° 59' 06" East 499.66 feet; thence South 41 ° 22' 53" East 840.42 feet, to the beginning of a curve; thence, along the curve to the left, 103.91 feet, having a radius of 1450.00 feet, a central angle of 04° 06' 21" and whose long chord bears South 43° 26' 03" East 103.89 feet, to the north-south¹/₄ section line of said Section 10; thence, leaving said right-of-way along said¹/₄ section line, South 00° 25' 39" West 898.66 feet, to the southeast corner of said Lot 6; thence, along the south line of said Section 10, North 89° 31' 37" West 2619.50 feet, to the southwest corner of said Lot 5; thence, along the west line of said Section 10, North 00° 44' 27" East 1195.52 feet, to the POINT OF BEGINNING, containing 101.33 acres (more or less).

Mayor
 Colten Johnson
City Council
 Arlon Chamberlain
 Scott Colson
 Michael East
 Chris Heaton



KANAB
 —UTAH—

City Manager
 Kyler Ludwig
City Attorney
 Kent Burggraaf
City Recorder
 Celeste Cram
City Treasurer
 Danielle Ramsay

2023 Anticipated Regular Meeting Schedule

Kanab City Council

Kanab City hereby gives notice that the City Council will hold its regular meetings on the second and fourth Tuesday of the month at 6:30 p.m. (unless otherwise noticed). Regular City Council Meetings will not be held on November 28th and December 26th. Meetings will be held in the Council Chambers located at 26 N. 100 E. Kanab, Utah. Persons desiring to be on the agenda should contact Kyler Ludwig, 435-644-2534.

January 10th	May 9th	September 12th
January 24th	May 23rd	September 26th
February 14th	June 13th	October 10th
February 28th	June 27th	October 24th
March 14th	July 11th	November 14th
March 28th	July 25th	December 12th
April 11th	August 8th	
April 25th	August 22nd	

Kanab Planning Commission

Kanab City hereby gives notice that the Kanab City Planning Commission will hold its regular meetings on the first and third Tuesday of the month at 6:30 p.m. (unless otherwise noticed). Meetings will be held in the Council Chambers located at 26 N. 100 E. Kanab, Utah. Persons desiring to be on the agenda should contact Janae Chatterley, 435-644-2534.

Kanab City Library Board

Kanab City hereby gives notice that the Kanab City Library Board will hold its regular meetings on the first Thursday of the month at 5:00 p.m. (unless otherwise noticed). Meetings will be held in the Library Conference Room at 374 N. Main Street Kanab, Utah. Persons desiring to be on the agenda should contact Jana Peay, 435-644-2594.

— A Western Classic —

Parks and Recreation Board

Kanab City hereby gives notice that the Parks and Recreation Board will hold its regular meetings quarterly on the third Monday of the month at 3:00 p.m. (unless otherwise noticed). Meetings will be held in the Conference Room located at 26 N. 100 E. Kanab, Utah. Persons desiring to be on the agenda should contact Danielle Ramsay, 435-644-2534.

Kanab City Beautification Committee

Kanab City hereby gives notice that the Kanab City Beautification Committee will hold its regular meetings quarterly on the first Tuesday of the month at 4:00 p.m. (unless otherwise noticed). Meetings will be held in the Conference Room located at 26 N. 100 E. Kanab, Utah. Persons desiring to be on the agenda should contact Donnie Riddle, 435-644-2534.

Kanab City Heritage and Preservation Board

Kanab City hereby gives notice that the Kanab City Heritage and Preservation Board will hold its regular meetings quarterly on the first Monday of the month at 5:00 p.m. (unless otherwise noticed). Meetings will be held in the Council Chambers located at 26 N. 100 E. Kanab, Utah. Persons desiring to be on the agenda should contact Emily Bentley, 435-644-2534.

Kanab Arts Council

Kanab City hereby gives notice that the Kanab Arts Council will hold its regular meetings on the first Wednesday of the month at 5:00 p.m. (unless otherwise noticed). Meetings will be held in the City Hall Conference Room at 26 N. 100 E. Kanab, Utah.

Public Notice Website

Agendas, minutes, and other board documents will be uploaded to the Utah Public Notice Website at utah.gov/pmn

*Meetings may be canceled due to holidays or for lack of agenda/quorum.

*A portion of or all of a meeting may be held Electronically.

– A Western Classic –

**UTAH SCHOOL AND INSTITUTIONAL TRUST LAND ADMINISTRATION
VENTANA RESORT VILLAGE PUBLIC INFRASTRUCTURE DISTRICT**

Ladies and Gentlemen:

The undersigned is an authorized representative of the Utah School and Institutional Trust Lands Administration ("SITLA"). SITLA has reviewed and hereby consents and approves to the form of governing document for the Ventana Resort Village Public Infrastructure District, attached as Exhibit A.

UTAH STATE AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION, ON
BEHALF OF THE STATE OF UTAH

By: 

Title: Managing Director

EXHIBIT A
FORM OF GOVERNING DOCUMENT

RESOLUTION NO. 9-2-22 R

A RESOLUTION APPROVING A POLICY REGARDING THE PROCESS AND CRITERIA THE CITY WILL UTILIZE IN CONSIDERATION OF APPLICATIONS FOR THE CREATION OF PUBLIC INFRASTRUCTURE DISTRICTS

WHEREAS, Title 17B and Title 17D, Chapter 4 of the Utah Code allow for the creation of Public Infrastructure Districts (PIDs) by the City upon the consent of the property owners and registered voters within the boundaries of the PID; and

WHEREAS, the City anticipates receiving petitions and requests for the creation of one or more PIDs within the City and desires to establish a process and criteria for the evaluation of such petitions and requests; and

WHEREAS, the City staff has worked with its municipal advisor, Zions Public Finance, Inc., to develop a PID policy as contained in Exhibit “A”; and

NOW, THEREFORE, BE IT RESOLVED by the Kanab City Council, adopting and approving the Kanab City Policy Statement: Establishing Public Infrastructure Districts attached hereto.

The Mayor and City staff are authorized to take all steps necessary to effectuate this resolution.

This Resolution shall be effective upon passage.

PASSED AND RESOLVED this ____ day of _____, 2022.

KANAB CITY

ATTEST:

MAYOR

RECORDER

VOTING:

Michael East	Yea	___	Nay	___
Celeste Meyeres	Yea	___	Nay	___
Arlon Chamberlain	Yea	___	Nay	___
Scott Colson	Yea	___	Nay	___
Chris Heaton	Yea	___	Nay	___

EXHIBIT "A"

KANAB CITY POLICY STATEMENT: ESTABLISHING PUBLIC INFRASTRUCTURE DISTRICTS

This policy statement addresses the criteria under which Kanab City will consider applications for proposed Public Infrastructure Districts (the “District”). Compliance with these criteria shall not obligate the City to approve formation of the District. The Governing Document will be subject to approval by the City in both form and substance. The criteria are intended to serve as guidelines for the review of letters of intent and Governing Documents.

The purpose of the Public Infrastructure District (PID) tool is to fund infrastructure. Initial, upfront costs of development can be significant, and the PID tool partially alleviates these costs. In addition, the relative cost savings associated with the funding is intended to help expedite development, create more desirable properties with notable amenities, and permit for development where typical market conditions may not permit construction. Ultimate PID costs are paid for by the end user, and PID financing is not a financial obligation of the jurisdictional entity. Consequently, Kanab City Corporation is not responsible for debt payments associated with any approved Public Infrastructure District.

Proposed Public Infrastructure Districts (PIDs) will be evaluated on the criteria to follow, with consideration for their ability to further the above intentions of Kanab City. This policy statement is divided into three sections:

- 1. Process for applying including fees charged**
- 2. The City’s decision-making criteria**
- 3. Governing Document requirements**

I. Process and Fees

Any proposed Public Infrastructure District will be considered in relation to the best interests of the City. Such interests include using the most appropriate financing mechanism for the type and magnitude of the improvements to be financed and appropriate governance mechanism. If through the review process, a Public Infrastructure District is determined to be the most appropriate mechanism, the process, the criteria, and requirements provided herein will apply, unless otherwise waived by the City.

A. Letter of intent to form a Public Infrastructure District

The applicant shall submit a letter of intent containing the following information in summary form. This letter will be used by staff to make a preliminary determination about the appropriateness of a District and must be submitted prior to submittal of a draft Governing Document. A positive staff response to the Letter of Intent does not assure approval of the Governing Document.

Letter of Intent contents:

1. Description of District area including size, location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development;
2. Description of proposed development within the boundaries of the proposed District including general distribution of land uses and densities and phasing of development;
3. Summary of needed infrastructure, services, and facilities:
 - a. Currently expected development scenario;
 - b. Required local and regional infrastructure and facilities for such development;
 - c. Regional and local infrastructure the proposed District is to provide;
 - d. Estimated construction costs for the proposed District improvements;
 - e. General description of phasing of construction based on development projections;
 - f. Anticipated maximum or fixed maximum mill levy required to meet debt service of the District;
 - g. Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area; and
 - h. A sample plan of finance depicting the possible sources and uses of funds for the District.
 - i. A summary overview of the differences between the proposed development *with* a Public Infrastructure District in place and the plan *without* a Public Infrastructure District. This will identify key components of the proposed development that are made feasible by the approval of a district.

4. Proposed timeline for District creation.
5. Acknowledgement that consent must be signed prior to the hearing date for the governing document by all property owners and registered voters, if any, within the proposed District boundaries approving of the creation of the proposed District and consenting to the issuance of debt in an amount sufficient for the proposed plan of financing.
6. Disclosure of any conflicts of interest between the applicant and the officers and employees of the City.
7. Copies of signed engagement letters between the applicant and applicable consultants and legal counsel retained by the City and/or the proposed District whereby applicant agrees to pay fees related to the review of the application and governing document.

B. Review Process

1. The District Advisory Committee (“DAC”) is a City committee that advises the Mayor, City Council and other policy-makers about district issues. The DAC includes representatives of the departments of [Community Development, Legal, Administration, and Public Works] as well as other agencies as needed.

The DAC will review the letter of intent utilizing these criteria to determine whether or not to direct the applicant to proceed with preparation of a draft Governing Document for submittal. Conceptual approval does not assure approval of the governing document.

C. Governing Document

1. If the concept for the District as contained in the letter of intent is approved, the City staff will work jointly with applicant and legal and financial advisors to submit a draft Governing Document to the City DAC.
2. The draft Governing Document will be reviewed by the DAC for compliance with the criteria and requirements contained herein. The DAC will discuss with appropriate policy-makers issues that arise during this drafting period to have such issues resolved.
3. The final Governing Document will be forwarded to City Council for action through the standard City and statutory processes.

D. Fees

No request to create a Public Infrastructure District shall proceed until the fees set forth herein are provided for. All checks are to be made payable to Kanab City and sent to the City Manager’s Office. Payment of fees does not obligate Kanab City to approve Letters of Intent, Governing Documents, of formation of the District.

1. Letter of Intent: A Letter of Intent is to be submitted to the City Manager's Office and a \$2,000 fee shall be paid at the time of submittal of the Letter to cover the cost of staff review.
2. If the applicant proceeds to the submittal of a Governing Document an application fee of \$5,000 shall be submitted concurrent with the draft Governing Document.
3. Other Expenses: In the event the costs of review exceed the application fee, the applicant for a District shall pay all reasonable consultant, legal, financial advisor, and other fees and expenses incurred by the City in the process of reviewing the draft Governing Document prior to adoption and other such fees and expenses as may be necessary to interface with such District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.

II. Criteria for Evaluating Proposed Public Infrastructure Districts

A. Public Benefit

Formation of a District bestows certain benefits on the District's proponents and is expected to provide public benefit consistent with the Creating Entities policy goals. Components of public benefit to be considered may include:

1. Resulting development that is in conformance with the Kanab City General Plan and all applicable supplements;
2. Provision of and/or contribution to needed regional and sub-regional infrastructure;
3. Open access to public trails and public lands;
4. Mixed-use development that includes a variety of housing types and prices, a range of employment opportunities, retail and consumer services, and civic amenities; and
5. High quality site and building design, including street connectivity, durable construction materials, and pedestrian-friendly design.

B. Evaluation Criteria

These criteria provide thresholds for consideration. Compliance with some or all of these criteria is desired; however, alternative approaches may be considered.

1. Districts should not include land that is already included within the boundaries of another public infrastructure district without express provision in an adopted Governing Document. In such cases, the relationship with the existing districts must be addressed in the Governing Document.
2. A District planning to levy more than 10 mills of tax in the District for repayment of limited tax bonds will not be considered without sufficient justification as to why additional mills

are necessary and reasonable for the development.

3. There must be a demonstrated public benefit directly resulting from the creation of the District and its undertakings as described in the Governing Document.

C. Evaluation of Applicant

The following criteria relating to the applicant and the development will be considered:

1. Historical performance of the applicant (within and outside of the City);
2. The current proposed plan of finance of the District;
3. The current development plan's relationship to the master plans of the City; and
4. The regional, economic development, or overall benefits to the City from the proposed plan of finance.

III. Governing Document Requirements

In addition to statutory requirements, a Governing Document memorializes the understandings between the District and the City, as well as the considerations that compelled the City to authorize the formation of the District. The Governing Document for the proposed District shall contain and will be reviewed for compliance with the following policies and requirements.

A. District Description

1. Description of District area including size, location, area context (significant natural and man-made features, major public improvements, adjacent development), development history within the proposed district boundaries, and proposed development scenario (land uses by type and intensity and general urban design character).
2. Description of the public benefit resulting from the creation of the District and its undertakings.
3. Itemization and description of all needed infrastructure (both regional and local) and facilities in the District's area.
4. Explanation of the relationship, if any, between the District and any other public infrastructure districts with overlapping boundaries. If more than one district is proposed to be created within an inclusion area, describe how ultimate district boundaries will be determined.
5. Estimated construction costs of such infrastructure.
6. General description of phasing of construction based on development projections and phasing.
7. Provide the following financial plan information:

- a. Proforma financial overview of total costs and total revenues from all revenue sources;
 - b. An example plan of finance showing a proposal of how the proposed financing might take place, recognizing that the actual financing terms and structure will be approved by the board of trustees of the District (the "Board") within the parameters of this Governing Document;
 - c. Comparison of the mill levies of similar taxing entities in the area;
 - d. Proposed operating budgets for the District's first three years of existence; and
 - e. Any other forms of public financing and assistance being sought, including assessment areas.
8. Description of the ultimate ownership and provision for the ongoing operating and maintenance costs for infrastructure.
 9. Description of any proposed divisions and an inclusion/exclusion process as appropriate.
 10. Proposed governance plan, including Board structure and to transition from appointed Board to elected Board.

B. Requirements and Expectations

1. The planned ownership of the Improvements, including any relationship with an existing statutory district must be addressed in the Governing Document.
2. All debt issued by the District for which a tax is pledged to pay the debt service shall meet the requirements of all applicable statutes.
3. Land, easements or improvements to be conveyed or dedicated to the City and any other local government entity shall be conveyed in accordance with the related standards at no cost to the City.
4. All public infrastructure within the District which will be connected to and owned by another public entity shall be subject to all design and inspection requirements and other standards of such public entity.
5. The District shall not pledge as security any land, assets or funds to be transferred to the City.
6. The District shall be subject to City zoning, subdivision, building codes, and all other applicable City ordinances and regulations. Approval of the Governing Document shall not bind the City to approve other matters which the District or developer may request.
7. The District shall pay all fees and expenses as provided in the Governing Document.
8. The District may not double tax, whether by mill levy, assessment, impact fees, or any combination thereof, any end user for the costs of Improvements.

C. Disclosure and Reporting Requirements

Disclosure of the existence of the District to property owners and potential property owners within the District is important and the following actions to be taken by each District shall be included in the Governing Document.

1. Within 30 days after the formation of the District, the Board shall record a notice with the county recorder:
 - a. Containing a description of the boundaries of the District;
 - b. Stating that a copy of the Governing Document is on file at the office of the City;
 - c. Stating that the District may finance and repay infrastructure and other improvements through the levy of a property tax;
 - d. Stating the maximum rate that the District may levy; and
 - e. If applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion.
2. Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, shall be required to disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:
 - a. All of the information required under (1)(b) above;
 - b. A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, a primary residence valued at \$[insert average anticipated residential property value] would have an **additional annual property tax of \$_____** for the duration of the District’s Bonds. A business property valued at \$[insert average anticipated commercial property value] would have an **additional annual property tax of \$_____** for the duration of the District’s Bonds.”
 - c. Such disclosures shall be contained on a separate colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.
3. At least annually following the formation of the District, the District shall notify (by mail, e-mail, or posting to the District’s website) property owners in the District of the existence of the District and of the next scheduled meeting of the Board of the District. Such meeting shall occur at least 30 days and not more than 60 days following the date of the notice. Such notification shall include names and contact information of the Board of Directors and

officers, the address, telephone and fax numbers, and e-mail address of the District, and shall include reference to the existence of a District file maintained by the City as described below.

4. The District shall provide the following information to the City Manager's Office on an annual basis, and the District shall create and maintain a file for public review of the following information.
 - a. Annual District budget;
 - b. Annual financial report or audit of the District, as applicable under relevant statutory provisions;
 - c. Total debt authorized and total debt issued and presently planned debt issuances;
 - d. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;
 - e. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;
 - f. List of current interlocal agreements, if changed (to be delivered to the City upon request);
 - g. List of all current contracts for services or construction (to be delivered to the City upon request);
 - h. Official statements of current outstanding bonded indebtedness, if not previously received by the City;
 - i. Current approved Governing Document, if changed; and
 - j. District Office contact information.
5. The following shall be considered significant changes to the Governing Document, thereby requiring approval by the City:
 - a. Exclusion or inclusion of property without Governing Document and Statute required approvals;
 - b. Change in the maximum mill levy;
 - c. Consolidation with any other district; and
 - d. Change in the dissolution date.

Submittal Instructions

All letters of intent, draft Governing Documents, annual financial information, and additional documents and requested information should be submitted to the City Manager's Office:

City of Kanab

26 North 100 East

Kanab City, Utah 84741

435-644-2534

Mayor
Colten Johnson
City Council
Arlon Chamberlain
Scott Colson
Chris Heaton
Kerry Glover
J.D. Wright



KANAB
—UTAH—

City Manager
Kyler Ludwig
City Attorney
Kent Burggraaf
City Recorder
Celeste Cram
City Treasurer
Danielle Ramsay

DATE: September 26, 2023
TO: Mayor and City Council
SUBJECT: Municipal Election - Cancel
PREPARED BY: City Manager, Kyler Ludwig

Background:

The 2023 Kanab Municipal Election had 3 open City Council positions available. 3 individuals applied for the 3 openings, and there were no write-in candidates prior to the September 18th deadline.

Kanab City under state law can cancel the election and declare the 3 applicants as elected by passing a resolution. Cancelling the election will save Kanab City the costs of paying for ballots under our agreement with Kane County.

Financial

The City had \$15,000 budgeted for the election. The cancellation of the election will leave this money unspent within the budget.

Recommendations/Actions:

Approve Resolution 9-4-23 R A Resolution Cancelling the November 21, 2023 Municipal General Election and Declaring Each Unopposed Candidate Elected to Office.

Attachments:

— A Western Classic —

RESOLUTION NO. 9-4-23 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANAB, UTAH, CANCELLING THE NOVEMBER 21, 2023 MUNICIPAL GENERAL ELECTION AND DECLARING EACH UNOPPOSED CANDIDATE ELECTED TO OFFICE.

WHEREAS, the City of Kanab provides the City Elections shall be held in accordance with the laws of the State of Utah; and,

WHEREAS, Utah Code Annotated § 20A-1-202 establishes the first Tuesday after the first Monday in November of each odd-numbered year for the purposes of conducting a municipal general election; and

WHEREAS, no proposition is to appear on the ballot in the election; and

WHEREAS, the filing deadlines for placement on the ballot and declaration of write-in candidacy have passed;

WHEREAS, each municipal officer candidate is unopposed; and

WHEREAS, Utah Code Annotated § 20A-1-206 specifically provides for a process whereby the City may cancel a municipal general election when the series of events identified above have occurred and upon compliance with applicable law.

NOW, THEREFORE, BE IT RESOLVED THAT: the City Council of the City of Kanab, Utah, cancels the November 21, 2023 municipal general election and declares each unopposed candidate elected to office upon compliance with applicable law.

PASSED AND ORDERED POSTED this 26th day of September, 2023.

KANAB CITY

ATTEST:

MAYOR

RECORDER

VOTING:

Kerry Glover	Yea ___	Nay ___
J.D. Wright	Yea ___	Nay ___
Arlon Chamberlain	Yea ___	Nay ___
Scott Colson	Yea ___	Nay ___
Chris Heaton	Yea ___	Nay ___

POSTED the ___ day of _____, 2023, as certified by the Recorder: _____.
RECORDER

Certificate of Election

State of Utah)
County of Kane §
City of Kanab)

I, the undersigned City Recorder in and for the City of Kanab, Kane County, State of Utah,
do hereby certify that the 2023 Municipal General Election was cancelled pursuant to Utah Code
Annotated § 20A-1-202, and Kanab City Resolution No. , which declares each unopposed
candidate elected to office. I do hereby certify that _____,
was declared elected to the office of Councilmember by the City Council of the City of Kanab.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed my official seal this
day of , A.D. 2023.

Celeste Cram, City Recorder

Mayor
Colten Johnson
City Council
Arlon Chamberlain
Scott Colson
Chris Heaton
Kerry Glover
J.D. Wright



KANAB
—UTAH—

City Manager
Kyler Ludwig
City Attorney
Kent Burggraaf
City Recorder
Celeste Cram
City Treasurer
Danielle Ramsay

DATE: September 26, 2023
TO: Mayor and City Council
SUBJECT: Fire Protection to Unincorporated Areas
PREPARED BY: City Manager, Kyler Ludwig

Background:

Under state code governing bodies of Cities and Counties are required to “shall: provide adequate fire protection within their own territorial limits” (11-7-1a). Kanab City provides the required protection from fire through a full-time Fire/EMS Department.

Kane County does not currently provide protection against structure fires, and the Kanab Fire Department has historically responded to fires in the surrounding unincorporated county. In October of 2022 the City and County entered into a one-year agreement, which gave Kanab City the ability to respond to fires in Kane County; the agreement was passed to provide Kanab City and Fire/EMS employees legal protection if they are able to respond. The one-year agreement was designed to give Kane County time to determine the best options for structure fire protection in unincorporated areas.

Analysis:

Kane County recently completed a survey of residents regarding the preferred level of service for structure fire protection. This survey will be reviewed at their Town Hall meeting on Wednesday September 27.

Following a discussion on August 22, 2023 staff has proposed new language to the Fire agreement with Kane County. Without an agreement the City will not be able to provide assistance in unincorporated areas of the County.

Recommendations/Actions: It is recommended the City Council:

Discuss the proposed language for the agreement and advise staff on any changes prior to bringing the agreement to Kane County.

The Council may approve the agreement by Resolution, which would give the County Commission the chance to approve the agreement at their October 10th meeting.

— A Western Classic —

**COOPERATION AGREEMENT
BETWEEN KANAB CITY AND
KANE COUNTY**

AUTHORIZATION FOR STRUCTURAL FIRE PROTECTION IN UNINCORPORATED KANE COUNTY

This Cooperation Agreement ("Agreement") is entered into by and between Kanab City, a municipal corporation and political subdivision of the State of Utah (the "City"), and Kane County, a political subdivision of the State of Utah (the "County"), on this 10th day of October, 2023 ("Effective Date"). Each of the foregoing are a "Party," and collectively are referred to herein as the "Parties."

Deleted: 11th

Deleted: 2022

RECITALS

WHEREAS, Utah Code, Title 11, Chapter 7, *Fire Protection*, requires that every incorporated municipality and board of commissioners provide for adequate fire protection within their territorial limits, and allows them to cooperate and contract with all contiguous counties and municipalities; and

WHEREAS, the City has elected to maintain and support a fire-fighting force or fire department for its own protection; and

WHEREAS, the County is committed to finding a long-term solution to ensure adequate fire protection is provided to unincorporated areas within the County; and

WHEREAS, the total cost to provide adequate fire protection goes beyond fire suppression and includes fire prevention measures and day to day operation costs; and

WHEREAS, the Parties value an investment in fire prevention including inspections, public education, and employee training; and

WHEREAS, the City allocated \$1,220,200 from the General Fund in the 2024 fiscal year budget towards the fire department; and

WHEREAS, the Parties jointly affirm that funding fire protection services solely through a per use rate or similar charging mechanism is not a sustainable approach; and

WHEREAS, the Parties acknowledge that this agreement is a short-term solution as the billing process fails to sufficiently reimburse City taxpayers for their financial investment in fire protection; and

WHEREAS, the City has and desires from time to time to contribute toward the support of structural fire protection, defined herein, in adjacent unincorporated areas of the County, at its sole discretion and as resources allow (i.e., not under a contractual or legal obligation to respond and support); and

WHEREAS, the County does not have a full-time fire-fighting force for providing fire protection for structural fires in the areas adjacent to the territory of the City and provides adequate fire protection for wildland fire suppression under the Sheriff's Office and in conjunction with the State of Utah, specifically the State Division of Forestry and Fire; and

WHEREAS, the Parties agree the County and its residents would benefit from the City's discretionary support, from time to time, resources permitting, in providing support on structural fires in the adjacent unincorporated areas of the County; and

WHEREAS, the Parties wish to memorialize their understanding, agreement, and delegation of authority from the County to the City to provide fire protection beyond the protection afforded for wildland fire, for structures, at the City's discretion and not under any obligation to do so, and for the City to bill for the services rendered, providing for the City to recoup its cost; and

WHEREAS, the City and County are public agencies as defined in the Utah Interlocal Cooperation Act, Utah Code § 11-13-101, et seq. (the "Act"), and, as such, are authorized by the Act to each enter into an interlocal agreement to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, the Parties are committed to promoting the health and welfare of the residents of their respective political subdivisions; and

WHEREAS, the terms of the foregoing agreement will promote the common general health, safety, and welfare of City and County residents; and

WHEREAS, this agreement does not create an interlocal entity.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, incorporated forthwith, the mutual covenants and agreements herein set forth, the mutual benefits to the Parties to be derived, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is outlined in the Recitals, which are incorporated herein by reference.
2. Duration. This Agreement shall commence on the Effective Date and shall terminate upon the – one year anniversary. This Agreement may be extended and/or amended by mutual written consent of the Parties.
3. Termination. This Agreement may be terminated by a Party by providing sixty (60) days' notice of the intent to terminate.
 - a. Non-Funding Clause and Force Majeure. If a Party responsible for financing the fire-fighting force makes all reasonable efforts in fulfilling its obligations under this Agreement, and, through no fault of the individual Party, or due to force majeure, or due to a third party's failure to appropriate necessary funding, and is therefore unable to reasonably bear the operational costs or to acquire the necessary financing for the fire-fighting source, then this Agreement may be terminated by written notice to the other Parties and there will be no obligation for the Parties to move forward with the terms of this Agreement.

Deleted: This Agreement shall be in effect for at least one year but not more than five years.

b. Termination Upon Creation of a Special Service District Providing Fire Protection. Upon the creation of a Special Service District providing fire protection to certain geographical areas of the unincorporated portions of the County, this Agreement shall terminate as to those unincorporated areas of the County. All or relevant portions of this Agreement shall be subordinate to any current or future agreement in effect, related to structural fire protection.

4. Representatives. The individuals listed below are authorized to act as the Representative for their respective Party in all matters related to this Agreement. Either Party may change its Representative by giving written notice to the other Parties' Representatives.

Kanab City	Kane County
Name: _____	Name: Commissioner Andrew Gant
Telephone: _____	Telephone: 435-310-1419
Email: _____	Email: agant@kane.utah.gov

5. Limitations. This Agreement does not constitute an obligation for the City to respond to structural fires in the unincorporated areas of the County, but delegates authority for the City's fire department to exercise its discretion to act under the County's fire authority as it pertains to responding to structural fires in the unincorporated areas of the County. This Agreement does not supersede, terminate, nor override any prior, concurrent, nor future agreements related to other fire protection or emergency services, or other forms of mutual aid, including, but not limited to those agreements related to wildland fire protection agreements. This Agreement does not supersede any responsibilities, regulations, and/or requirements imposed by state laws and local ordinances. This Agreement does not obligate the City to undertake nor assume any statutory or legal responsibilities or obligations of the County. This agreement does not create any additional obligations or responsibilities of the County except as set forth in section 7.

6. City's Intent and Commitments. The City commits to working in good faith with the County.
- a. The City may exercise its discretion in responding to structural fires in the unincorporated areas of the County when notified by the County's dispatch. If responding to a structural fire in the unincorporated areas of the County, the City's fire department personnel shall determine the level of fire protection service to be rendered, as well as the manner and method in which the service is to be provided.
 - b. The City's fire department will not respond to all dispatch callouts for structural fires in the unincorporated areas of the County, but when it does respond the City's fire personnel will act reasonably and in accordance with its adopted policies and procedures.
 - c. The City will bill the County a minimum bill of \$10,000 per structure fire response.
 - d. The City will not charge the County in the event of a false alarm.
 - e. The City may bill the County for any costs that exceed the minimum bill; the City will utilize the State of Utah Wildland Fire Reimbursement Rates to determine staffing and equipment costs.
 - f. The City will bill the County for requested fire inspections outside the City territorial limits.
 - g. The City will use the State of Utah Wildland Fire Reimbursement rates to determine costs; A 2-hour minimum inspection time will be charged on all inspections.

- h. When the City responds to a structure fire within the unincorporated areas of the County in cooperation with another fire agency, the minimum bill will be reduced to \$5,000, plus additional costs as noted in 6(e).
- i. At all times the City will prioritize responding to and having sufficient fire protection coverage within the City's territory, before exercising discretion to respond to a structural fire in the unincorporated areas of the County.

7. County's Intent, Commitments, and Delegation of Authority. The County commits to working in good faith with the City.

- a. As the fire authority for the unincorporated areas of Kane County, the County hereby delegates authority to the Kanab Fire Department to respond to structural fires in the unincorporated areas of Kane County. However, the County does not obligate the City to act or respond to structural fires in its territory but allows the City to exercise its discretion in whether to respond and the level, manner, and method of structural fire protection services to be rendered.
- b. The County authorizes the City to bill the County for fire protection services and fire inspections within the unincorporated territorial limits of the County.
- c. The County will pay the City within ninety (90) days of receiving a bill as outlined within this agreement.

8. Reporting, Information Sharing, and Record Keeping. As necessary and requested by a Party, the other Party shall comply with any reporting requests and requirements. The Parties agree to maintain their books and records in such a manner that any funds received from another Party will be shown separately on the receiving Party's books. The Parties' respective records shall be maintained sufficiently to identify the use of funds for the purposes outlined in this Agreement. The Parties shall make their respective books and records available to the other Parties upon reasonable request at reasonable times.

9. Entire Agreement; Amendments. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by any Party or agents of any Party that are not contained in this Agreement shall be binding or valid. Alterations, extensions, supplements, or modifications to the terms of this Agreement shall be agreed to in writing by the Parties, incorporated as amendments to this Agreement, and made a part hereof.

10. Severability. If any provision of this Agreement is adjudged to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired, and the Parties will use their best efforts to substitute a valid, legal, and enforceable provision which, insofar as practical, implements the purposes of this Agreement.

11. Third Party Beneficiaries. There are no intended third party beneficiaries to this Agreement. It is expressly understood that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claim or right of action by any third person under this Agreement. It is the express intention of the Parties that any person, other than the Party who receives benefits under this Agreement, shall be deemed an incidental beneficiary only.

12. Choice of Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

Deleted: <#>The City will bill the property owner or responsible person for all actual costs and its reasonably assessable costs for responding to any structural fire in the unincorporated areas of the County. The City will take additional reasonable steps to collect a bill if the property owner or responsible person initially refuses. If the property owner or responsible person does not respond to the billing and within ninety (90) days after additional reasonable collection actions, the City will forward the bill and all necessary materials to the County Attorney for further collection proceedings.¶

Deleted: <#>The County authorizes the City to bill the property owner or responsible person for the actual and reasonable assessable costs of services provided.¶ When the City bills for providing structural fire protection services, the County will assist the City in collecting any billed amounts from the property owner or responsible party. Matters of billing will be referred to the County Attorney ninety (90) days after the City has made reasonable attempts to collect and the property owner or responsible party has failed to pay a billed amount or otherwise make arrangement for payment. The City will provide any and all necessary documents to the County Attorney to allow for adequate collection of the billed services.¶ The County will adopt an ordinance or take other legislative or administrative actions deemed appropriate, to ensure that there is a countywide legal obligation for a property owner or responsible person in the unincorporated county to pay the City for the cost of responding to a structural fire when services are provided by the City.¶

13. No Assignment. The rights and obligations under this Agreement are not assignable in whole or in part.

14. Privileged Communications. Documentation of or pertaining to pre-decisional analysis or deliberations shall be treated as privileged interagency communication and managed as protected records to the extent allowed under federal and state law.

15. Interlocal Cooperation Act. In satisfaction of the requirements of the Interlocal Cooperation Act in connection with this Agreement, the Parties agree as follows:

- a. This Agreement shall be authorized as provided in Utah Code § 11-13-202.5.
- b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with Utah Code § 11-13-202.5.
- c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party, pursuant to Utah Code § 11-13-209.
- d. The term of this Agreement shall not exceed fifty (50) years, pursuant to Utah Code § 11-13-216.
- e. Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.
- f. No separate legal entity is created by the terms of this Agreement and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties.
- g. Pursuant to Utah Code § 11-13-207, the Representatives designated by each Party are hereby designated as the joint administrative board for all purposes under the Interlocal Cooperation Act.

16. Agency. No officer, employee, or agent of the City or County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees, including, but not limited to, workers' compensation insurance, health insurance, and unemployment insurance, are available to the officers, employees, or agents of the other Party. The Parties will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this the activities anticipated under this Agreement.

17. Governmental Immunity, Liability, and Indemnification.

- a. Governmental Immunity. The Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq. (the "Immunity Act"). None of the Parties waive any defenses or limits of liability available under the Immunity Act and other applicable laws. All Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.
- b. Liability and Indemnification. The Parties agree to be liable for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and none of the Parties will have any liability whatsoever for any negligent act or omission of another Party, its employees, officers, or agents. An individual Party shall indemnify, defend, and hold harmless another Party, its officers, employees and agents (the "Indemnified Parties") from and against any and all actual or threatened claims, losses, damages, injuries, debts,

and liabilities of, to, or by third parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) the Party's breach of this Agreement; (ii) any acts or omissions of or by the Party, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) the Party's use of public funds. The Parties agree that their respective duty to defend and indemnify the Indemnified Parties under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against a Party for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of another Party to this Agreement. The Parties agree that the requirements of this paragraph will survive the expiration or sooner termination of this Agreement. The County shall hold the City harmless against claims of inadequate fire protection or insufficient response or measures used in the service provided, or claims of a similar nature.

18. Required Insurance Policies. All Parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their respective obligations hereunder and consistent with applicable law.

19. Non-Funding Clause. The Parties will work in good faith in acquiring the funds necessary to perform their respective obligations under this Agreement. If funds sought are not appropriated and made available to one or more of the Parties, through no fault of the Party, then that Party to whom funds were not appropriated shall promptly notify the other Parties of such non-funding and of the resultant need to terminate this Agreement. The termination of the Agreement under this paragraph shall not be construed as a breach of this Agreement or as an event of default under this Agreement, and such termination under this paragraph will be without penalty and no right of action for damages or other relief will accrue to the benefit of one of the Parties, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

20. Interpretation. This Agreement, except where the context by clear implication herein otherwise requires, shall be construed as follows:

- a. Definitions include both singular and plural;
- b. Pronouns include both singular and plural and cover both genders;
- c. The captions and headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement; and
- d. Where applicable, reference to a Party, such as the City or County, shall also include the fire authority or fire department of that entity.
- e. "Structural fire" as referenced herein includes any habitable and non-habitable structure fires, fires that occur within a residential subdivision or on any private land that would not yet be considered wildland fire, vehicular and debris fires, hazmat response, and any other fire that would otherwise commonly be referred to as a "structural fire."

21. Execution in Counterparts. This Agreement may be executed in counterpart originals, all such counterparts constituting one complete executed document.

22. Authorization. By signature below, the following individuals certify that they are authorized to act on behalf of their respective Parties to give effect to this Agreement.

Notwithstanding anything perceived to be to the contrary in the foregoing terms of this Agreement, the Parties intend this Agreement to represent their overall intent to work together in good faith, the delegation of authority for the City to act on behalf of the County and to bill for the services rendered.

[Signatures on the following page(s).]

THE PARTIES HERETO have executed this Agreement.

KANAB CITY

Approved as to form:

Troy Colten Johnson
MAYOR
Dated: _____, 2023

Kent A. Burggraaf
CITY ATTORNEY
Dated: _____, 2023

Deleted: 2022

Deleted: 2022

KANE COUNTY

Approved as to form:

Wade Heaton
COMMISSION CHAIR
Dated: _____, 2023

Robert Van Dyke
COUNTY ATTORNEY
Dated: _____, 2023

Deleted: Andrew Gant

Deleted: 2022

Deleted: 2022

RESOLUTION NO. 9-5-23 R

**A RESOLUTION APPROVING A COOPERATION AGREEMENT WITH KANE COUNTY
FOR DISCRETION FIRE PROTECTION IN UNINCORPORATED AREAS**

WHEREAS, the Kanab City Council (the “Council”) met in regular session on _____ to discuss, among other things, approving a Cooperation Agreement (“Agreement”) between Kanab City (“City”) and Kane County (“County”) (collectively, the “Parties”), establishing terms for providing discretionary structural fire protection (defined herein as including structure, vehicular, and debris fires, and hazmat response) in unincorporated areas of Kane County;

WHEREAS, the City and County are public agencies as defined in the Utah Interlocal Cooperation Act, Utah Code § 11-13-101, et seq. (the “Act”), and, as such, are authorized by the Act to each enter into an interlocal agreement to act jointly and cooperatively on the basis of mutual advantage;

WHEREAS, Utah Code Title 11, Chapter 7, *Fire Protection*, requires that every incorporated municipality and board of commissioners to provide for adequate fire protection within their territorial limits, and allows them to cooperate and contract with all contiguous counties and municipalities;

WHEREAS, the City has elected to maintain and support a fire-fighting force or fire department for its own protection, which department often responds to structural fires in adjacent unincorporated areas of the county;

WHEREAS, Title 11, Chapter 7 of Utah Code requires that the City enter into a written agreement with the County, if it intends to provide fire protection services outside the City’s territory and in the unincorporated areas of the County, in order to: (1) preserve the City’s privileges and immunities from liability; and (2) to afford a fireman that is killed or injured outside the territorial limits of the City benefits and protections under the law, as if the death or injury occurred within City limits;

WHEREAS, the County does not have a full-time fire-fighting force for providing fire protection for structural fires in the areas adjacent to the territory of the City;

WHEREAS, the City desires from time to time to contribute toward the support of structural fire protection, in adjacent unincorporated areas of the County, at its sole discretion and as resources allow (i.e., not under a contractual or legal obligation to respond and support);

WHEREAS, the Agreement would formally delegate fire protection authority to the City, thereby permitting the City to provide structural fire protection at its discretion, and authority for the City to bill for the services rendered, providing for the City to recoup its cost; and

WHEREAS, this Agreement does not create an interlocal entity.

NOW, THEREFORE, BE IT RESOLVED by the Kanab City Council, adopting the Cooperation Agreement attached hereto, and thereby authorizing the signing of the same.

The Mayor and City staff are authorized to take all steps necessary to effectuate this resolution.

A fully executed copy of the Agreement shall be provided to the appropriate representative of the County for presentment and consideration.

The provisions of this Resolution shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this Resolution or the application in a different circumstance.

This Resolution shall be effective upon passage.

PASSED AND RESOLVED this ____ day of _____, 2023.

KANAB CITY

ATTEST:

MAYOR

RECORDER

VOTING:

J.D Wright	Yea ___	Nay ___
Kerry Glover	Yea ___	Nay ___
Arlon Chamberlain	Yea ___	Nay ___
Scott Colson	Yea ___	Nay ___
Chris Heaton	Yea ___	Nay ___