Willard City Corporation

80 West 50 South
Box 593

Willard, Utah 84340
(435)734-9881

NOTICE

Notice is hereby given that the Subdivision Land Use Authority (SLUA) of the Willard City Corporation will hold a special meeting at Willard City Hall, 80 West 50 South, on Thursday, November 30, 2023. Said meeting shall start at 2:00 p.m.

Agenda is as follows:

1. **Call to order:**

2. **Business:**

   a. Consideration of a PUD development agreement for the Kunzler property located at approximately 1550 North Hargis Hill Road (Parcel Nos. 02-035-0046, 02-038-0072, 02-038,0073, 02-040-0210, 02-043-0013, 02-043-0048, 02-043-0049, 02-043-0050)

   b. Consideration and approval of November 2, 2023, minutes

3. **Adjourn**

SLUA Meetings: Held as needed based on applications.

I, the undersigned duly appointed and acting Deputy City Recorder for Willard City Corporation, hereby certify that a copy of the foregoing notice was posted at the Willard City Hall, on the State of Utah Public Meeting Notice website https://www.utah.gov/pmn/index.html, on the Willard City website www.willardcity.com, and sent to the Box Elder News Journal this 22nd day of November, 2023.

/s/ Michelle Drago

Deputy City Recorder

NOTICE OF SPECIAL ACCOMMODDTION DURING PUBLIC MEETINGS - In compliance with the American with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the City Office at 80 West 50 South, Willard, Utah 84340, phone number (435) 734-9881, at least three working days prior to the meeting.

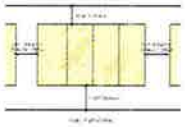
Area Calculations

Total Gross Area	74.4 acres
Open Space / Park	35.0 acres (47%)
Total Single Family Lot Area (76 Lots)	11.7 acres (16%)
Total Multi Family Lot Area (170 Units)	11.7 acres (16%)
Streets, Park strips, and Curb & Gutter	16.0 acres (21%)

- 246 TOTAL LOTS/UNITS OR 3.3 LOTS/UNITS PER ACRE
- AVERAGE LOT SIZE: 6,750 +/- SF
- MINIMUM LOT SIZE: 5,500 SF

Land Use

SYMBOL	NOTES	ACRES
	OPEN SPACE / PARK	35.0
	SINGLE FAMILY	16.6
	MULTI FAMILY	22.5



Townhomes

Phasing

	ACRES	SINGLE FAMILY	MULTI-FAMILY	TOTAL UNITS
PHASE 1	13.2	37	37	74
PHASE 2	12.9	21	60	81
PHASE 3	6.3	18	20	38
PHASE 4	6.0	0	53	53
OPEN SPACE A	35.7			
TOTAL	74.1	76	170	246

Development Standards

-50 FT. MIN. LOT FRONTAGE (SINGLE FAMILY)
-20 FT MIN FRONT YARD SETBACK
-20 FT MIN REAR YARD SETBACK (SINGLE)
-25 FT MIN REAR YARD SETBACK (TOWNHOME)
-6 FT MIN SIDE YARD SETBACK (SINGLE FAMILY)
-15 FT MIN SIDE YARD SETBACK CORNER LOT
-10 FT MIN. DISTANCE BETWEEN BUILDINGS (TOWNHOMES)

Exhibit B

Scale: 1" = 120'

0 60 120 240 360

April 25, 2023

Kunzler Property

AFTER RECORDING, RETURN TO:

Kunzler Land Holdings, LLC
Attn: Bryan Bayles
1740 Combe Road, Suite 2.
Ogden, Utah 84403

Box Elder County Parcel Nos.: 02-035-0046; 02-038-0072; 02-038-0073; 02-040-0210; 02-040-0013; 02-043-0048; 02-043-0049; 02-043-0050

(Space Above for Recorder's Use)

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into this ___ day of_____, 2023, by and among WILLARD CITY, ("**City**") a body corporate and politic of the State of Utah located in Box Elder County, KUNZLER LAND HOLDINGS, LLC, a Utah limited liability company, ("**Developer**"), and SAMUEL W. KUNZLER SOLE TRUSTEE OF THE WALTER KUNZLER AND JOSIE MAE KUNZLER TRUST DATED MAY 16, 1980, Kunzler Land Holdings, LLC ("**Owner**"). City, Developer, and Owner may hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**." This Agreement supersedes and replaces any previous agreements entered into or representations made by and between the Developer, Owner, and the City involving the Property (defined below).

RECITALS

A. Developer intends to construct and develop a residential development project in Willard, Box Elder County, Utah (the "**Project**"), as described herein. The Project encompasses that certain real property more particularly described on **Exhibit A** and depicted on the proposed site plan for the Project (the "**Plan**") attached as **Exhibit B**, both of which are attached hereto and incorporated herein (the "**Property**").

B. The City, acting pursuant to its authority under Utah Code §10-9a-101, et seq., and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the proposed Project and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.

C. Pursuant to the Willard City Code (the "**Code**"), including, without limitation, Chapter 12-106 *et seq.* therein related to the City's Planned Development Zone ("**PDZ Ordinance**"), the City approved Developer's Planned Development Zone ("**PDZ**") application including a concept site plan for the Project on November 14, 2019. A complete copy of the Code in effect on November 14, 2019, is on file with the Willard City Recorder. The portion of the Code containing the PDZ Ordinance, is attached hereto as **Exhibit C**. The Plan proposes that the Property be developed for residential uses and that residential housing units (each a "**Unit**") be constructed on the Property.

D. Under the PDZ Ordinance, and Chapter 12-111, Table I, Section 7(b) of the Code, the City allows the clustering of density in the underlying zoning district and is required to make

certain findings of the development standards and other provisions that apply to, govern and vest the development, use, and mitigation of the development impact of the real property included in the PDZ approval.

E. Developer and the City desire to enter into this Agreement in order to implement the City's prior approvals pertaining to the Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable State law. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of, Utah Code § 10-9a-102(2).[1]

F. Owner and Developer each own a portion of the Project and each desires to encumber the Property with this Agreement and to develop the Project pursuant to the terms and conditions of this Agreement.

G. The Parties agree that the development of the Property will require increased municipal services from the City in order to serve the Project and will further require the installation of certain Improvements (defined below) which benefit both the Property and the City as a whole.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the Parties hereby voluntarily mutually agree as follows:

[1] All references to sections of the Utah Code are references to the provisions in effect as of the Effective Date.

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SECTION 1. EFFECTIVE DATE AND TERM

A. Effective Date. This Agreement shall become effective on the date it is executed by Developer, Owner, and the City (the "**Effective Date**"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals, and if not added shall be the date the City's legislative body ("**City Council**") approves the Development Agreement in a form reasonably acceptable to Developer and Owner.

B. Term. The term of this Agreement (the "**Term**") shall commence upon the Effective Date and continue for a period of fifteen (15) years, unless earlier terminated by Developer upon notice by Developer to the City upon completion. So long as there are no existing defaults or breaches under this Agreement by Developer, Developer shall be entitled a one-time five (5) year extension of the term of this Agreement at the conclusion of the initial fifteen (15) year term. Upon termination of this Agreement, the contractual obligations of the Parties to each other hereunder (other than reimbursement obligations related to Improvements) shall terminate; provided that none of the approvals, dedications, easements, deed restrictions, licenses, building permits, certificates of occupancy or the like granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.

SECTION 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the exhibits. Except where the context requires otherwise, the singular of a defined term includes the plural and vice versa.

Agreement – means this Agreement including all of its exhibits.

Applicable Law or Applicable Laws – means: (i) the laws of the State of Utah in effect as of the Effective Date; and (ii) and the Code and the ordinances, policies, standards and procedures of the City related to zoning, subdivisions, development, public Improvements and other similar or related matters that were in effect on November 14, 2019.

City –means the City of Willard, and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

Code – means the Willard City Code in effect on November 14, 2019.

Development Activities – has the meaning set forth in Utah Code § 10-9a-103(11), including, without limitation, any change in use of the Property that creates additional demand or need for public facilities. Development Activities also include the following: (i) the actual construction of Improvements on the Property; (ii) obtaining any permit for construction of said Improvements; or (iii) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct Improvements thereon.

Future Laws – The laws, ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect after the date of the Code, referenced above, or at a

particular time in the future when an application for Development ("**Development Application**") is submitted for a part of the Project. The Future Laws may or may not be applicable to such Development Application depending upon the provisions of this Agreement and applicable Utah law.

Improvements – are defined in Section 8(A).

Intended Uses – means the use of all or portions of the Project for single-family homes, multi-family units, open space, and other uses as generally depicted in the Plan and allowed in the PDZ and in any underlying zones.

Subsequent Approvals – means those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, and that are granted by City in response to Development Applications submitted after the City Council adopts this Agreement.

SECTION 3. CONSISTENCY WITH LAW

A. Prior Approvals. The Project is consistent with the intent of the Code and the PDZ Ordinance. This Agreement is consistent with the terms and conditions of the PDZ approval. The Project has been properly processed, considered and executed under the Code, including the PDZ Ordinance, and pursuant to the City's legislative authority in accordance with the Code. Minutes of the applicable public meetings evidencing the approvals for the Project are attached hereto as **Exhibit D**. This Agreement incorporates the prior approvals and provides additional detail regarding the parties' intent for the development of the Project.

B. Legislative Approval. This Agreement has been approved by the City's legislative body pursuant to Utah Code § 10-9a-532, after providing notice as required by that section, conducting a review by the City's planning commission, and holding appropriate public hearings. Thus, to the extent this Agreement allows for uses and development of land that applicable land use regulations would otherwise prohibit, this Agreement will control.

SECTION 4. PROJECT DESCRIPTION

A. Project Zoning. This Agreement governs and vests the zoning, development, use, and mitigation for the Project, as legally described on **Exhibit A**. The Plan for the Project is generally depicted on **Exhibit B**. The Property shall be physically developed pursuant to the terms and conditions of this Agreement and in accordance with any Applicable Laws.

B. Project Elements. The Project includes a mix of Intended Uses, which include the following elements and is depicted generally on the Plan for the Project attached as **Exhibit B**, except as may be modified pursuant to Section 5(E).

Total Project Acreage	74.4 acres
Residential Density	
Single Family Units	76 units

Multi-Family Units	170 units

Open Space

Minimum Required Open Space	22.32 Acres (30%)

SECTION 5. GENERAL CONDITIONS

A. Prior Agreement Effect on Development Agreement. To the extent a provision of the Future Laws conflicts with a provision of this Agreement or an interpretation necessary to give effect to the Agreement, then this Agreement shall control.

B. Development Agreement Subject to Applicable Laws. This Agreement is subject to and consistent with the Code and other Applicable Laws. In the event of a conflict between the Code or other Applicable Laws and this Agreement, then the provisions of this Agreement and its Exhibits shall control. Specifically, certain provisions of this Agreement and its Exhibits may supersede and replace provisions of the Code or other Applicable Laws, but only with respect to the Project. Pursuant to Utah Code § 109-9a-532(2)(a)(iii), this Agreement has been approved by the City Council in accordance with the same procedures, including notice provisions, used for enacting a land use regulation.

C. Owner as Party. Owner is a party to this Agreement solely for the purpose of subjecting the Property to the agreements, approvals and responsibilities contained in this Agreement. The City and Developer expressly acknowledge and agree that Owner shall not be liable for any of Developer's obligations as set forth in this Agreement.

D. Development Activities. This Agreement shall govern all Development Activities related to the Property. No Development Activities may occur on the Property until this Agreement is filed with the Box Elder County Recorder and the City has approved the Final Plat (defined in Section 10 below) for the first phase of the Project.

i. Phased Development. The Project will consist of multiple phases, as shown in the Plan, a copy of which is attached hereto as **Exhibit B**. The Parties acknowledge that the most efficient and economic development of the Project depends on numerous factors, such as permitting, market orientation and demand, interest rates, competition, and similar factors which change over time. Accordingly, the Developer may determine the timing, sequencing, and phasing of development in its sole subjective business judgment and discretion. The Parties agree that Developer may modify or amend the Plan relating to the issues described in the preceding sentence, including phasing, from time to time without amending this Agreement as provided in Section 9(B). However, Developer agrees to discuss changes to the timing, sequencing, and phasing of the development with the City's planning or zoning administrator.

ii. Allocation of Units. Furthermore, the configurations, and product types of the various Units shown in the Plan may be reconfigured on a phase-by-phase basis with submission of a Final Plat for each phase so long as Developer does not exceed the total

residential density as allocated in Section 4(B), above ("**Residential Density**"). City Council approval will only be required where Developer seeks to materially modify the Plan. For purposes of this Agreement, a change is "substantially similar" to the Plan, and not "material," if the change will not result in an increase in the overall maximum density approved above and only affects the configuration of the Units or other Intended Uses shown in the Plan. A change will "materially modify" the Plan if the change increases or attempts to increase the Project's Residential Density or if the change introduces or attempts to introduce uses not identified as Intended Uses or shown in the Plan.

E. Security Bond. Prior to recording any final subdivision plat, Developer shall provide adequate financial surety for the required Improvements consistent with the City's ordinances. Notwithstanding any contrary provision of the Code or any other ordinance, regulation, or policy adopted by the City, the parties agree that the City will accept either a cash bond or a letter of credit bond, at Developer's election, as surety for construction of any Improvements required in connection with the recording of any subdivision plat.

SECTION 6. OBLIGATIONS OF DEVELOPER AND THE CITY

A. Obligations of the Developer:

i. General Obligations: The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein.

ii. Conditions for Approvals. Development of the Project shall be governed by this Agreement, the Applicable Laws (except in the event of a conflict between the Code and the Agreement), and must comply with the following:

a. Payment of Fees: Developer agrees to pay all applicable City fees as a condition of developing the Project on the Property. Developer shall pay to the City any water impact fees and sewer impact fees at the time of the issuance of each building permit.

b. Water Rights: At the time of the recording of the Final Plat for the first phase in the Project, and to satisfy the City's requirement to dedicate water for the First 75 Units, the Developer shall dedicate to the City the water right identified of record with the Utah Division of Water Rights as No. 29-3166. In addition to the water right just described in the preceding sentence, the developer shall preserve other irrigation water rights they have, for this property, for a future secondary water system. The Developer, in conjunction with this development agreement, shall apply for an adjustment to water rights required, per Section 12-400-12-06 of the Code. Consistent with Utah Code § 10-9a-508(3)(b), the City will not impose any further water-related exaction in connection with a Development Application for the Project as the City's water interests exceed the interests needed to meet reasonable future water requirements.

c. Covenants, Conditions, and Restrictions: Any covenants, conditions and restrictions ("**CC&Rs**") for the Property may provide for the establishment of a homeowners' association ("**HOA**") for the Project.

d. Common Areas and Open Space: Common and open space design and standards must generally reflect the representations made by the Developer herein and must conform with the open space requirements of the Code. To preserve open space areas, there must be notes on the applicable Final Plats, conservation easements, or other written evidence of dedications to preserve such areas as open space. Construction drawings must be submitted for all common areas and amenities, if any, as shown on the attached exhibits.

e. Landscaping Requirements: Landscaping design within the Project should be conscious of low-or moderate-water use.

f. Large Game and Farm Animals: No large game or farm animals may be kept within those areas of the Project for which a Final Plat has been approved and building permits have been issued.

g. Recorded Drawings: Developer shall provide the City Engineer with two (2) certified record plan or as-built drawings upon completion of the Project to the extent as-built drawings are required by the Applicable Laws. Utilities will not be initially accepted until such as-built drawings are submitted by the Developer and approved by the City. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

B. Obligations of the City:

i. General Obligations: The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of the Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

ii. Conditions of Approval: The City shall not impose any further conditions on Development Applications other than those detailed in this Agreement and the Code, unless agreed to in writing by the Parties. The Developer shall remain bound by Applicable Law unless specifically agreed to otherwise herein. Any architectural regulations required under this Agreement or Applicable Law must be finalized prior to approval of a Final Plat.

iii. Acceptance of Improvements: The City agrees to approve and, as applicable, accept dedication of all public Improvements intended for the City and constructed by the Developer, or the Developer's contractors, subcontractors, agents or employees, provided that (a) the City's Planning and Engineering departments review and approve the plans for any such public Improvements prior to construction; (b) the Developer permits the City's Planning and Engineering departments to inspect upon request any and all of said public Improvements during the course of construction; (c) the public Improvements are inspected by a licensed engineer who certifies that the public Improvements have been constructed in accordance with the approved plans and

specifications; (d) the Developer has warranted the public Improvements as required by Applicable Law; and (e) the public Improvements pass a final inspection by the City's Planning and Engineering departments.

iv. Access to Project: The Parties acknowledge that an access point to the Project may come from the highway maintained by the Utah Department of Transportation ("**UDOT**") and designated as Highway 89 ("**Highway 89**"). The City represents and warrants that it owns real property that connects the Project to Highway 89. The City shall grant Developer access and utility connectivity to the Project over and through the City's property and the City's previously completed road Improvements. The City acknowledges that the access points on Hargis Hill Road and 200 West Street are sufficient for the Project under City standards, and the City agrees to cooperate with Developer's efforts to obtain any required consents or permits from UDOT in order to satisfy UDOT standards.

C. Water Rights: The City shall provide the water needed to complete the Project for the residential uses and Open Space Area per the Developer's request as required by Section 12-400-12-06 of the Code, and consistent with the Plan. The requirements of Section 12-400-12-06 are satisfied by virtue of this Agreement and the City Council's approval of this Agreement. The City currently has approximately 5,300 ac-ft of excess water. Consequently, except as described in Section 6.A(ii)(b), above, and Section 8(E) below, Developer will not be required to dedicate any additional water rights or shares for this Development.

SECTION 7. VESTED RIGHTS AND APPLICABLE LAW

A. Vested Rights: The Developer is vested with the right to pursue the Project in accordance with this Agreement and Applicable Law. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the Developer from the obligation to comply with all applicable requirements of the Code necessary for approval and recordation of Final Plats, including the payment of fees, and compliance with all other Applicable Laws. Developer, by and through execution of this agreement, receives a vested right to develop the number of lots and Units identified in Section 4(B) of this Agreement when shown and configured on a Final Plat, so long as development of the Project is generally in accordance with the Plan attached as **Exhibit B** hereto (subject to modifications, if any, allowed under this Agreement), the terms and conditions of this Agreement, and compliance with all Applicable Laws. Developer is vested with the right to locate the densities described in Section 4(B) of this Agreement, and all other uses available under Applicable Law. Developer may allocate total Residential Density from phase to phase within the Project so long as the total allocations for the entire Project do not exceed the Residential Density approved in Section 4(B) of this Agreement. Developer is vested with the right to connect to existing public roads and infrastructure as depicted in the Plan; construct new roads of the widths, type and dimensions depicted in the Plan, or as otherwise allowed by Applicable Law; and develop the Project in accordance with setback, parking, height, open space and other dimensional and location requirements which cannot be more restrictive or onerous than depicted and described in the Plan or as allowed by Applicable Law.

B. Applicable Law: The City's Future Laws shall not apply with respect to development or use of the Property except as follows:

i. Future Laws that the Developer agrees in writing will apply to Development Application related to the Property;

ii. Future Laws which are generally applicable to all properties in the City's jurisdiction and which are required to comply with State and federal laws and regulations affecting the Property;

iii. Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, 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;

iv. Future Laws that are health and environmental standards and required in order for the City to comply with federal or State environmental laws;

v. 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;

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

vii. Impact fees or modifications thereto which are lawfully adopted, imposed collected and charged uniformly by the City to all properties, applications, persons and entities similarly situated.

SECTION 8. CONSTRUCTION OF IMPROVEMENTS, UPSIZING, AND REIMBURSEMENTS

A. Public Improvements and Offsite Improvements. Developer will construct, or participate in the cost of constructing, certain items of utility or public infrastructure or facilities ("**Improvements**") as set forth herein. With respect to any Improvements required to be constructed by Developer, the City shall, at the request of Developer, cooperate in applying for or facilitating the creation of, or otherwise obtaining the following: (a) one or more Public Infrastructure Districts under Title 17D of the Utah Code; (b) one or more Community Development Projects and/or Economic Development Projects under Title 17C of the Utah Code; (c) one or more Basic Local Districts under Title 17B of the Utah Code; (d) one or more Assessment Areas under Title 11, Chapter 42 of the Utah Code; (e) development, infrastructure, or project grants provided by any local, interlocal, state, or federal entity or agency; and/or (e) other reasonable financing mechanisms requested by Developer.

B. Water Lines. Developer shall construct two (2) culinary water lines in connection with development of the Project.

i. 200 West Water Line. Subject to reimbursement pursuant to the provisions of the Reimbursement Agreement, defined below, Developer shall be responsible for constructing and installing a new culinary water line on the Property under the 200 West Street (the "**200 West Water Line**"), substantially in the corridor depicted on **Exhibit E** attached hereto.

ii. Hargis Hill Water Line. Developer shall also, if approved by the City's Planning and Engineering departments, replace the culinary water line under Hargis Hill Road with a new ten-inch (10") water line (the "**Hargis Hill Water Line**"), starting at Main Street and continuing to the northern most edge of the Property as per Applicable Law, substantially in the corridors depicted on **Exhibit F** attached hereto. After upsizing the Hargis Hill Water Line, the Developer may connect the Project to said Hargis Hill Water Line.

iii. General Provisions Applicable to Water Lines. The City represents and warrants to Developer that sufficient water rights and associated water capacity, storage, and water main extensions exist to allow Developer to proceed with the construction of up to seventy-five (75) residential Units within the Project (the "**First 75 Units**"). Developer may construct the First 75 Units prior to constructing the 200 West Water Line so long as the size of any of the homes comprising the First 75 Units does not exceed 3,600 square feet above grade. After the 200 West Water Line is installed, the 3,600 square feet above grade restriction in the immediately preceding sentence will no longer apply. So long as the applications for construction of the 200 West Water Line and the Hargis Hill Water Line are made consistent with the terms of this Development Agreement, the Plan, and proposed to be located within the corridors depicted on **Exhibit E** and **Exhibit F** attached hereto, the City Planning and Engineering Departments shall promptly review and approve any applications Developer submits relating to said water line construction applications.

C. Water Storage Tank and Transmission Line: The City represents and warrants to Developer that the City has sufficient culinary water storage capacity to allow Developer to construct the First 75 Units without relying on any new or additional water-related Improvements. The City agrees that Developer has the right to develop the First 75 Units utilizing the City's existing water storage infrastructure. The Parties acknowledge that additional culinary water storage capacity may be required if the Project proceeds beyond the First 75 Units. In recognition that additional water storage capacity may be required for the construction of any Units beyond the First 75 Units, the Developer agrees, subject to conditions outlined below, to participate in the financing of a water storage tank ("**Water Tank**") and a water transmission line supplying water from an existing water storage facility to the Water Tank ("**Transmission Line**") in the corridors depicted on **Exhibit G** and **Exhibit H** attached hereto, with all such financing being reimbursable to Developer, as provided herein.

i. Land Acquisition Contingency. It shall be a condition precedent to Developer's obligation to provide any portion of the Developer's Water Tank and Transmission Line Expense, defined below, that the City acquire all land, or rights in land,

necessary to allow for the construction of the Water Tank and Transmission Line. As necessary, the City agrees to exercise the right of eminent domain in order to acquire such land, or rights in land. Notwithstanding the foregoing, if the City has not obtained land, or rights in land, necessary to allow for construction of the Water Tank and Transmission Line on or before December 31, 2023 ("**Land Acquisition Deadline**"), or fails to meet any of the time frames set forth below, then Developer will have no obligation with respect to the Water Tank and Transmission Line, including, without limitation, the obligation to contribute any portion of Developer's Water Tank and Transmission Line Expense. In that case, Developer shall be allowed to develop the entire Property and construct all Units, utilizing the City's existing infrastructure, as augmented by the 200 West Water Line and the Hargis Hill water Line.

ii. Developer's Water Tank and Transmission Line Expense. If the City does acquire the necessary land, or rights in land, by the Land Acquisition Deadline, then the terms and conditions in the remaining portions of Section 8(C), and its subsections, will apply. The City may determine the total capacity of the Water Tank, so long as the Water tank holds a minimum of five hundred thousand (500,000) gallons. The City shall be responsible for the construction of the Water Tank and the Transmission Line and for all other necessary expenses related to, or necessary for, the construction of the Water Tank and the Water Line. Subject to contingencies of this Agreement, the Developer shall contribute up to one million six hundred twenty-five thousand dollars ($1,625,000) (the "**Developer's Water Tank and Transmission Line Expense**") towards the City's costs and expenses incurred for the construction of the Water Tank and Transmission Line construction. The City shall pay any costs and expenses incurred in constructing the Water Tank and Transmission Line in excess of Developer's Water Tank and Transmission Line Expense. The entire portion of the Developer's Water Tank and Transmission Line Expense which is contributed by Developer will be reimbursable.

iii. Contribution by Developer. The Developer's obligation to contribute any portion of Developer's Water Tank and Transmission Line Expense to the City shall be governed by the following terms and conditions.

a. Cost of Design. The City's engineer shall be responsible for the design and engineering of the Water Tank and Transmission Line. The City's engineer will provide approved plans for the same to Developer within ninety (90) days after the Land Acquisition Deadline. Within ten (10) days after the Developer receives the design and engineering plans for the Water Tank and Transmission Line from the City, the Developer shall deliver to the City the actual cost of designing and engineering the Water Tank and Transmission Line, as demonstrated by bids, contracts, or receipts, but in no case more than fifty-thousand dollars ($50,000). Notwithstanding any contrary provision of this Agreement, Developer shall have no obligation to contribute any additional portion of the Water Tank and Transmission Line Expense unless and until the City has issued building permits for the First 75 Units ("**Building Permit Contingency**").

b. Initial Construction Payment. The City shall execute a contract with a qualified contractor to perform the preliminary site work prior to constructing the

Water Tank and Transmission Line. The City shall provide an executed copy of the contract to the Developer promptly when finalized, but in any case not later than one hundred twenty (120) days after the Land Acquisition Deadline. On or before ten (10) days after the Developer receives the executed contract for such site work from the City, and subject to the Building Permit Contingency, the Developer shall deliver to the City the actual cost of preliminary site work for the Water Tank and Transmission Line, as demonstrated by the contract, but in no case more than one hundred-thousand dollars ($100,000).

c. Subsequent Construction Payment. The City shall execute a contract with a qualified contractor for the actual construction of the Water Tank and Transmission Line not later than one hundred fifty (150) days after the Land Acquisition Deadline. The City shall then provide an executed copy of the contract to the Developer. On or before ten (10) days after the Developer receives the executed contract from the City, but only if Developer elects to pursue construction and development of the Project beyond the First 75 Units, the Developer shall deliver to the City the actual contract amount for constructing the Water Tank and Transmission Line, but only up to the remaining portion of Developer's Water Tank and Transmission Line Expense, after accounting for the other payments provided for in this Section. Under no circumstances will Developer be required to pay the City any amount that exceeds the Developer's Water Tank and Transmission Line Expense. The City shall work diligently and in good faith to complete construction of the Water Tank and Transmission Line in a timely manner.

iv. Self-Help Remedy. If the City fails to complete the Water Tank and Transmission Line in a timely manner and such failure interferes with Developer's construction of infrastructure for the Project or with the construction of Units on lots within the Project, then, in addition to any other rights and remedies available to the Developer, Developer may give written notice to the City of Developer's intent to assume the obligation to construct the Water Tank and Transmission Line ("**Self-Help Notice**"). If Developer delivers the Self-Help Notice, then the City agrees to assign to Developer all contracts related to the construction of the Water Tank and Transmission Line and to cooperate with Developer to facilitate Developer's construction of the same. Any amounts expended by Developer in connection therewith will be reimbursable to Developer. For the avoidance of doubt, if Developer delivers the Self-Help Notice and Developer there after expends amounts in excess of the Developer's Water Tank and Transmission Line Expense, then the City agrees to indemnify and reimburse Developer, immediately upon demand, for all such additional costs and expenses. Notwithstanding the foregoing, nothing in this Agreement requires Developer to issue the Self-Help Notice or to assume the obligation to construct the Water Tank and Transmission Line.

D. Sewage Lift Station: The Parties acknowledge that the sanitary sewer needs of the northwestern most residential Units within the Project may require that a small sewage lift station and / or individual grinder pumps in residences (either option, as determined most feasible by Developer's engineering study, a "**Lift Station**") be constructed. If an engineering assessment determines that a Lift Station is required, then Developer shall submit to the City a detailed engineering plan with specifications of said Lift Station prior to final approval/installation of the

lines and Lift Station. The City agrees to allow the Lift Station, provided that: (i) the City's Planning and Engineering departments review and approve the plans to ensure they are generally consistent with industry standard; (ii) the Developer permits the City's Planning and Engineering departments to inspect upon request any and all of the Lift Station's construction; (iii) the Lift Station is inspected by a licensed engineer who certifies that the Lift Station has been constructed in accordance with the Applicable Law; and (iv) the Lift Station passes a standard final inspection by the City. Developer, initially, and following development the HOA, will be solely responsible for the Lift Station's installation and ongoing maintenance.

E. Secondary Water Line. Developer shall install a secondary water piping system ("**Secondary Water System**") throughout the Project. The Secondary Water System will initially be a "dry system," meaning that it will be constructed and sized to handle the needs of the Project but will not be connected to a secondary water source at this time. The City and Developer anticipate that the Secondary Water System will be connected to a water source in the future when the City's secondary water infrastructure is extended to the Project. When completed, the City will maintain the Secondary Water System, regardless of when it is connected to water source. In other words, when completed, the City shall maintain the Secondary Water System as a "dry system" until connected to a water source. The City acknowledges and agrees that: (i) the Secondary Water System is strictly limited to the Project area and under no circumstances will Developer be required to construct, extend, install, or repair the Secondary Water System outside the Project area; (ii) this Secondary Water System will not include any storage, transmission lines, or water rights; and (iii) Developer will not be required to procure or dedicate any additional water rights or water shares beyond preserving the shares in or for Pineview (48.39 acre-feet) and North Willard Irrigation (37.5 acre-feet), to the extent any such shares are currently allocated to the Property.

F. Other Improvements:

i. Required Improvements For each phase of the Project, Developer shall be solely responsible to design, install, construct, and/or develop, at the Developer's initial cost and expense, the following public Improvements: (a) all streets and roads in such phase of the Project, including grading, paving, temporary turn arounds, and all other aspects of road construction, as such is required by the City as shown on a Final Plat or for that particular phase of the Project; (b) fire hydrants, curbs, street signs, gutters, landscape, berms, and sidewalks along the streets and roads; (c) all necessary horizontal Improvements including, but not limited to, water lines, sanitary sewer lines, storm drain lines, storm water drainage basin(s), and all other utility lines required to service the Project (including, without limitation, telephone, gas, and power lines, and three-phase power); (d) the stubbing of the utilities referenced-above into any future streets that tie into the Project; (e) any lift stations required to provide sanitary sewer service to any of the lots within the Project; and (f) any other Improvements, facilities, or infrastructure required by the City for the dedication and acceptance of the public Improvements.

ii. Widening of 200 West. Additionally, if the City has completed the construction of the portion of 200 West Street that abuts the Project, then the Developer shall be responsible for Widening the east side of the portion of the 200 West Street which abuts the Project pursuant to the standards identified in **Exhibit N** attached hereto. As used herein, the term "**Widening**" means the expansion of the east side of 200 West Street

beyond what is necessary for the Project in order to conform with **Exhibit N**, notwithstanding any contrary provisions of the City's public works standards as contained in the Code ("**PWS**"). Widening will include the installation of curb, gutter, and sidewalk on the east side of 200 West Street.

iii. South Side Road. For the avoidance of doubt, Developer will only be required to construct a half-width road on the southern boundary of the portion of the Property east of 200 West Street ("**South Side Road**"), and no building permits or certificates of occupancy will be delayed or withheld based on the construction status of the South Side Road. Developer will have no obligation to construct any land which is not included within the Property.

iv. General Standards of Construction. Developer shall construct and install public Improvements: (a) in a good and workmanlike manner; and (b) in accordance with the City's requirements, approvals, regulations, ordinances, specifications, standards, and other governing documents; and (c) all public utilities shall be located underground.

v. Specific Road Standards. Additionally, Developer shall construct all roads within the Project that are to be publicly dedicated in accordance with the PWS. If Developer constructs any portion of 200 West Street (other than the Widening referenced above), Developer shall be entitled to reimbursement from the City for the cost of the same when such construction is complete, as provided in the Reimbursement Agreement. Developer shall construct the Project's internal roads per the PWS's PUD – 60' Right-of-Way cross section as depicted on **Exhibit I** attached hereto, where applicable and per the PWS's Standard Residential Roadway Section, as depicted on **Exhibit J** attached hereto, in other locations. For the avoidance of doubt the South Side Road will only need to be constructed to a half-width of the PWS's Standard Residential Roadway Section. Developer shall not pave any street until all utilities placed therein have been completely installed, inspected, and accepted by the City, including all individual lot service lines (water and sewer) leading to and from the utility main and the lot line, all electrical lines, and all communication conduits.

vi. Cost Sharing with Other Owners or Developers. Nothing in this Agreement precludes Developer from entering into future reimbursement or cost-sharing agreements with any third-party seeking to utilize or benefit from any portion of the public Improvements.

vii. General Provisions Governing Public Improvements. The public Improvements required to be constructed in connection with each Final Plat for the Project shall be determined by the City at the time of Final Plat submittal and may be adjusted in accordance with the Code, this Agreement, and Applicable Law, but may not require the installation of Improvements not required to serve the Units or lots depicted or shown on such Final Plat. Developer shall complete the Project in accordance with the terms of this Agreement and applicable Code. Notwithstanding anything herein to the contrary, any public Improvements Developer is obligated to provide and dedicate, shall be completed within five (5) years after the approval date of the Final Plat for the last phase of the

Property. Upon completion of the Improvements, Developer shall warrant the Improvements for one (1) year as required under Applicable Law.

G. Open Space Obligations. The City and Developer agree to negotiate in good faith as to each Party's responsibility for constructing and installing park Improvements on the open space area located west of 200 West ("**Open Space Area**"). Any subsequent agreement regarding the parties' obligations for the Open Space Area will be consistent with this Agreement.

i. No-School Plan. The parties anticipate that, in the absence of a purchase of a portion of the Open Space Area by a School, defined below, the Open Space Area will be improved in a manner generally as shown on the plan for the Open Space Area attached as **Exhibit K** ("**Open Space Plan**"). The parties acknowledge that the Open Space Plan may change by mutual agreement of the Parties or if site conditions make complying with the Open Space Plan impractical.

ii. School Plan. Developer will have no obligation to improve any portion of the Open Space Area which is used, or will be used, as a school site. A school district, private school, or charter school (any of the foregoing, a "**School**") may decide prior to completion of the First 75 Units, whether to construct a school building within the designated Open Space Area and a School may purchase a portion of the Open Space Area from Developer or Owner, as applicable, for the school site. If a School purchases a portion of the Open Space, then the Parties anticipate that the Open Space Area will be improved in a manner generally as shown on the amended plan for the Open Space Area attached as **Exhibit L** ("**Open Space Plan With School**"). Neither Owner or Developer will be required to provide any water necessary for use in connection with the operation of a School.

iii. Development of Open Space Generally. The Developer and Owner shall dedicate the Open Space Area not included within a school site and any park Improvements thereon to the City, which shall suffice in all ways for Developer's Open Space Area dedication obligations under this Agreement. The City shall provide the necessary culinary and / or secondary water needed to irrigate and otherwise supply water to and for Open Space Area. The Parties agree that in no case will Developer's financial obligation with respect to the park Improvements exceed a cost of _____ dollars ($_____). The Parties anticipate that the park Improvements will be installed not later than the time when the City has issued certificates of occupancy for one hundred percent (100%) of the Units within the Project. If Developer agrees to install or finance all or part of the park Improvements, the City shall reimburse Developer for its costs and expenses for installing and/or financing such park Improvements, and such reimbursement shall, at Developer's election, be through payment of impact fees collected by the City. Notwithstanding any other provision of this Agreement, under no circumstances shall Developer be required to incur costs for the park Improvements that exceed the amount of park impact fees which the City has collected in connection with building permits for the Project.

iv. Event of Deadlock. If the Parties cannot timely agree as to each Party's responsibilities with respect to Improvements for the Open Space Area as shown on the Open Space Plan or the Open Space Plan With School, then: (a) Developer and Owner

shall dedicate the Open Space Area to the City; and (b) Developer may claim a credit for the value of the Open Space Area and any park Improvements against any park impact fees collected by the City for the Project. Thereafter, Developer and Owner will have no further obligations or duties with respect to the Open Space Area.

H. Dedication of Improvements. Developer and Owner shall dedicate to the City those public Improvements required for each phase of the Project upon the City's confirmation that the same have been constructed as required herein. The City shall approve, consistent with the Plan, the alignment of all roads and utility lines and shall approve all descriptions of land, rights of way, and easements appurtenant to the public Improvements. Developer and/or Owner shall acquire and provide to the City, for review and approval, a title report from a qualified title insurance company covering such land, rights of way, and easements associated with the Improvements. Developer shall consult with the City Attorney and obtain the City Attorney's approval of all instruments to convey and dedicate the public Improvements and any appurtenant land, rights of way, and/or easements hereunder to the City.

I. Construction Site Safety. Developer shall provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed reasonable and necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual on Uniform Traffic Control Devices. Developer shall not remove said safety devices until construction of the Improvements has been completed.

J. Construction Site Waste. Developer shall, at all times during construction of the Improvements: keep the public right-of-way free from an unreasonable accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary; and at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. In the case of excessive accumulation of dirt and/or construction materials, after written notice to Developer and a minimum of fifteen (15) days for Developer to cure, then the City may have the streets cleaned at Developer's expense and Developer shall be responsible for the prompt payment of the City's actual and reasonable costs associated therewith. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

K. Cooperation with City Building Inspector, City Engineer, and City Public Works Director. Developer shall require its contractors and subcontractors to cooperate with the City's Building Inspector, Engineer, or Public Works Director by ceasing operations when winds are of sufficient velocity to create an excessive amount of blowing dust from construction of the Project which, in the City's reasonable determination, is hazardous to public health and welfare and which Developer is unable to mitigate.

L. Developer Compliance with EPA and other Regulations. Developer specifically represents that to the actual knowledge of Developer's representative Bryan Bayles, as of the

Effective Date, all property to be dedicated (whether in fee simple or as an easement) to the City associated with the Project (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Agreement is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. Notwithstanding any provision to the contrary, Developer's representative shall have no personal liability under Agreement.

M. System Improvements and Reimbursement. The provisions for reimbursement for the cost of system Improvements are contained in the *Reimbursement Agreement* ("**Reimbursement Agreement**") attached hereto as **Exhibit M**. Except as provided in the Reimbursement Agreement, the City shall not require Developer to upsize or build any other system Improvements for the City without first obtaining another written agreement and repayment or reimbursement terms acceptable to both Developer and the City.

i. Reimbursable Improvements and Fee Credits. The Parties agree that the Improvements identified in this Section 8, and its subparts, which are identified as system improvements serve a regional benefit and provide for excess system capacity. The Parties intend for Developer to pay any applicable "Proportionate Share," as that term is defined in Utah Code § 11-36a-102, of Improvements for the Project and that Developer be reimbursed for other expenses as provided herein. To the extent any reimbursement to Developer provided for in this Agreement or in the Reimbursement Agreement will come from impact fees paid to the City on or after the date of this Agreement, such impact fees will be sequestered and not commingled with other City funds or accounts. Such impact fees, when collected by the City, will be paid to Developer in accordance with the terms and conditions of the Reimbursement Agreement. At Developer's option, Developer may elect to accept any reimbursement provided for herein or in the Reimbursement Agreement in the form of credits against fees and charges which Developer may need to pay in connection with development of the Project, such fees including, but not being limited to impact fees, building permit fees, and other application fees.

ii. Water Line Reimbursement: The City shall reimburse Developer for the entire cost of construction and upsizing of the 200 West Water Line referenced in Section 8(B)(i) from impact fees paid by users of the City's system, the parties agreeing that such upsizing is a system improvement. The cost of constructing the Hargis Hill Water Line is not reimbursable, but is a project cost to be paid solely by Developer.

iii. Water Tank and Transmission Line Reimbursement: The City shall reimburse Developer for the entire amount of Developer's Water Tank and Transmission Line Expense paid or contributed by Developer, as referenced in Section 8(C), and its subparts. Such reimbursement may come from impact fees, or from grants or similar funding which the City may receive from other public bodies, including the Utah Division of Drinking Water for projects as the Water Tank and Transmission Line (such funds, collectively, the "**Grants**"). The parties agree that the Water Tank and Transmission Lines

are system improvements. Any Grants received on or after the Effective Date will be held and sequestered by the City and reimbursed to Developer as Developer spends portions of Developer's Water Tank and Transmission Line Expense. Grants will be used to reimburse Developer before they are used for any other purpose. If the City does not receive Grants as of the date when Developer begins to expend portions of the Developer's Water Tank and Transmission Line Expense, or if the Grants are insufficient to fully reimburse Developer, then the City will reimburse Developer with impact fees paid in connection with development within the City.

iv. Public Streets. The City shall reimburse Developer for the entire amount of construction of any public streets which are not interior to the Project, any such streets being system improvements, except for: (a) the Widening of the east side of 200 West Street; and (b) the construction of the South Side Road.

v. Open Space. The City shall reimburse Developer for the entire amount of constructing any Improvements within the Open Space.

SECTION 9. AMENDMENT

A. Amendment. Unless otherwise stated in this Agreement, or as provided in Section 9(B), the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent of the City and Developer (or a sub-developer, but only if such amendment applies only the portion of the Project owned by such assignee sub-developer). However, no amendment or modification to this Agreement shall require the consent or approval of any person or entity whose interest in the Project is only ownership of a specific lot, Unit or other portion of the Project. Each person or entity (other than the City and the Developer) that takes or receives any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all future amendments to this Agreement which comply with this Section 9 and its subparts.

B. Permissible Administrative Amendments. Notwithstanding the foregoing, the City and Developer agree that the following modifications to the Agreement may be made by the Developer acting alone, if expressly permitted under this Agreement, or by the written agreement of Developer and the City's planning or zoning administrator without the need for such modification to be approved by the City Council: (i) modifications to the location and / or sizing of infrastructure so long as such changes do not materially change the functionality of such infrastructure; (ii) the location and / or configuration of rights-of-way within the Project; (iii) modifications to the phasing and location of individual Units within the Project (iv) modifications to the configuration and phasing of any portion of the improvements or other components shown on the Open Space Plan or the Open Space Plan With School; and (v) technical edits necessary to clarify this Agreement or any of the Exhibits hereto in order to clarify the documents or modify them consistent with their intended purpose.

C. Separate Development Agreements. Developer or successors in title may elect to propose and enter into separate agreements with City to govern the construction or development of a particular portion of the Project. Nothing in any separate agreement may conflict with the

entitlements obtained by Developer in this Agreement without the express written consent of City and Developer.

SECTION 10. COOPERATION AND IMPLEMENTATION

A. Submitting Documents; no Preliminary Plat Required. Developer shall submit to the City all plats, plans (including utility plans), reports and other documents required for approval of a final subdivision plat for the Project, or a phase of the Project if Developer desires to develop the Project in phases (each such plan, a "**Final Plat**"), according to the Code and standards incorporated therein unless specifically provided otherwise in this Agreement. For the avoidance of doubt, so long as each proposed Final Plat is substantially similar to the Plan, as the same may be amended or modified as provided herein, then no preliminary plat approval will be required for any phase within the Project.

B. Issuance of Building Permits. The City will not issue any building permit for construction of any structure within any phase of the Project until: (i) all individual lots within the such phase of the Project, as shown on a Final Plat, are staked by a licensed surveyor; and (ii) public water lines and stubs to each lot in such phase, charged fire hydrants, sanitary sewer lines and stubs to each lot in such phase, street lights and public streets (including all weather access, curb, gutter, but not requiring full pavement), serving such structure have been completed and accepted by the City or, in the alternative, Developer has provided a financial assurance for such Improvements in such phase as discussed herein and allowed by Utah Code 10-9a-604.5, which approvals by the City shall be accomplished promptly once these actions by Developer have been completed.

C. Issuance of Certificate of Occupancy. The City will not issue a certificate of occupancy for any structure within a phase of the Project until water, sewer, and gas lines to the structure are installed and functional, streets and street signs in such phase are installed, and all electric lines in such phase are installed and functional.

D. Processing of Future Development Applications. Upon submission by the Developer of any Development Applications after the Effective Date and the payment of processing fees, the City shall promptly and diligently commence and complete all steps necessary to act on the Development Application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) the granting of the appropriate Subsequent Approval as set forth herein. Without limiting the foregoing, the City will confirm within twenty (20) days after the submission of a Development Application that the Development Application is complete or the City will identify any deficiencies with the Development Application. Once a Development Application is complete, the City will act on the Application within thirty (30) days and deliver to Developer notice of its action. In order to assist the City with its obligations hereunder, Developer may elect to cause the City to outsource the review of any Development Applications to third party engineers or other appropriate reviewers. Developer will be responsible for the portion of the cost of any such review which exceeds the cost which would have otherwise been expended by the City in connection with its review of the Development Application.

E. Additional Provisions. The City's obligations under this Section 10 are conditioned on the Developer's submission to the City, in a timely manner, of all documents, applications,

plans and other information necessary for the City to meet such obligations and requirements. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals for the Project. The City may deny a Development Application seeking a Subsequent Approval by the Developer only if the Development Application is incomplete, does not comply with this Agreement, or violates Applicable Law. If the City denies a Development Application for a Subsequent Approval, the City must specify the modifications required to obtain such Subsequent Approval.

SECTION 11. DEFAULT AND TERMINATION

A. Default Generally. Except as provided below, any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day-time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or exercise any remedies specifically authorized under this Agreement. In the case of a default by Developer, the City shall not have the right to pursue any remedies until the City Council finds, on the record at a duly noticed public meeting, that default has occurred and has not been cured within the applicable time period. Further, following such a finding, the City may not withhold approval for any Development Applications unless such Development Application is directly related to the uncured default. If the default is cured within the applicable cure period, then no default shall exist, and the noticing Party shall take no further action. Notwithstanding any other provision of this Agreement, no default of an assignee of Developer shall be deemed a default of Developer, and the City will have no rights or remedies with respect to Developer or any portion of the Property owned or controlled by Developer based on a default by any assignee of Developer.

B. Time-Sensitive Default by the City. Notwithstanding the foregoing, if a claimed default consists of the City's failure to comply with any deadline provided for under this Agreement, including, without any limitation, deadlines to make any payments or reimbursements when due, or to process and approve Development Applications within the timeframes provided in this Agreement, then Developer shall give written notice and the City will have five (5) business days after the date of such written notice within which to cure such default. In the event the City defaults under the terms of this Section, the Developer shall have all rights and remedies provided in this Section 11 of this Agreement, and as provided at law. Without limiting the foregoing, Developer will be entitled to immediate injunctive relief requiring the City to comply with such deadlines or take other appropriate actions. In connection with any such injunctive relief, the City waives the requirement of a bond or other security.

C. Enforced Delay. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-

outs, riots, floods, earthquakes, epidemics or pandemics, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 12. NOTICE OF COMPLIANCE

A. Timing and Content. Within five (5) business days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to the Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledge by the City, certifying that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.

B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 12(A) shall constitute a presumption that as of five (5) business days from the date of the Developer's written request: (i) this Agreement was in full force and effect without modification except as represented by the Developer; and (ii) there were no uncured defaults in the performance of the Developer. Nothing in this Section 12, however, shall preclude the City from conducting a review under Section 11, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 11 for defaults which commence prior to the presumption created under this Section 12, and which have continued uncured.

SECTION 13. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND REQUIRED NOTICE

Developer may transfer or assign its rights under this Agreement on a phase-by-phase basis upon written notice to the City. The City acknowledges and agrees that Developer may assign or transfer its rights and obligations under this Agreement, in whole or in part, to any affiliate of Developer, including an affiliate operating as Nilson Homes, or to any subsidiaries or related entities. This Agreement is binding on the successors and assigns of Developer. In the event Developer assigns any of its rights or obligations under this Agreement to a third party, Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of such assignment. In such event, Developer's successor in interest shall be bound by the terms of this Agreement.

SECTION 14. MISCELLANEOUS TERMS

A. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

B. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written consent of the Parties.

C. Other Miscellaneous Terms. The singular shall be made plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto and shall be deemed to be and contain the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Agreement.

D. No Waiver of Regulation(s). Except as otherwise set forth herein, nothing in this Agreement shall be construed as a waiver of any requirements under the Code or State law, in its current form as of the date of approval of a Final Plat and the Developer agrees to comply with all requirements of the same.

E. Severability of Waivers. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

F. City Council Budget. Any financial obligation of the City arising under this Agreement that is payable after the current fiscal year will be paid with funds for the purpose being annually appropriated, budgeted and otherwise made available by the City Council.

G. Covenants to Run with the Property. The Parties agree that this Agreement runs with the Property, including any subsequent approved amendments to a Final Plat of all, or a portion of the Property. This Agreement is also binding upon and inures to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all Improvements required pursuant to this Agreement touch and concern the Property regardless of whether such Improvements are located on the Property. Assignment of interest within the meaning of this Section specifically includes, but is not limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

H. Non-Binding Mediation. In the event of the default of any of the provisions hereof by a Party which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any court of law. In any such event, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies.

I. No Third-Party Beneficiaries. Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

J. Applicable Laws. It is expressly understood and agreed by and between the parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Willard, Utah. Venue for any action brought to interpret or enforce this Agreement shall be Box Elder County.

K. Time of Performance. 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.

L. Construction of Agreement. This Agreement shall be construed to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect the health, safety, and welfare of the citizens of the City together with the purpose of allowing Developer to make investment backed decisions and to rely on the approvals granted herein.

M. Attorney's Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief, or other litigation, including appeals, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorney's fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

N. Greenbelt Taxes. Pursuant to Utah Code § 10-9a-603(3), Developer, or Owner as applicable, shall pay any required Greenbelt or rollback Taxes, if applicable.

O. Application Fees. All application fees must be paid at time of Development Application submittal. No Development Application will be processed until all application fees are paid. Notification and publication fees for required public hearing notices (individual notices mailed to property owners-$1.00 per notice; 14-day publication of legal notice in local newspaper-cost of notice) will be billed to applicant at the time a hearing is scheduled. Notification fees must be paid within 10 days of billing. The payment of fees and/or the acceptance of such fees by City Staff does not constitute any sort of approvals, vesting, or signify that the Development Application is complete or appropriate in any manner. The collection of fees is simply a requirement to begin the review process that will ultimately make such determinations.

P. Exhibits. The following exhibits are attached to this Agreement and are incorporated herein:

Exhibit A: Legal Description of the Property

Exhibit B: Proposed Concept Plan

Exhibit C: Copy of the PDZ Ordinance

Exhibit D: Copy of November 14, 2019, Approvals

Exhibit E: 200 West Water Line Corridor

Exhibit F: Hargis Hill Water Line Corridor

Exhibit G: Water Tank Location

Exhibit H: Transmission Line Corridor

Exhibit I: Cross Section 60' PUD Right-of-Way

Exhibit J: Cross Section Standard Residential Roadway

Exhibit K: Open Space Plan

Exhibit L: Open Space Plan With School

Exhibit M: Reimbursement Agreement

Exhibit N: Standards for 200 West Widening

SECTION 15. NOTICES

Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Willard City Corp.
PO Box 593
Willard, UT 84302

If to Developer: Kunzler Land Holdings, LLC
Attn: Bryan Bayles
1740 Combe Road, Suite 2
Ogden, Utah 84403

Notwithstanding the foregoing, if any party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such party shall do so by giving the other parties to this Agreement written notice of such change.

SECTION 16. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein, this Agreement, including its exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and of the Developer. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

SECTION 17. SIGNING AND RECORDATION OF AGREEMENT

The City represents that the individual signing this Agreement will have full authority to sign and shall sign this Agreement with said authority from the City. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Box Elder no later than the date on which the Plat for the Project is recorded.

[End of Agreement. Signatures and acknowledgements follow.]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the Effective Date.

DEVELOPER:
KUNZLER LAND HOLDINGS, LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF UTAH)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this___day of_____, 2023, by_____as_____of KUNZLER LAND HOLDINGS, LLC, a Utah limited liability company.

_____

Notary Public

CITY:
WILLARD CITY, a municipal corporation and political subdivision of the State of Utah

By: _____
Name: _____
Title: _____

Attest: _____
City Recorder

STATE OF UTAH)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this___day of_____, 2023, by _____ as _____ of WILLARD CITY, a body corporate and politic of the State of Utah.

_____

Notary Public

IN WITNESS WHEREOF, Owner joins in this Agreement for the sole purpose set forth in Section 1.1.

OWNER:

THE WALTER KUNZLER
AND JOSIE MAE
KUNZLER TRUST DATED
MAY 16, 1980

_____
By: Samuel W. Kunzler, Sole Trustee

STATE OF UTAH)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this___day of _____, 2023, by Samuel W. Kunzler as Sole Trustee of the Walter Kunzler and Josie Mae Kunzler Trust dated May 16, 1980.

_____
Notary Public

EXHIBIT A

Legal Description of the Property

Parcel No. 1 (West of 200 West)

A PART OF THE SOUTHWEST QUARTER OF SECTION 11 AND A PART OF THE NORTHWEST QUARTER OF SECTION 14 AND A PART OF THE NORTHEAST QUARTER OF SECTION 15 AND A PART OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 8 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT AN EXISTING FENCE CORNER MARKING THE SOUTHEAST CORNER OF THE MARION G. STOKES PROPERTY, TAX ID. NO. 02-035-0043, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF 200 WEST STREET LOCATED 69.40 FEET SOUTH 89°45'50" EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER AND 420.70 FEET NORTH 00°55'15" WEST FROM THE SOUTHWEST CORNER OF SAID SECTION 11;

RUNNING THENCE SOUTH 00°55'15" EAST 1112.70 FEET ALONG AN EXISTING FENCE LINE MARKING SAID WEST RIGHT-OF-WAY LINE TO AN EXISTING FENCE CORNER MARKING THE NORTHEAST CORNER OF THE ORMOND CONSTRUCTION INC. PROPERTY, TAX ID. NO. 02-043-0031; THENCE NORTH 87°54'43" WEST (NORTH 88°20'00" WEST BY RECORD) 1904.18 FEET ALONG SAID FENCE LINE TO AN EXISTING FENCE CORNER MARKING THE NORTHWEST CORNER OF SAID ORMOND CONSTRUCTION INC. PROPERTY BEING A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD; THENCE NORTH 01°47'55" WEST 556.04 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE SOUTHWEST CORNER OF THE DOUGLAS R. THOMPSON ETAL PROPERTY, TAX ID. NO. 02-035-0045; THENCE SOUTH 88°15'16" EAST (SOUTH 88°50'00" EAST BY RECORD) 1060.30 FEET ALONG AN EXISTING FENCE LINE TO THE SOUTHEAST CORNER OF SAID THOMPSON PROPERTY; THENCE NORTH 00°25'35" EAST 544.01 FEET (NORTH 551.76 FEET BY RECORD) TO THE SOUTH BOUNDARY LINE OF THE MARION G. STOKES PROPERTY, TAX ID. NO. 02-035-0040; THENCE SOUTH 88°20'25" EAST (SOUTH 88°46' EAST BY RECORD) 838.99 FEET ALONG THE SOUTH BOUNDARY LINE OF SAID STOKES PROPERTY TO THE POINT OF BEGINNING. CONTAINING 35.124 ACRES.

EXHIBIT A Cont.

Legal Description of the Property

Parcel No. 2 (East of 200 West)

A PART OF THE SOUTHWEST QUARTER OF SECTION 11 AND A PART OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 8 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE SOUTHWEST CORNER OF THE BOYD J. RICKS TTEE PROPERTY, TAX ID. NO. 02-038-0028, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 200 WEST STREET LOCATED 135.42 FEET SOUTH 89°45'50" EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER AND 419.06 FEET NORTH 00°55'15" WEST FROM THE SOUTHWEST CORNER OF SAID SECTION 11;

RUNNING THENCE ALONG AN EXISTING FENCE LINE MARKING THE SOUTH BOUNDARY LINE OF SAID RICKS PROPERTY AND THEN THE SOUTH BOUNDARY LINE OF THE GERRY WILSON ETAL PROPERTY, TAX ID. NO. 02-038-0031 THEN THE LEO ROBERTSON JR., TAX ID. NO. 02-038-0032 AND THEN THE DAVID N. JENSEN PROPERTY, TAX ID. NO. 02-038-0027 SOUTH 88°20'25" EAST (SOUTH 88°46' EAST BY RECORD) 1505.41 FEET TO AN EXISTING REBAR MARKING THE NORTHWEST CORNER OF THE CRAIG R. RUSTAN ETAL PROPERTY, TAX ID. NO. 02-038-0045; THENCE SOUTH 00°15'36" WEST (SOUTH BY RECORD) 198.08 FEET ALONG AN EXISTING FENCE LINE TO AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF THE MICHAEL W. BRAEGGER TTEE ETAL PROPERTY, TAX ID. NO. 02-038-0043; THENCE NORTH 89°51'41" EAST (EAST BY RECORD) 45.49 FEET ALONG AN EXISTING FENCE LINE MARKING THE SOUTH BOUNDARY LINE OF SAID BRAEGGER PROPERTY TO AN EXISTING REBAR MARKING THE NORTHWEST CORNER OF THE SMANTHA SHUPE PROPERTY, TAX ID. NO. 02-038-0050; THENCE ALONG THE BOUNDARY LINE OF SAID SHUPE PROPERTY THE FOLLOWING TWO (2) COURSES; (1) SOUTH 01°11'48" WEST (SOUTH BY RECORD) 96.22 FEET; AND (2) SOUTH 89°45'49" EAST 240.93 FEET (NORTH 89°02'23" EAST 241.82 FEET BY RECORD) TO THE WEST RIGHT-OF-WAY LINE OF HARGIS HILL ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES; (1) SOUTH 15°35'38" EAST 174.25 FEET; AND (2) SOUTH 16°29'10" EAST 126.73 FEET TO THE NORTHEAST CORNER OF THE LARRY GRANT HOLMES PROPERTY, TAX ID. NO. 02-040-0009; THENCE ALONG THE BOUNDARY LINE OF SAID HOLMES PROPERTY THE FOLLOWING THREE (3) COURSES; (1) NORTH 88°12'41" WEST (NORTH 88°50'00" WEST BY RECORD) 989.02 FEET; (2) SOUTH 00°19'31" WEST (SOUTH BY RECORD) 272.70 FEET; AND (3) SOUTH 88°00'29" EAST 1074.31 FEET (SOUTH 88°35'00" EAST BY RECORD) TO SAID WEST RIGHT-OF-WAY LINE OF HARGIS HILL ROAD; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES; (1) SOUTHEASTERLY ON A NON-TANGENT CURVE TO THE LEFT ALONG THE ARC OF A 660.00 FOOT RADIUS CURVE, A DISTANCE OF 131.64 FEET, CHORD BEARS SOUTH 25°34'27" EAST 131.42 FEET, HAVING A CENTRAL ANGLE OF 11°25'41"; AND (2) SOUTH 31°17'18" EAST 13.01 FEET TO THE NORTHEAST CORNER OF THE SAMUEL W. KUNZLER PROPERTY, TAX ID. NO. 02-040-0039; THENCE ALONG THE BOUNDARY LINE OF SAID KUNZLER PROPERTY THE FOLLOWING TWO (2) COURSES; (1) NORTH 87°54'07" WEST 247.61 FEET (NORTH 88°20' WEST 244.73 BY RECORD); AND (2) SOUTH 02°05'53" WEST (SOUTH 1°40' EAST BY RECORD) 148.96 FEET TO THE NORTH BOUNDARY LINE OF THE ORMOND CONSTRUCTION INC. PROPERTY, TAX ID. NO. 02-040-0038; THENCE NORTH 87°54'46" WEST (NORTH 88°35' WEST) 1748.53 FEET TO THE NORTHWEST CORNER OF SAID ORMOND PROPERTY BEING A POINT ON THE SAID EAST RIGHT-OF-WAY LINE OF 200 WEST STREET; THENCE NORTH 00°55'15" WEST 1113.19 FEET ALONG SAID EAST RIGHT-OF-WAY TO THE POINT OF BEGINNING. CONTAINING 38.977 ACRES.

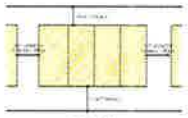
Area Calculations

Total Gross Area	74.4 acres
Open Space / Park	35.0 acres (47%)
Total Single Family Lot Area (76 Lots)	11.7 acres (16%)
Total Multi Family Lot Area (170 Units)	11.7 acres (16%)
Streets, Park strips and Curb & Gutter	16.0 acres (21%)

- 246 TOTAL LOTS/UNITS OR 3.3 LOTS/UNITS PER ACRE
- AVERAGE LOT SIZE: 6,750 +/- SF
- MINIMUM LOT SIZE: 5,500 SF

Land Use

SYMBOL	NOTES	ACRES
	OPEN SPACE / PARK	35.0
	SINGLE FAMILY	16.6
	MULTI FAMILY	22.5



Townhomes

Phasing

	ACRES	SINGLE FAMILY	MULTI-FAMILY	TOTAL UNITS
PHASE 1	13.2	37	37	74
PHASE 2	12.9	21	60	81
PHASE 3	6.3	18	20	38
PHASE 4	6.0	0	53	53
OPEN SPACE A	35.7			
TOTAL	74.1	76	170	246

Development Standards

-50 FT. MIN. LOT FRONTAGE (SINGLE FAMILY)
-20 FT MIN FRONT YARD SETBACK
-20 FT MIN REAR YARD SETBACK (SINGLE)
-25 FT MIN REAR YARD SETBACK (TOWNHOME)
-6 FT MIN SIDE YARD SETBACK (SINGLE FAMILY)
-15 FT MIN SIDE YARD SETBACK CORNER LOT
-10 FT MIN. DISTANCE BETWEEN BUILDINGS (TOWNHOMES)

Exhibit B

Scale: 1" = 120'

0 60 120 240 360

April 25, 2023

Kunzler Property

EXHIBIT C

2019 VESTED CODE

CHAPTER 12-106.
PLANNED DEVELOPMENT

12-106-1. Purpose.

The purpose of the Planned Development (PD) is to allow diversification in the relationship of various uses and structures to their sites, and to permit more flexibility in the use of such sites while maintaining a partial rural nature of these areas. The application of planned development concepts is intended to encourage good neighborhood, housing, or area design, thus insuring substantial compliance with the intent of the district regulations and other provisions of this Ordinance relating to the public health, safety, and general welfare, and at the same time securing the advantages of larger-scale site planning for residential, commercial or industrial developments, or combinations thereof. To help maintain the rural nature of Willard City, a PD is an alternative to a typical one-half acre lot subdivision development.

12-106-2. Definitions

Planned Development (PD), for the purposes of this Ordinance, shall mean an integrated design for development of residential, commercial, or industrial uses, or combinations of such uses, in which one or more of the regulations, other than use regulations, of the District in which the development is to be situated, is waived or varied to allow flexibility and initiative in site and building design and location, in accordance with an approved plan and imposed general requirements.

Through the zone change process, land may be classified as suitable for a rezone to PD pursuant to the following considerations as determined appropriate by the Planning Commission and City Council:

1. Residential PDs in residential and agricultural zones must meet all requirements and regulations as stipulated in the Willard City Subdivision Ordinance and its associated Specifications and Standards except as specified in this Chapter.

2. Commercial or industrial PD uses, or combinations of such uses, in commercial zones must meet all requirements and regulations as stipulated in the Willard City Commercial Zones and Development Ordinance and the Subdivision Ordinance Specifications and Standards, when applicable, except as specified in this Chapter.

3. Development under this chapter requires a zone change together with a concept plan approval. Existing zone district standards may be used as a baseline for a proposed PD. A regulating plan is required and shall include design and quality standards for the entire site. Phasing plans and improvement agreements shall also be required. Development agreements are required in all cases. All such development shall be consistent with the goals of the General Plan.

4. Combinations of residential, commercial, or industrial PD uses must meet all requirements and regulations as stipulated in the Willard City Subdivision Ordinance and its associated Specifications and Standards or the Commercial Zones and Development Ordinance, whichever is applicable to the relevant zoned, or potential zoned, portion of the development.

5. Design Compatibility. The development should be planned as one complex land use with a common architectural design theme that provides variety with a high degree of architectural quality, rather than an aggregation of individual, unrelated buildings located on separate unrelated lots.

12-106-3. PDs in Residential and Agricultural zones.

Willard City allows Residential PDs, also known as a cluster developments, in areas zoned, or potentially zoned, as R-1/2, R-1, A-3, A-5, or MU-40 based on Willard City's current Land Use Map in affect at the time the PD application is accepted by Willard City. All requirements and regulations as stipulated in the Willard City Subdivision Ordinance and its associated Specifications and Standards must be met except as noted below:

1. The minimum size for a Residential PD is four (4) acres.

2. If the Development consists initially of more than one parcel of land, the parcels must form one contiguous area and cannot be bisected or separated except by a public right-of-way or easement (e.g., street or trail), or a natural barrier, or barriers, such as a stream or lake.

3. A minimum of thirty percent (30%) of land in a Residential PD development will be set aside under a protected conservation easement on part of the same property or an adjacent property, in perpetuity.

4. The maximum overall density of dwelling units in a Residential PD is four units per acre in the development. Density shall be determined by using the developable acreage of the entire proposed development. Developable acreage is land under twenty percent (20%) slope which is capable of being improved with landscaping, recreational facilities, buildings or parking. Unmitigated natural hazard areas and wetland areas shall be "undevelopable" land. Land devoted to street usage (the right of way for public streets and the area from back of curb to back of curb for private streets) shall not be considered developable acreage and must be subtracted out of the total acreage used to determine density.

5. The land in the protected conservation easement may not be further subdivided. It may be kept by the development's Home Owners' Association, donated to Willard City for use as a public park or other facility as deemed necessary by Willard City, or donated, with the written approval of Willard City, to the public school system. The conservation easement area must be maintained in its current or an improved condition and that condition must be acceptable to Willard City and its residents. If the area is not maintained in a condition acceptable to Willard City to meet the public health, safety, and general welfare of its citizens, Willard City will maintain it and charge the lot owners of the associated development for the maintenance costs with the costs divided equally among each lot owner. Also see section 12-106-5, Required Conditions, in this Chapter.

6. No dwelling unit is allowed within the protected conservation easement area; however, a facility for the common use of the PD, such as a recreation center, public facilities, such as trails, parks, swimming pool, agriculture purposes, fire or police station, or public school, may be placed in this area if there is a current or projected public need and the facility is approved in writing by Willard City.

12-106-4. PDs in Commercial Zones

The City of Willard allows commercial PDs in areas zoned, or potentially zoned, as Commercial based on Willard City's current Land Use Map in affect when the PD

application is accepted by Willard City. The city may also allow small scale neighborhood commercial in a Planned Development located in a residentially zoned district if the proposed commercial development is central to the development and includes a total area of at least four (4) acres. Other conditions may be required to mitigate impacts to surrounding neighborhoods and to guarantee appropriate street access. All requirements and regulations as stipulated in the Willard City Commercial Zones and Development Ordinance and the Willard City Subdivision Ordinance and its associated Specifications and Standards, when applicable, must be met except as noted below:

1. The minimum size for a Commercial PD is four (4) acres.

2. If the Development consists initially of more than one parcel of land, the parcels must form one contiguous area and cannot be bisected or separated except by a public right-of-way or easement (e.g., street or trail), or a natural barrier, or barriers, such as a stream or lake.

3. A minimum of twenty-five percent (25%) of land in a Commercial PD will be set aside under a protected conservation easement on part of the same property, in perpetuity.

4. A Commercial PD may include areas in the sensitivity zone (see GP 25) or an MU40 zone, provided the sensitivity or MU40 zone is not in the commercially developed part of the PD.

5. The maximum density (i.e. units per acre) and minimum lot area are as specified in the Willard City Commercial Zones and Development ordinance. Dwelling units must be multi-family, such as town-homes, condominiums, cluster-homes, or apartments, and may not be single-family homes.

6. The land in the protected conservation easement may not be further subdivided. It may be kept by the owner, or owners, of the Commercial PD, donated to Willard City for use as a public park or other facility as deemed necessary by Willard City, or donated, with the written approval of Willard City, to the public school system. The conservation easement area must be maintained in its current or an improved condition and that condition must be acceptable to Willard City and its residents. If the area is not maintained in a condition acceptable to Willard City to meet the public health, safety, and general welfare of its citizens, Willard City will maintain it and charge the owners of the associated development for the maintenance costs with the costs divided among the owners based on the proportionate square footage of land owned. Also see section 12-106-5, Required Conditions, in this Chapter.

7. No dwelling unit is allowed in the protected conservation easement area; however, a public facility, such as a park, fire or police station, or public school, may be placed in this area if there is a current or projected public need and the facility is approved in writing by Willard City.

8. Special consideration shall be given to avoid placement of the PD adjacent to farming or livestock operations (refer to the Right to Farm provisions in the General Plan).

12-106-5. <u>Required Conditions.</u>

1. No PD shall have an area less than that approved by the Land Use Authority as adequate for the proposed development.

2. A PD which contains uses not permitted in the zoning district in which it is to be located requires a change of zoning district and shall be accompanied by an application for a zoning amendment, except that any residential use is considered a permitted use in a PD which allows residential uses and shall be governed by density, design, and other requirements of this Ordinance or the Subdivision Ordinance, as applicable.

3. The development shall be in single or corporate-type ownership at the time of application, or the subject of an application filed jointly by all owners of the property.

4. Preservation, maintenance and ownership of required open spaces within the development shall be accomplished in a manner acceptable to Willard City, including:

a. Dedication of the land as a public park or parkway system, or other public facilities, or,

b. Granting to the Local Jurisdiction a permanent, open space easement on and over the said private open spaces to guarantee that the open space remains perpetually in recreational use, with ownership and maintenance being the responsibility of an Owners' Association established with articles of association and bylaws which are satisfactory to the Governing Body, or,

c. Complying with the provisions of the Condominium Ownership Act of 1963, Title 57, Chapter 8, Utah Code Annotated, 1953, as amended, which provides for the payment of common expenses for the upkeep of the common areas and facilities, or,

d. Other plans, found by the Land Use Authority to be satisfactory in maintaining the open space, and to assure the space will be kept in compliance with planned usage requirements.

5. The proposed use of the particular location shall be shown as necessary or desirable, to provide a service or facility which will contribute to the general well-being of the neighborhood and the community.

6. It shall be shown that under the circumstances of the particular case, the proposed use will not be detrimental to the health, safety, or general welfare of persons residing in the vicinity of the PD.

7. Where the General Plan calls for a public park in or near a proposed PD, the governing body may require the developer to construct and deed a public park to Willard City.

8. In the event the common open space and other facilities are not maintained in a manner consistent with the approved final plan, the city may at its option cause such maintenance to be performed and assess the costs to the affected property owners or responsible association. The city may also require a Special Improvement District or similar mechanism for maintenance.

12-106-6. General Site Plan

Applications shall be accompanied by a general site plan for the total area within the proposed development showing, where pertinent:

1. The use or uses, dimensions, sketch elevations, and locations of proposed structures.

2. Dimensions and locations of areas to be reserved and developed for vehicular and pedestrian circulation, parking, public uses such as schools and playgrounds, landscaping, and other open spaces.

3. Architectural drawings and sketches outlining the general design and character of the proposed uses and the physical relationship of the uses.

4. Such other pertinent information, including the general design and character of the proposed uses and the physical relationship of the uses.

5. Such other pertinent information, including residential density, coverage, and open space characteristics, shall be included as may be necessary to make determination that the contemplated arrangement of buildings and uses makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this Ordinance.

6. An impact statement including effect on the environment, city utilities, traffic, and schools shall accompany the application.

7. Any other relevant site plan requirements and regulations as noted in Chapter 12-400, Subdivision Ordinance, and Chapter 12-112, Commercial Zones and Development Ordinance.

12-106-7. <u>Construction Limitations.</u>

1. Upon approval of a PD, construction shall proceed only in accordance with the plans and specifications approved by the Land Use Authority, and in conformity with any conditions attached by the Land Use Authority to its approval.

2. Amendments to approved plans and specifications for a PD shall be obtained only by following the procedures here outlined for first approval and as noted in Chapter 12-400.

3. Willard City shall not issue any permit for any proposed building, structure or use within the project unless such building, structure, or use is in accordance with the approved development planned with any conditions imposed in conjunction with its approval as noted in Chapter 12-400.

12-106-8. <u>Review by Planning Commission.</u>

In order that it may approve a PD, the Planning Commission shall have authority to require that the conditions of Chapter 12-108, Design Review, and the following conditions (among other conditions it deems appropriate) be met by the applicant. The following conditions are intended to emphasize, enhance, or add to the conditions in Chapter 12-108:

1. That the proponents of the PD have demonstrated to the satisfaction of the Planning Commission that they are financially able to carry out the project.

2. That the proponents intend to start construction within one year of the approval of the project, and intend to complete said construction, or approved stages thereof, in accordance with the approved plan.

3. That the development is planned as one complex land use rather than as an

aggregation of individual and unrelated buildings and uses.

4. That the development as planned will accomplish the purpose outlined in Section 12-106-1.

5. The Planning Commission shall require such arrangements of structures and open spaces within the site development plan as necessary to assure that adjacent properties will not be adversely affected.

6. Landscaping, fencing and screening related to the several uses within the site and as a means of integrating the proposed development into its surroundings shall be planned and presented to the Planning Commission for approval, together with other required plans for the development.

7. The size, location, design and nature of signs, if any, and the intensity and direction of area or flood-lighting shall be detailed in the application.

8. A grading and drainage plan shall be submitted to the Planning Commission with the application.

9. A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed as part of a general landscaping plan. Use of xeriscape designs is recommended.

12-106-9. <u>Scope of Planning Commission Action.</u>

In carrying out the intent of this Chapter, the Planning Commission shall consider the following principles:

1. It is the intent of this Chapter that site and building plans for a PD shall be prepared by a qualified designer or qualified team of designers having professional competence in urban planning as proposed in the application.

2. It is not the intent of this Section that control of the design of a PD by the Planning Commission is so rigidly exercised that individual initiative be stifled and substantial additional expense incurred; rather, it is the intent of this Section that the control exercised be the minimum necessary to achieve the purpose of this Chapter.

3. The Planning Commission may recommend approval or disapproval of an application for a PD. In a recommendation for approval, the commission may attach such conditions as it may deem necessary to secure compliance with the purposes set forth in Section 12-106-1. Final approval of the PD application shall be made by the City Council in compliance with the regulations of this Ordinance. Approval of a PD Rezone in no sense excuses the developer from the applicable requirements of the City Ordinances in effect at the time of the approval, except as modifications thereof are specifically authorized in the approval of the application for the PD.

4. At least one public hearing is required for review of PD applications. The land use authority may determine that additional public hearings are necessary. The public hearing(s) may be held in combination with the rezone request. Written notice shall be mailed to property owners within one-quarter (1/4) mile of the proposed PD a minimum of fifteen calendar days prior to the hearing, by the city, at the expense of the applicant. Failure to receive actual notice of the hearing shall in no way affect the validity of the action, providing a good faith effort is made by the city.

12-106-10. <u>Performance Bonds.</u>

The city may allow a developer to proceed with recording or development activities (as defined below) before completing improvements listed in this chapter if the developer files with the city a cash bond, escrow bank account bond, or an irrevocable letter of credit as an improvement assurance warranty (as described below) in a form approved by the city attorney and in an amount specified by the city engineer, plus fifty percent to assure actual construction of the improvements listed in this chapter within two years after the date such transaction is posted. Upon partial completion of an element of the improvements and after receiving lien release disclosers signed by contractors, sub-contractors, suppliers, and other firms with vested interest who completed work on or supplied material for the portion of work involved, such as storm drain, roadway, parks and open space, and/or culinary and secondary water, then the City shall release ninety five percent of the valued amount with respect to such element, upon substantial completion of an element of the improvements, and after receiving lien release disclosers the City shall release one hundred percent of the constructed value amount with respect to such element, and the remainder of such amount will be held for an additional one year period beginning on the date such improvements are accepted as an improvement assurance warranty.

12-106-11. Conflict, Severability, and Effective Date.

1. Conflict. If any portion of this code is found to be in conflict with any other provision of any zoning, building, fire, safety, or health ordinance of the City code, the provision which establishes the higher standard shall prevail.

2. Severability. If any section, subsection, sentence, clause, or phrase of this code or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this code, or the application of the provision to other persons or circumstances is in effect and shall remain in full force and effect.

3. Effective Date. This code shall take effect and be in force on February, 16th, 2009. Approved by the City Council this 12th day of February, 2009 and signed in authentication of its passage this 16th day of February, 2009.

EXHIBIT D

NOVEMBER 14, 2019, APPROVALS

EXHIBIT D

WILLARD CITY COUNCIL
NOTICE

The Willard City Council of the Willard City Corporation will hold a meeting on Thursday, November 14, 2019, at the Willard City Hall, 80 West 50 South. The meeting will begin promptly at 6:30 p.m. The agenda will be as follows:

1. **Call to Order**
   a. Invocation
   b. Pledge of Allegiance
2. **Open Comment Period** (Individuals have three minutes for open comments. If required, items may be referred to department heads for resolution. Items requiring action by the City Council will be placed on the agenda for a future meeting.)
3. **Business**
   a. Child Richards CPAs & Advisors - Presentation of the 2018-19 Fiscal Year Audit
   b. Abdiel Vazquez - American Democracy Project Chair, Weber State College Republicans Vice Chair Weber State University- Request for consideration of Resolution 2019-19 **A RESOLUTION REQUESTING CONTACT INFORMATION ON MUNICIPAL ELECTED OFFICIALS BE INCLUDED ON THE WILLARD CITY WEBSITE**
   c. Planning Commission
      1) Public comment and presentation on any written comment and discussion on of disposal a parcel of real property located at approximately 40 N 100 E, Parcel 02-048-0060 (.07 acres).
      2) Jared Erickson/Sam Kunzler – Presentation of revised concept plan and request to accept the concept changes.
      3) Bryce Wheelwright - Presentation and discussion of a proposed revision to Ordinance 12-400 Subdivision Ordinance allowing a waiver of curb and gutter.
      4) Update on Planning Commission Vacancies
   d. Discussion and consideration of Ordinance 2019-E **AN ORDINANCE AMENDING TITLE THREE OF THE WILLARD CITY GENERAL ORDINANCE TO CREATE AND DEFINE THE POSITION OF CITY MANAGER**
   e. Approval of Minutes – October 24, 2019, Work Session and October 24, 2019 Regular meeting.
   f. Financial –
      1) Warrants
      2) Vouchers
      3) Reports
4. **Department Reports**
   a. Maintenance Department
      1) Purchase approvals
   b. Police Department
      1) Purchase approvals
   c. Fire Department
      1) Purchase approvals
5. **Council members**
   a. Mike Crossley
   b. Del Fredde
   c. Josh Braegger
   d. Jared Profaizer
   e. Brad Robb
6. **Mayor's General Correspondence and Information**
7. **Closed Session** – To discuss the sale/disposal of real property and to discuss pending litigation.
8. **Adjourn**

Pursuant to section 52-4-204 UCA the City Council may vote to go in to an executive session for the purposes stated by section 52-4-205 UCA.

I, designated recorder for Willard City hereby certify that the foregoing notice and agenda was posted at the Willard City Hall and on the State of Utah Public Meeting Notice Website November 13, 2019.

Recorder, Willard City

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the City Office at 80 West 50 South, Willard, Utah 84340, phone number (435) 734-9881, at least three working days prior to the meeting.

Date:	November 14, 2019
Time:	6:30 p.m.
Place:	Willard City Hall, 80 W 50 S, Willard, UT 84340
Attendance:	Mayor Kenneth Braegger, Council members Josh Braegger, Jared Profaizer Del Fredde, Mike Crossley, and Brad Robb; City Recorder Teri Fellenz, City Planner Bryce Wheelwright, City Attorney Colt Mund
Excused:	
Others:	(see attached for others)

1. **Call to Order**
   a. Invocation
   b. Pledge of Allegiance
2. **Open Comment Period** (Individuals have three minutes for open comments. If required, items may be referred to department heads for resolution. Items requiring action by the City Council will be placed on the agenda for a future meeting.) No public comment was received.
3. **Business**
   a. Child Richards CPAs & Advisors - Presentation of the 2018-19 Fiscal Year Audit – Ryan Child of Child, Richards CPAs and Advisors presented the results of the 2018-19 Fiscal year audit. He stated they gave an unqualified opinion and there is a clean financial statement. He reviewed balances of the funds and stated there is only one finding which is a General Fund Balance in excess of 25% of the fund revenues. The corrective action is to spend the excess or transfer it to a Capital Improvements Fund. He asked if there were any questions and stated they enjoyed working with the staff.

   b. Abdiel Vazquez - American Democracy Project Chair, Weber State College Republicans Vice Chair Weber State University- Request for consideration of Resolution 2019-19 **A RESOLUTION REQUESTING CONTACT INFORMATION ON MUNICIPAL ELECTED OFFICIALS BE INCLUDED ON THE WILLARD CITY WEBSITE –** Abdiel Vazquez introduced himself and explained he is currently attending Weber State University and the requirements of one of the classes is to present a resolution to the City Council for approval. He stated he felt it is important for the citizens to know who their Council Members are and how to contact them. He presented Resolution 2019-19.

   Council member Profaizer stated he felt the best place to approach Council members and find out what is going on is for citizens to come to a City Council meeting. Council member Robb stated that he worked with Abe on the resolution for the past month and not everyone is available to make it to the City Council meeting. He stated they discussed putting the Council members names, phone number and email address. Council member Fredde stated he felt it was a good thing to have. Kaleb Kunzler suggested an email managed by the City that is trackable or they could contact the City Office.

   Council member Robb stated he disagrees and feels they are public officials and the public should be able to access their elected officials. A discussion was held on

issues with giving out personal cell phones and email numbers and the possibility of passing the resolution and adding Council members names and determine what contact information can be made available.

Abdiel also explained he works for Congressman Rob Bishop and how contact information is available through that office.

Council member Robb made a motion to approve Resolution 2019-19, seconded by Council member Fredde. The motion carried with the following vote.

Council member Robb – yes
Council member Crossley- yes
Council member Fredde – yes
Council member Braegger – yes
Council member Profaizer – yes

c. Planning Commission

1) Public comment and presentation on any written comment and discussion on of disposal a parcel of real property located at approximately 40 N 100 E, Parcel 02-048-0060 (.07 acres). City Planner Bryce Wheelwright explained there was a public comment period posted and they have not received any written comment regarding the parcel of property the City Council is considering for disposal. Mayor Braegger gave the audience an opportunity to give comment. No comment was received. City Attorney Colt Mund explained they will need to present a resolution and the State Code also states the disposal of a "significant parcel" of property requires a public hearing. Because there is not a definition of a significant parcel in the Willard City Ordinance a public hearing will also be noticed for the next meeting.

2) Jared Erickson/Sam Kunzler – Presentation of revised concept plan and request to accept the concept changes. Jared Erickson presented the attached revised plan for the proposed Planned Development. He explained the school was moved to the west side and the revised the density with a 24 unit increase. He also explained the lane that has been in question to access properties west of the development will be a recorded easement. Mayor Braegger explained he likes the plan and asked what happens if the school is not interested in the property. Jared stated there would be trails and a boardwalk and the particulars could be incorporated into the development agreement.

   Council member Profaizer asked if the road lines up with 100 W. as shown on the Master Road Plan. Jared Erickson stated it does line up. Jared Erickson stated there are a lot of town homes which he feels is a better plan. Mayor Braegger explained the Holmes property is shown on the plan, but is not part of the development. Jared Erickson stated it was just to show the potential of the Holmes property.

   Council member Crossley made a motion to approve the revised concept plan, seconded by Council member Profaizer. The motion carried.

   Council member Robb – yes
   Council member Crossley- yes
   Council member Fredde – yes
   Council member Braegger – yes
   Council member Profaizer – yes

3) Bryce Wheelwright - Presentation and discussion of a proposed revision to Ordinance 12-400 Subdivision Ordinance allowing a waiver of curb and gutter. City Planner Bryce Wheelwright presented the attached proposed ordinance. He explained there are issues with minor subdivisions and areas where curb and gutter didn't make sense. The Planning Commission worked on the Old Town Willard Ordinance that was approved a few months ago.

   The Planning Commission was then requested by property owners to look at the City as a whole. The previous City Attorney and Planning Commission created an ordinance that if a property meets certain criteria it would be a solution to the problem. Bryce stated he was not sure that it would and asked City Attorney Colt Mund to comment. Attorney Mund stated he spoke with Attorney Mike Christiansen in his office about allowing waivers of curb and gutter on a general level. They both offer the same opinion that there should not be modification to the ordinance to allow a waiver.

   Council member Braegger stated the Flood Control Board is looking at the Storm Water Protection Plans and the State seems to be moving away from curb and gutter and to natural drainage areas for the water to dissipate. Colt stated he is not familiar with the State storm water plans and stated that anything considered on a case by case basis opens up the Council for arbitrary decisions. No curb and gutter is a City Council decision, but the current ordinance requires it.

   Council member Profaizer stated they should not make any changes until they have an understanding of what the State requirements are and the direction they are moving. Mayor Braegger explained having curb and gutter makes a defined line of property. He explained the issues of residents encroaching on the right-of-way with landscaping and yard art. He also explained areas where they currently have the natural drainage areas, the ditches in the right-of-way have been filled up and the drain pipes under the driveways have not been installed causing more problems. He stated it is an issue they have been dealing with and feels they should stick with curb and gutter. He stated if they delay then it becomes a city problem. Mayor Braegger also stated the east-west streets on the east side need to have something done. The sides of the streets wash out each time there is a rain storm. He stated they may need to just form a SSID and do a curb and gutter project. More discussion was held on the need to have developers put in the curb and gutter and not have an ordinance where they consider it on a case by case basis. Council member Fredde explained he felt they need to stick with curb and gutter.

   City Attorney Mund stated the Planning Commission should explore it further and it is his opinion it is not a wise decision to go further with the ordinance and felt the time could be spent better elsewhere. The Council agreed.

4) Update on Planning Commission Vacancies – City Planner Bryce Wheelwright stated he sent a list of names to the Council members to fill 2 vacancies. The Council asked if any of them had been contacted. City Planner Bryce Wheelwright stated they have not. Mayor Braegger stated he will start contacting the individuals to see if they are interested.

d. Discussion and consideration of Ordinance 2019-E **AN ORDINANCE AMENDING TITLE THREE OF THE WILLARD CITY GENERAL ORDINANCE TO CREATE AND DEFINE THE POSITION OF CITY MANAGER** –The attached ordinance was presented for approval delegating some of the powers of the Mayor and Council to a City Manager. Council member Profaizer stated he feels the position will be needed more and more as the City grows.

Council member Profaizer made a motion to approve Ordinance 2019-B. The motion was seconded by Council member Robb and the motion carried.

Council member Robb – yes
Council member Crossley- yes
Council member Fredde – yes
Council member Braegger – yes
Council member Profaizer – yes

e. Approval of Minutes – The minutes of the October 24, 2019, Work Session and the October 24, 2019 Regular meeting, were individually reviewed.

Council member Crossley made a motion to approve the minutes as written, seconded by Council member Braegger. The motion carried.

Council member Robb – yes
Council member Crossley- yes
Council member Fredde – yes
Council member Braegger – yes
Council member Profaizer – yes

f. Financial – The vouchers and warrants were presented to the Council for approval. The reports were individually reviewed.
   1) Warrants
   2) Vouchers
   3) Reports

4. **Department Reports**
   a. Maintenance Department – Supervisor Doug Thompson reported the contractor is progressing on the new water tank and the lid should be poured in the next week.
      1) Purchase approvals
   b. Police Department
      1) Purchase approvals
   c. Fire Department
      1) Purchase approvals
5. **Council members**
   a. Mike Crossley
   b. Del Fredde – Council member Fredde reported he appreciates the way the community is coming together to help Bill Clausen who lost his house in a fire.
   c. Josh Braegger – Council member Braegger reported the Flood Control Board has curb and gutter on the east side streets on the projects list. A discussion was held on getting in contact with Matt or Stan of Jones and Associates on future storm water and curb and gutter projects.
   d. Jared Profaizer
   e. Brad Robb – Stated they may need to plan a special meeting to review and approve the plumbing and block portions of the restroom construction for the Nature Park.
6. **Mayor's General Correspondence and Information-**Mayor Braegger reminded everyone of the annual Christmas Party on December 4th.
7. **Closed Session** – To discuss the sale/disposal of real property and to discuss pending litigation.

Council member Crossley made a motion to go into a closed session to discuss the sale/disposal of real property and to discuss pending litigation. The motion was seconded by Council member Robb. The motion carried.

Council member Robb – yes
Council member Crossley- yes
Council member Fredde – yes
Council member Braegger – yes
Council member Profaizer – yes

Mayor Braegger, Council members Robb, Braegger, Crossley, Profaizer, and Fredde, City Attorney Colt Mund, and City Recorder Teri Fellenz adjourned to the main office at 7:35 for the closed session.

At 7:41 Attorney Mund left and Attorney Chris Davis joined the others in the closed session.

Council member Crossley made a motion to adjourn the closed session and resume the regular City Council meeting. The motion was seconded by Council member Profaizer and the regular meeting resumed at 8:00 p.m.

Council member Robb – yes
Council member Crossley- yes
Council member Fredde – yes
Council member Braegger – yes
Council member Profaizer – yes

Mayor Braegger then allowed a presentation by an individual for an Eagle Scout Project. The plan is to widen a trail at the North East corner of the Willard Nature Park to connect it and keep it off of the road. The Council agreed it was a good idea and no City funds are required.

8. **Adjourn:** ***Council member Robb made a motion to adjourn the meeting, seconded by Council member Braegger. The motion carried with a unanimous vote and the meeting adjourned at 8:05 p.m.***

Minutes were read individually and approved on December 12, 2019

Mayor

Recorder

EXHIBIT E
200 West Waterline

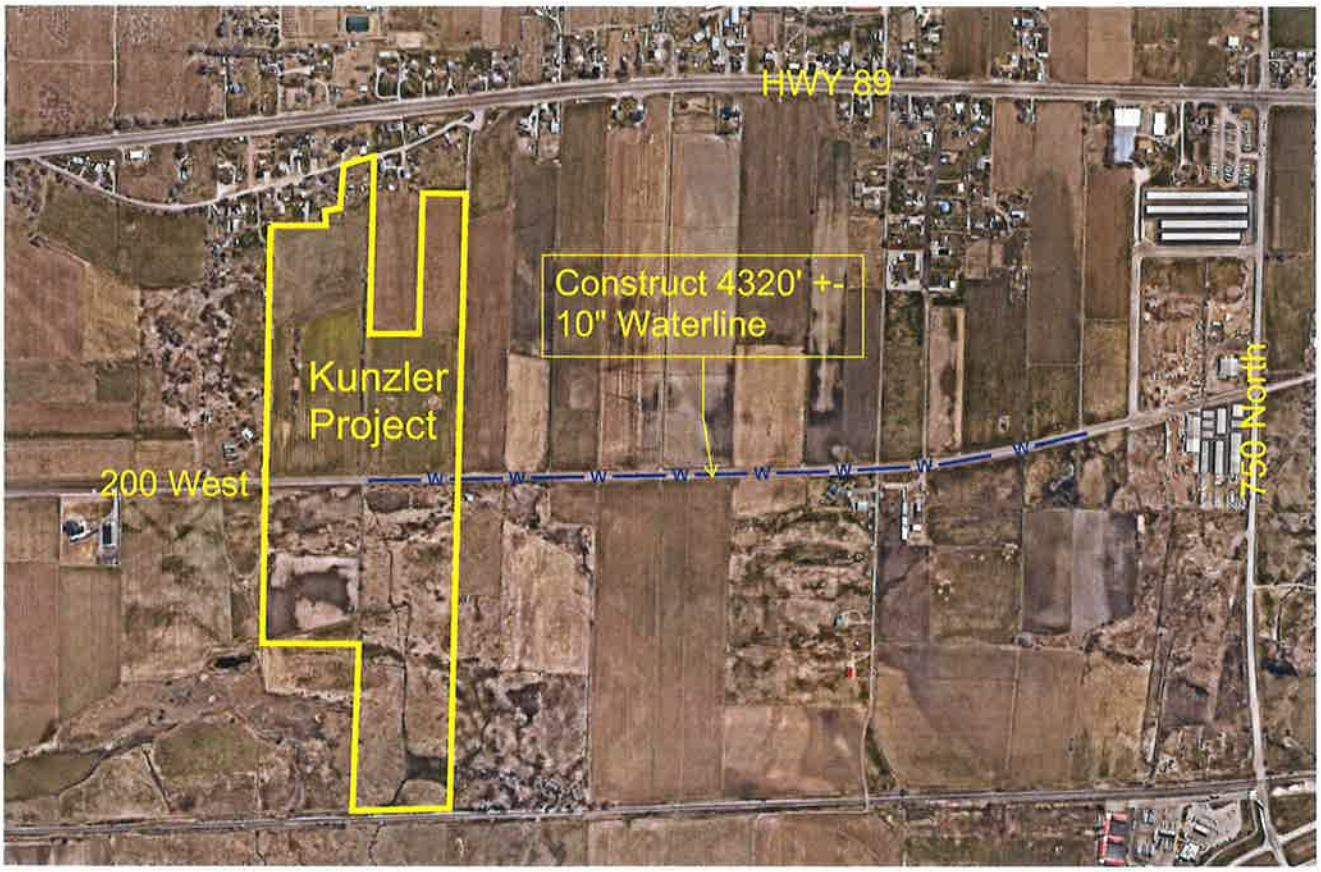
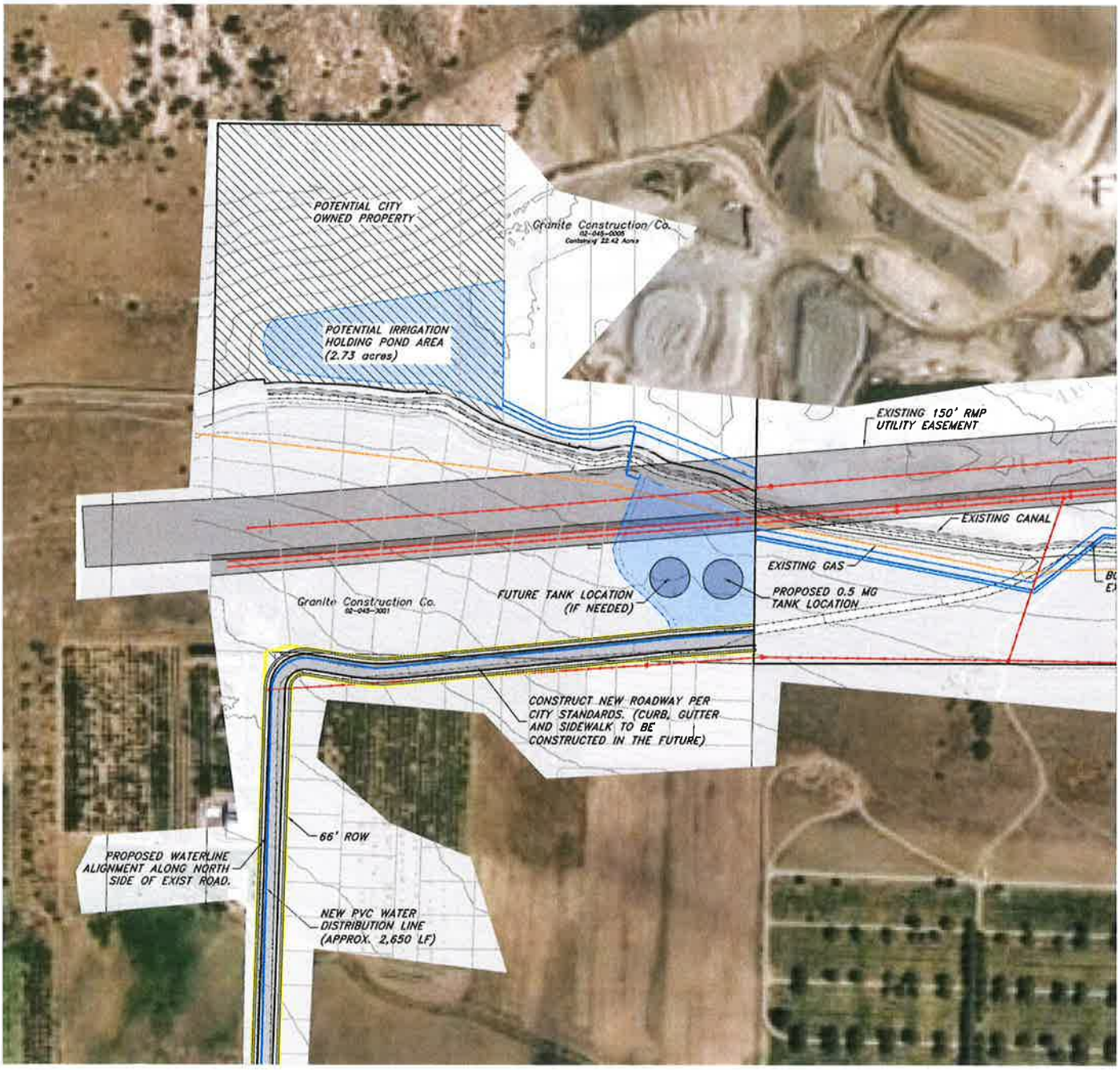


EXHIBIT F
HARGIS HILL WATERLINE

EXHIBIT G
Water Tank Location



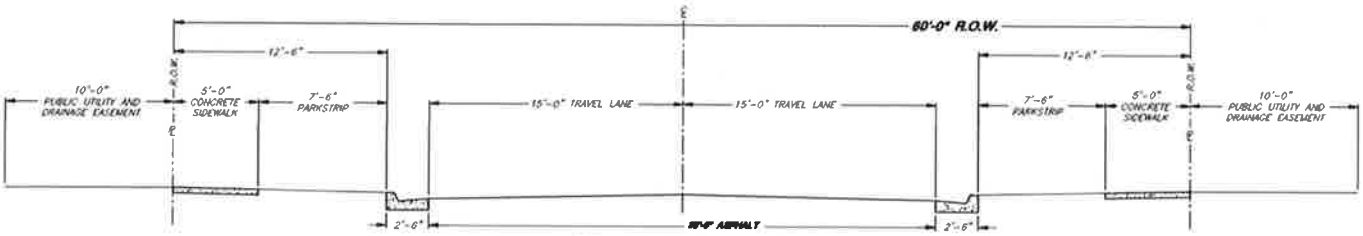
N

EXHIBIT H
Transmission Line

N

EXHIBIT I

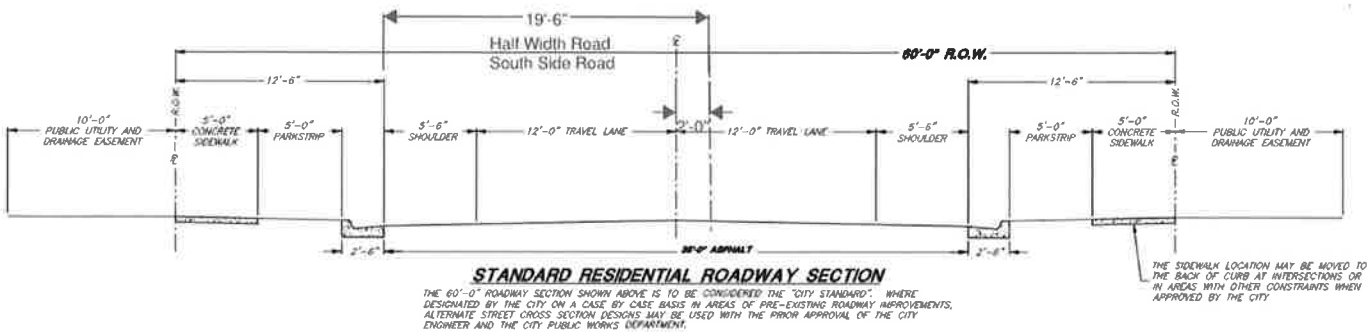
CROSS SECTION PUD – 60' RIGHT-OF-WAY



PUD - 60' RIGHT-OF-WAY

EXHIBIT J

CROSS SECTION STANDARD RESIDENTIAL ROADWAY



STANDARD RESIDENTIAL ROADWAY SECTION

THE 60'-0" ROADWAY SECTION SHOWN ABOVE IS TO BE CONSIDERED THE "CITY STANDARD". WHERE DESIGNATED BY THE CITY ON A CASE BY CASE BASIS IN AREAS OF PRE-EXISTING ROADWAY IMPROVEMENTS, ALTERNATE STREET CROSS SECTION DESIGNS MAY BE USED WITH THE PRIOR APPROVAL OF THE CITY ENGINEER AND THE CITY PUBLIC WORKS DEPARTMENT.

EXHIBIT K
Open Space Plan

EXHIBIT L

Open Space Plan – School Option

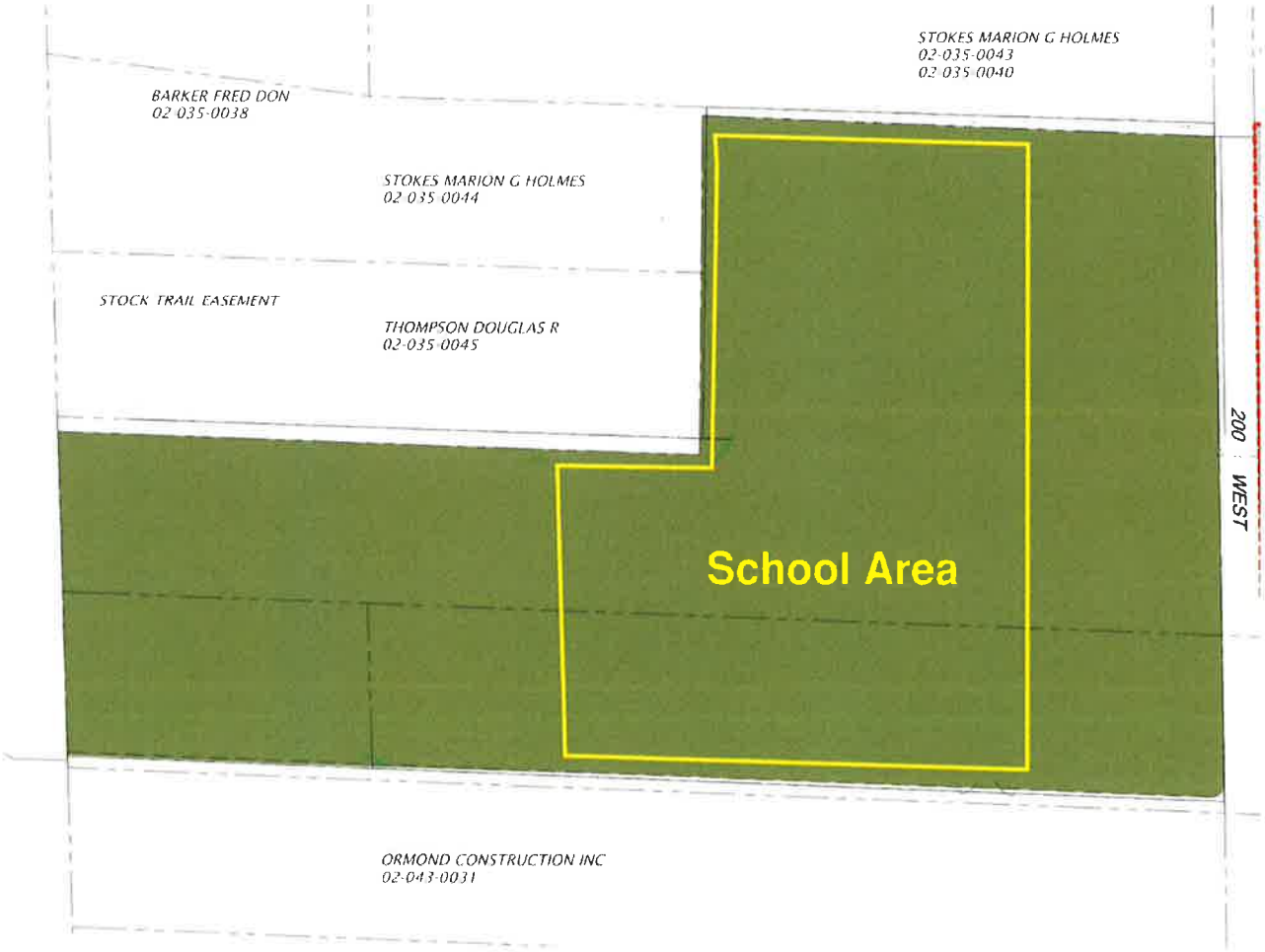


EXHIBIT M

REIMBURSEMENT AGREEMENT

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "**Agreement**") is entered into and effective as of the ___ day of _____, 2023, between the WILLARD CITY, a municipal corporation and political subdivision of the State of Utah ("**City**") and KUNZLER LAND HOLDINGS, LLC, a Utah limited liability company ("**Developer**"). The City and Developer are referred to herein individually as "party," and collectively as "parties."

RECITALS

A. Developer is the owner and / or developer of certain real property located in Willard City, Box Elder County, State of Utah, more particularly described in **Appendix 1** attached hereto and incorporated herein by reference (the "**Developer Property**").

B. In connection with the development of the Developer Property and as a condition of development approval from the City, Developer is willing to construct and install (or advance funds for the construction and installation of) certain infrastructure identified below (collectively the "**Improvements**").

C. The City has determined that the anticipated Improvements are a system improvement to the City's municipal infrastructure as the term "system improvement" is used in the Utah Impact Fees Act, Utah Code § 11-36a-101, et seq.

D. Developer desires reimbursement for the cost of design, installation, and construction of the Improvements (or for funds advanced by Developer in connection with the design, construction, and installation of the Improvements) and the City is willing to reimburse Developer for the same from impact fees or other, fees, assessments, and taxes charged or collected by the City (collectively the "**Reimbursement Fees**").

E. Reimbursements are authorized by the Willard City Municipal Code (the "**City Code**") for the purpose of implementing the policies stated therein.

NOW, THEREFORE, the City and Developer, for and in consideration of the promises set forth in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals and Appendices. The above Recitals and Appendices attached hereto and referenced herein are hereby incorporated into this Agreement.

2. Scope of Improvements. The expenses for Improvements which are covered by this Agreement, and which are reimbursable, are more particularly described in that certain *Development Agreement* ("**Development Agreement**") dated [insert date of Development Agreement]. The Development Agreement was recorded in the office of the Box Elder County Recorder on [date] as Entry No. [insert recording information]. The Development Agreement was entered by and among Developer, the City, and certain landowners with respect to the Developer

Property. As set forth in the Development Agreement, the reimbursable expenses include the following:

2.1. 200 West Water Line. Subject to the terms of the Development Agreement, Developer will construct the 200 West Water Line as defined and described in the Development Agreement. The entire cost of the construction and upsizing of the 200 West Water Line is a reimbursable expense.

2.2. Water Tank and Transmission Line. Subject to the terms of the Development Agreement, Developer will contribute up to one million six hundred twenty-five thousand dollars ($1,625,000.00) toward the construction of the Water Tank and Transmission Line as defined and described in the Development Agreement, such contribution being referred to in the Development Agreement as the Water Tank and Transmission Line Expense. The entire Water Tank and Transmission Line Expense is a reimbursable expense.

2.3. Public Streets. Other than (a) public streets within the Developer Property, (b) the Widening of 200 West Street, as described in the Development Agreement, and (c) the construction of the South Side Road, as defined in the Agreement, the entire cost of constructing any public streets within the City is a reimbursable expense.

2.4. Open Space. Subject to the terms of the Development Agreement, Developer will construct and install certain improvements in the Open Space Area pursuant to the Open Space Plan or the Amended Open Space Plan, as those terms are defined and described in the Development Agreement. The entire cost of improving the Open Space Area is a reimbursable expense.

3. Developer Obligations. When required by the Development Agreement, Developer shall design, construct and install the Improvements in accordance with the terms of the Development Agreement, or will contribute funds as set forth in the Development Agreement.

4. Reimbursement Obligations by the City for the Improvements. The City shall reimburse Developer for the cost of the Improvements in the following amounts ("**Reimbursement Amount**"). A breakdown of the current estimated Reimbursement Amount is included as **Appendix 2** attached hereto and incorporated herein by reference. Notwithstanding the foregoing, in the event of a conflict between **Appendix 2** and the actual costs comprising the Reimbursement Amount set forth below, the actual costs will control. The Reimbursement Amount consists of the following:

4.1. 200 West Water Line. As set forth in the Development Agreement, the entire cost of constructing the 200 West Water Line will be included in the Reimbursement Amount. The current estimated cost of constructing the 200 West Water Line is [amount].

4.2. Water Tank and Transmission Line. The entire amount of Developer's Water Tank and Transmission Line Expense, as that term is defined in the Development Agreement, is included in the Reimbursement Amount. The amount of Developer's Water Tank and Transmission Line Expense will not exceed $1,625,000.00.

4.3. Widening. The entire cost of constructing any public streets which are not excepted under Section 2.3, above, is included in the Reimbursement Amount. The current estimated cost of constructing public streets is [amount].

4.4. Open Space. The entire cost of Improvements in the Open Space Area is included in the Reimbursement Amount. The current estimated cost of constructing the Improvements in the Open Space area is [amount].

5. Process for Reimbursement. The following provisions will apply to the City's obligation to pay the Reimbursement Amount.

5.1. Where required by the Development Agreement, the City will sequester impact fees or other funds paid to, or received by, the City which are intended to be used to reimburse Developer for the Reimbursement Amount.

5.2. Prior to the City's payment of the Reimbursement Amount, Developer shall submit to the City a request for payment detailing and confirming the amounts paid, or contributed by Developer for construction or installation of the Improvements, together with actual receipts, bills, or invoices (as applicable) and cancelled checks or other evidence of payment. For reimbursement of any amounts other than Developer's Water Tank and Transmission Line Expense, any applicable Improvements must be installed, inspected, and approved, which approval shall not be withheld so long as the Improvements are constructed pursuant to plans approved by the City, and where required such Improvements will be dedicated to the City.

5.3. Beginning after any Improvements are constructed, or after Developer contributes amounts for the same, payment of the Reimbursement Amount to Developer shall be made on a quarterly basis on April 15, June 15, September 15 and January 15 of each year until the Reimbursement Amount is paid in full. Reimbursement payments shall be mailed to Developer at:

Kunzler Land Holdings, LLC
Attn: Bryan Bayles
1740 Combe Road, Suite 2
Ogden, Utah 84403

5.4. For amounts related to the Water Tank and Transmission Line, payment of the Reimbursement Amount will be subject to Section 8(C)(ii) of the Development Agreement.

5.5. In lieu of receiving cash for any portion of the Reimbursement Amount, the Developer may elect to receive credits toward the Developer's obligation to pay any applicable impact fees ("**Impact Fees**").

6. Final Payment. The City will pay the Reimbursement Amount, or portions thereof, on the terms and conditions set forth in Section 5.3. Notwithstanding the foregoing or any other provision of this Agreement, and regardless of whether the City has collected

sufficient impact fees or other third-party payments to cover the Reimbursement Amount, the City shall pay Developer the full Reimbursement Amount not later than two (2) years after receipt all documents required under Section 5.2 above (the "**Final Reimbursement Deadline**"). The City will be responsible to allocate sufficient funds to pay the Reimbursement Amount on the timeframe provided for in this Agreement. Nothing herein shall prohibit the City from prepaying all Reimbursement Amounts prior to the Reimbursement Deadline.

7. Extension. The parties may extend in writing the time for the performance by the parties to this Agreement of any provision herein, or permit the curing of any default on such terms and conditions as may be agreeable to the parties; provided, however, that no such extension or permissive curing of any particular default shall operate to release any of the parties from such party's other obligations or constitute a waiver of any right with respect to any provision of, or default under, this Agreement.

8. General Provisions.

8.1. Notices. All notices, acceptances and communications between the parties hereunder will be in writing (by mail, facsimile, email, telex or telegraph), postage or transmission costs prepaid, and will be addressed to the parties at the addresses set forth below. All such notices shall be deemed to have been duly delivered five (5) days after mailing via certified U.S. mail. Notices delivered other than by mail shall be effective on the date of receipt. All such notices, acceptances and communications will be deemed properly given when received by the party to whom it is addressed at:

If to the City: _____
_____
_____

If to Developer: Kunzler Land Holdings, LLC
Attn: Bryan Bayles
1740 Combe Road, Suite 2
Ogden, Utah 84403

With a copy to: Kirton McConkie
Attn: Loyal Hulme and Daniel Dansie
50 East South Temple, Suite 400
Salt Lake City, UT 84111

The City or Developer may change the address or addresses at which such party desires to receive notice on written notice of such change to the other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

8.2. City Conflict of Interest. No member, official, employee, consultant or agent of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects such person's personal interests or the interests of any corporation, partnership or association in which such person is directly or indirectly interested.

8.3. No Personal Liability of Certain Persons. No member, official, employee, consultant or agent of the City shall be personally liable to Developer in the event of any default by the City under this Agreement.

8.4. Entire Agreement. This Agreement constitutes the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by either of the parties that is not embodied in this Agreement.

8.5. Attorneys' Fees. If any party to this Agreement brings suit to enforce or interpret this Agreement, for damages on account of the breach of a covenant contained in this Agreement, or with respect to any other issue related to this Agreement, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

8.6. Modification. A modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by each of the parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

8.7. Assignment. Developer shall have the right to assign its rights, duties and obligations under this Agreement to an affiliate or successor of Developer. This Agreement shall be binding on the parties' successors or assigns.

8.8. Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

8.9. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah. Unless otherwise provided, references in this Agreement to Sections are to Sections in this Agreement. This Agreement shall be construed according to its fair meaning and not strictly for or against the City or Developer, as if each of the parties collectively had prepared it.

8.10. Construction. The captions and headings contained herein are for convenience of reference only, and shall not in any way affect the meaning or interpretation of this Agreement. Notwithstanding any rule of construction to the contrary, any ambiguity or uncertainty in this Agreement shall not be construed against any of the parties hereto based upon authorship of any of the provisions hereof.

8.11. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

8.12. No Third Party Beneficiary. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties and their respective successors or permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third person to either of the parties, nor shall any provision hereof give any third person any right of subrogation or action over or against either of the parties.

8.13. Further Actions. The City and Developer shall execute such additional documents and take such further actions as may reasonably be required to carry out each of the provisions and the intent of this Agreement.

8.14. Severability. To the extent any provision of this Agreement shall be held, found or deemed to be unlawful or unenforceable, then any such provision or portion thereof shall be modified to the extent necessary so that any such provision or portion thereof shall be legally enforceable to the fullest extent permitted by applicable law. Any court of competent jurisdiction shall, and the parties hereto do hereby expressly authorize any court of competent jurisdiction to, enforce any such provision or portion thereof or to modify any such provision or portion thereof so that any such provision or portion thereof is enforced to the fullest extent permitted by applicable law.

[Signatures to follow]

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

CITY:

WILLARD CITY,
a Utah municipal corporation

By:_____
Mayor Travis Mote

DEVELOPER:

KUNZLER LAND HOLDINGS, LLC, a Utah limited liability company

By: _____
Name: _____
Its: _____

Appendix 1

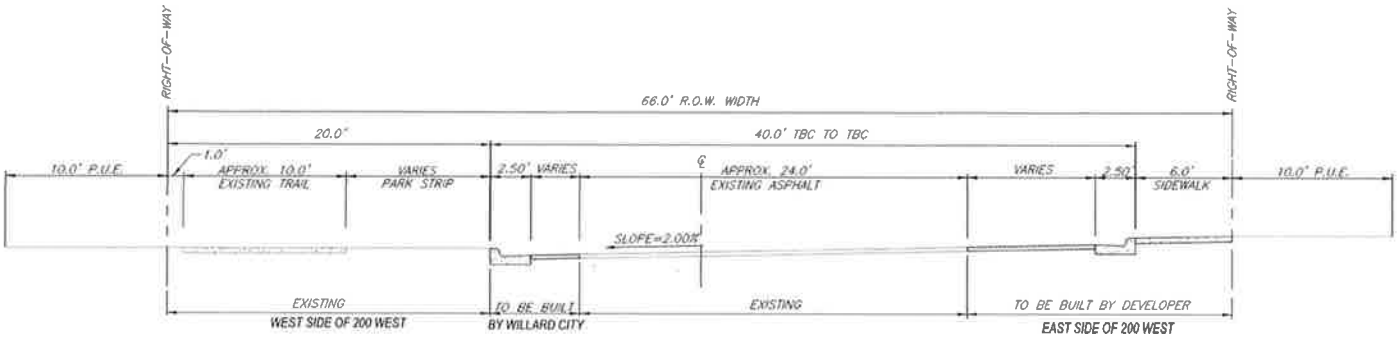
(Legal Description of Developer Property)

Appendix 2

(Estimate of Reimbursement Amount)

EXHIBIT N

200 WEST – DEVELOPMENT IMPROVEMENTS



200 WEST STREET SECTION

SCALE: 1" = 5'