

LA VERKIN CITY PLANNING COMMISSION

Regular Meeting

Wednesday, September 25, 2024, 6:00 pm.

City Council Chambers, 111 South Main Street

La Verkin, Utah 84745

Present: Chair Allen Bice; Commissioners: Matt Juluson, Kyson Spendlove, Richard Howard, and John Valenti; Staff: Derek Imlay, Fay Reber, and Nancy Cline; Public: Patricia Wise, Brett Carter, Travis Marx.

Commissioner Hugh Howard and Sherman Howard were excused.

A. Call to Order: Chair Allen Bice called the meeting to order at 6:00 pm.

The invocation and Pledge of Allegiance was given by Richard Howard.

B. Approval of Agenda:

The motion was made by Commissioner Kyson Spendlove to approve the agenda, seconded by Commissioner Richard Howard. Valenti-yes, Juluson-yes, Bice-yes, Spendlove-yes. The motion carried unanimously.

C. Approval of Minutes: September 11, 2024, regular and work meeting

The motion was made by Commissioner Matt Juluson to approve the July 10, 2024, regular meeting, seconded by Commissioner John Valenti. Juluson-yes, Bice-yes, Valenti-yes, Richard Howard-yes, Spendlove-yes. The motion carried unanimously.

D. Reports:

City Councilwoman Wise reported that the Rim to River ribbon cutting will be on October 24, 2024, at 11:00 a.m.

Director of Operations-Nothing to report.

E. Public Hearing:

Commissioner Bice read a statement: "Public hearings are designed for the public to express opinions or desires or make statements otherwise relevant to the issue being discussed. They are not an opportunity for debate or discussion. At the discretion of the City Staff or Planning Commission, questions raised during the public hearing portion of the meeting may be addressed after the public hearing closes, the Planning Commission discusses the issue at hand or may be addressed by City Staff at a later date, but during the public hearing, no interactive discussion will take place. To give everyone the opportunity to speak, we will limit each speaker to 3 minutes. You are encouraged to be concise and brief."

1. Amending the Tourist-Commercial zone ordinance No. 2024-[20](#). An Ordinance of the City Council of La Verkin, Utah, amending §10-6G2-2-5 of the La Verkin City Code to allow for extended occupancy in RV Resort areas.

Public Hearing opened at 6:05

No comments were made.

Public Hearing closed at 6:06

F. Business:

1. Discussion and possible action to recommend approval for Ordinance No. 2024-[20](#). An Ordinance of the City Council of La Verkin, Utah, amending §10-6G2-2-5 of the La Verkin City Code to allow for extended occupancy in RV Resort areas.

Commissioner Juluson asked if this was for only the RV pads and not the casitas at the resort. We allow them to use 25% of the pads for extended stays.

Derek replied Yes, giving them 22 spots to extend the stay from October 1st to the end of March.

Commissioner Richard Howard asked if it specifically said it was a pad, not the casita. He was concerned about any loopholes that could allow unlimited time.

Derek commented that the ordinance requires them to give the city a monthly report of the customers' make, model, and license plates staying in the affected spots, along with the pad number. We can track this and make sure they leave in March. The city can revoke their license if they violate this agreement. This will protect the city if these owners sell to someone else.

Brett Carter said they are 100% on board with the city. They don't want to have people squatting or long-term. They want to accommodate their snowbird customers who wish to stay a few months. And that's all they are looking for. They fully support the city and want to help ensure that what's happened in the past does not happen again.

Commissioner Juluson asked if other resorts in our area allow it. To his knowledge, Hurricane City does not.

Derek replied the newer resorts in Hurricane City allow it, and Virgin City also allows this.

Travis Marx added that the only city that does not allow it is La Verkin.

Commission Juluson said Hurricane City does not allow it; they have them move every 29 days and pay the transit tax.

Derek replied that no one wants to move every 29 days and that the transit tax the city would collect is minimal. The city would benefit from them shopping locally. He knows the one in Virgin allows it. The ordinance doesn't allow people to have any side buildings, structures, or stairs outside what already comes contained within the unit itself. So, if they have an awning within the unit or set of stairs, that's doable. But anything like skirting, things that would start to make us think that people are getting ready to homestead there. It's protected in the existing ordinance.

Commissioner Spendlove wanted to ensure the ordinance covers revoking a business license if it allows permanent residents.

Derek answered that the ordinance is very specific. He also added that he doesn't want to kick people out of their homes as they did years ago with an illegal trailer park that had permanent residents. They tried to clean up the city and didn't like impacting citizens' lives that way, so they are very specific with this zoning and ordinance.

Commissioner Bice commented that the business's policy of not letting older trailers in seems relatively restrictive.

Brett Carter replied that if the RV is older than ten years, it's conditional on their being allowed into the resort. They want to keep it looking nice.

The motion was made by Commissioner Richard Howard to recommend approval of Ordinance No. 2024-20. An Ordinance of the City Council of La Verkin, Utah, amending §10-6G2-2-5 of the La Verkin City Code to allow for extended occupancy in RV Resort areas., seconded by Commissioner Kyson Spendlove. Valenti-yes, Richard Howard-yes, Bice-yes, Juluson-yes, Spendlove-yes. The motion carried unanimously.

2. Discussion regarding Mixed-use, high-density, residential, R_1-4, R1-6.

Commissioner Richard Howard commented on high-density having four stories. He thought it would be too tall, stick out, and not blend within the town. He referred to Washington City buildings and their height. He attended the Utah League of Cities and Towns, and the Mayor of Baker said they put high density by the freeway. He wanted to know the plan for how high the buildings could be.

Commissioner Bice responded that we're mainly targeting this for the topside, where we agreed to allow 1,600 building units there. If each building unit had 3,100 square feet, that would fit on an acre for the 14 units. If we went two stories, that would allow each of them to have 6,000 square feet. I don't see us needing to do that, but it allows us to if necessary. And up on topside, where we have the topography, a lot of that won't be buildable, but potentially a lot of it will be. We'll be able to put the four-story building units there. But if we pass the ordinance, we'll have people who own property here who want to do this down in town. The City council had citizens show up in opposition to the high density in town. This gives 14 units per acre.

Commissioner Juluson asked for high density; wouldn't it be more than one apartment building per acre?

Commissioner Bice answered that they are allowed 14 units per acre to put all 14 units in one. This would allow them to go four stories, but it wouldn't allow them to go denser than 14 per acre, and it probably wouldn't make sense for them to go four stories.

Commissioner Spendlove added that he sees more of a townhome look, where they can spread it out slightly more over the acre than all in one.

Commissioner Bice brought up the citizens' concerns about a rendering of plans with 70 units per building and multiple buildings per unit. Not only do we not have a zone like that, but we've never considered that density. So this would be what they have in Washington, which is less dense.

Commissioner Richard Howard agreed that they should be careful about approving tall buildings, not down in town, only on the topside.

Commissioner Bice added I wouldn't like it down here, but I don't own any of those big pieces of property, and those owners will want it. But we need it up on the topside if we get them the 1,600 units in that 400+ acres.

Commissioner Richard Howard said that as long as the city doesn't allow something too big, He brought up an example of Salt Lake City flee market on 26 acres, and citizens are upset they are selling the land. He can see both sides how economically the land has a more significant profit if they sell it and the other side that the community loves it the way it is. Economics drives the economy. It did concern him about where to put high-density.

Derek commented that somebody would have to develop a large parcel of property between amenities and additional parking. He didn't see this applying to any property on this side of town. He saw this as a potential for Interstate Rock to have enough property. It could be there, but we are targeting the Topside with all these codes. We wanted to start this work before the bank returned with a Development Agreement to sell the land. That way, we stay ahead of the needs of developing the Topside.

Commissioner Richard Howard talked about Mayor Randall from South Jordan. The idea was that they had that massive piece of South Jordan and created a daybreak community that had all sorts of amenities, parks, water, and everything. It's not that we do that up there so much, but it's an example of the city pre-planning this community. He asked a question about Old La Verkin being one thing, but going down the hill where there isn't much yet until Interstate Rock is developed, is it an idea that you've thought about putting in apartments down there because it looks like a good place that wouldn't be obtrusive?

Commissioner Spendlove responded that he has been working with Derek to see if there is this ability because they felt like between Silver Acres up above and our development down below, putting in a higher density like this would not only benefit us but also get some of the lower-income people into a good spot, but it also creates a great break from that trailer park to a subdivision. It's a great transition zone. So we've been looking at that. Plus, it doesn't change the views because there are 30 to 40 feet of drop between the two subdivisions right now, so we've been looking at that area across the north side of 740 up against SR 17. I think our goal is the topside, and maybe we can write it in currently to be the topside, but I think we have to be careful as long-term planning to say it's only for the topside because 30 years from now, the codes and everything else will change. Old La Verkin will be old La Verkin. There will have to be some discussion on creating space for the citizens to live here.

Commissioner Valenti agreed on a better approach to experiment with high-density first on the topside. It gives the city time to grow and see what it looks like before we allow any in downtown La Verkin. The R-1-4 removed the bed and breakfast. He was curious how that would ever fit in there. Even the R-1-6 might be a little bit difficult, too. He also asked about the high density. There's a reference to multi-family, and of course, the concern about what the Administrative Land Use Authority (ALUA) might be doing with authority that otherwise might belong to the planning commission and city council. Section 8 talks about multi-family housing, which was given to the ALUA. He doesn't know if that's the intention because the high-density could just come into the ALUA and have no (planning development agreement) PDA.

Commissioner Juluson answered the ALUA only allows 1-4 units for townhomes.

Commissioner Bice responded that it includes townhomes, apartment complexes, and single-family dwellings, which are ALUA. The first page, A, number 3, home occupations. He didn't think this was a good idea because it would increase traffic. A home business, even with no clients coming to the house, he was not sure it was a good idea for high-density housing. Anything that brings extra traffic into the neighborhoods.

Derek agreed it was a broad definition for home businesses. It could include anything from construction workers to materials delivery, truck drivers, and beauticians. And when you're going into high density, you don't want that additional traffic in there, especially if you're doing things that are starting to disturb the neighbors. That could be taken out.

Commissioner Bice brought up the studies and how the city can require them to be done, like studies regarding traffic, noise, drainage, and geotechnical, but it doesn't say what authorization we have to do things with those studies. Would this be like conditional use? If we don't like what the study says, will we be able to say, "No, this can't happen?"

Derek explained that developers are required to do these studies as they are planning the development. Everybody that puts a subdivision in is going to do a hydrology study to make sure that they can stand up to the 100-year flood zone and that you're not overloading historically what's been allowed previously—same thing with the traffic. Certain areas must have a traffic study because the study can do a couple of different things like noise, but it also does how many more vehicular trips are done every day, which could impact the size of the

road. Soil studies are something that everybody gets to do. Still, these are studies that we do in-house that we'll review and make sure they pass. If there are problems like at Sunset View estates, the soil studies show the lots with blue clay. The lots that are built with different soil types will be permitted differently.

Commissioner Spendlove added that Interstate has been dealing with getting studies for the Family Fun Center in Hurricane, traffic impact studies, and so while we have the right to develop and stuff where it's in the code, we have to have certain studies per city's requirements. Just tell us what we have to have to be able to develop, and we have to meet those requirements. Having that listed in the zone is essential so they understand. It's still stipulated upon the studies coming back. Any traffic study will show you if you have enough access points if there will be a need for stoplights, or what will be impacted in that area. He thought having that in there and being called out is an excellent way to let people know this zone requires all those, and it will or could require some additional studies.

Derek added that because of its high density, you would have access to and knowledge of those studies. Sometimes, we like to take a lot of that information and include it in the Mylar when it's taken out and recorded. Supposedly, when you buy a piece of property, you should know your property's do's and don'ts. People can go down and review that.

Commissioner Bice brought up the landscaping code. It says that drought-tolerant landscaping and sprinkler fixtures shall be incorporated. Some of the other conservancy districts in the state have outlawed sprinklers, except where there's grass, and they want dribblers. At the League of Cities and Towns, they preached the evil of sprinklers. So maybe instead of "shall add sprinklers or dribblers," add "whichever is more appropriate for the type of landscaping."

Derek replied that maybe we should go in there and say it is required to follow the agreement between the cities and the conservancy district because that's what we're following now for our code. Sprinklers are only allowed in grass areas, and emitter systems are only in non-grass areas. There's a lot of detail regarding the sizing, watering amount, type of plants, and trees.

Commissioner Spendlove commented that the sentence should be removed and replaced with "all landscapes must comply with the Water Conservancy District."

Derek agreed that it makes it easier. They must bring in a landscaping plan we approve to ensure it matches up.

Commissioner Juluson asked if the Water Conservancy District also has a drought landscape.

Commissioner Bice answered they are encouraging the use of drought-resistant plants.

Derek added we're referring back to their planting list. We're supposed to have Utah State University provide us with a better plant list designated for our area. But if the district had their choice, they'd eliminate grass. You can have fake grass and these plants, and that's it. You have to landscape your front yard for any new home right now. You can only do minimal grass, depending on the lot size. It's heavily regulated to ensure we don't exceed the bounds of excessive water use. We're in a different position here in La Verkin because of our secondary system. Other cities are not really in the same position. So it applies more there, but everybody has to come to the same agreement.

Commissioner Bice commented that we don't want to conserve so aggressively that we lose water rights. He went to the seminar on water, and that's a possibility. He thought they said seven years; maybe it was longer than that. If the city couldn't project that you would use that within a certain number of years, then you lose the rights. The state owns it. We have rights to it.

Derek replied that we first looked at the water needed for total growth. Assuming that through the studies of water and irrigation, our water shows that we will not have enough water at the rate that we have now for full growth. If Toquerville ever gets going again, we will be trading the water, not giving up the water rights. And we'll be using the reused water out of Toquerville, which will help take care of some of that concern because they'll take that and put it right into those reservoirs. We're letting 700 acre-feet of irrigation water go down the river consistently every year over the last 11 years, but the studies help us protect ourselves because we have to have water for growth.

Commissioner Bice suggested they discuss Mixed-use in the code. The code also discusses the allowed height. It says the maximum building height shall be four stories, but a story isn't a height. Businesses are frequently higher than that, especially if they have a large footprint—more than 8 or 10 feet. Going to Ace Hardware, I'll bet that's a 20-foot ceiling. So, let's put a height number instead of the word "stories."

Derek read the definition of a story, which is 10 feet. But if you start looking at the hotels, a story is 14 feet. I think that's more so because they run all their infrastructure in the roofs and drop it down to an 8 or 10.

Commissioner Bice added if we're having these be businesses on the bottom floor and not just dwellings, then a 10-foot business, if it has a fairly big footprint, would feel restrictive, but we don't want them to have four stories with 20-foot ceilings every story.

Commissioner Spendlove agreed that you get a 20-foot, which is one story. Then you get 10 feet on top of each, so you will be at 50 feet. This doesn't give us a height; it just gives us four stories. They can choose how many stories, but you can only go up to 45 feet. That would be beneficial.

Derek replied that 45 feet sounded good. It gives them four stories with a flat roof.

Commissioner Spendlove added that it either gives you four stories or a taller ceiling in the first story and then two stories above that, which is 10 feet. So, it gives you the ability to make some changes or adjustments.

Commissioner Bice said if it had a big footprint, Joann's and Costco would have high ceilings, and if they didn't, it would feel claustrophobic.

Derek commented that your hotel heights are 55 feet right now. He thought 45 feet seemed like a good number because you could regulate the bottom. You could always do your residential above 8 feet.

Commissioner Bice agreed that 45 feet would accomplish it without having a big, tall building.

Commissioner Spendlove added that it helps to restrict that extra height we're trying to avoid while still getting a mixed-use product or option for that.

Commissioner Juluson agreed it could read that the building height should not exceed 45 feet and 4 stories. He also had a concern about microbreweries being allowed as a home occupation. Would the state allow that?

Derek answered he would review that and report back.

Commissioner Bice said the home occupations are a business downstairs. Do we want the extra traffic that a home occupation would generate?

Commissioner Spendlove said it would be a business downstairs and a living space upstairs so that it wouldn't be a home-occupied business.

Commissioner Bice moved on to R-1-6 and R-1-4, which had the same recommendations, just different size footprints.

Derek commented that he changed the R-1-4. Because the size is so minimal, down here on the notes, we added the G: A developer shall provide two additional enclosed parking spaces for occupancy and two additional all-street parking spaces. There will need to be a mini-parking lot somewhere to deal with the additional traffic in such a condensed area. We discussed needing open space, which assumes we have a fairly significant development. 200 square feet of active open space is required per dwelling. 100 square feet shall be in a private patio for the exclusive use of these dwellings and occupants, and 100 square feet shall be provided in a common recreational area.

Commissioner Bice was confused about whether this could be combined indoors and outdoors. Could it be 100 feet towards a rec room?

Derek replied that he assumed it didn't have to be outside. He said it can be anything that allows people to recreate or congregate. We don't want all this high-density housing with no amenities or room for people to congregate.

Commissioner Spendlove added that with this 4,000 square feet, we think it allows for a subdivision to have multiple lots that are this 4,000 square feet. And then I noticed there was a comment in this adjustment that would require the shared recreational area. So, it's like they would have to be individual units. This is not a multi-family development. This is saying if someone wants to come in and develop a subdivision, and of these 4,000 square foot lots we would require after so many units, whatever we decide makes sense, there would have to be some HOA / recreation facility, whatever they decide to do for all of those people. It would be similar to Sky Mountain.

Commissioner Bice was not sure he liked the 4,000 sq ft individual homes. Maybe it needs to happen. They will be smaller than the ones across the street from the city offices. Those are fifty-five hundred, but if we do it, I don't think we should have home occupations there either. And underneath that, where it says household pets, we should put a definition of what a household pet is. I'm sure you all have seen the news articles about the people up in arms about the pot-bellied pig or the eight-foot python that people who own them are calling their household pet, the llama, and the neighbors don't like it, but there's nothing they can do about it. I know what I think a household pet is, but we should define that a little better.

Derek commented on setbacks. We could allow the sides to encroach up to 6 feet on the sides and 8 feet in the rear. The front setbacks and the house portion could be within 20 feet of the setback, but the garage portion would have to be maintained 25 feet back. Just because the bigger trucks and stuff, if you allow them to move up that additional 5 feet, the bigger trucks will stick out into the sidewalk.

Commissioner Spendlove added Can we also clarify what would be considered a side yard against a street? Are we comfortable with 6 feet as that? Because I just heard about PUEs on a street side yard

Derek replied it is 6 feet because, at 5 feet, you clear the fire code. At 5 feet, you can't have any openings. So I figured at 6 feet, if you're trying to come out of a garage, you could do that. You can also do that if you have a window on the side. Since we couldn't have anything, it should be six feet.

Commissioner Spendlove wanted a 10-foot side yard on corner lots that face the street so they could get public utilities in. He was concerned about issues with the utility departments getting their lines in.

Derek agreed and said they could keep the current code for side lots.

Commissioner Bice asked about 10-6 C 1-5 modifying regulations. (A) says that behind the main building, you can have a side set for private garages behind the main building, and you can have a side setback of two feet, but then down at (C), it says you have to have an easement of seven and a half feet, and most of the time you can not build on the easement.

Derek replied that most of the time, you can build on the easement, but just with the understanding that if we have a utility there and we have to come to work on it and tear it out, you're going to put it back at your cost. All the utilities are in the street in the newer parts of town. We no longer have utilities running on the side or in the back. So it's not as big of a deal with this. But I think (A) we need to take that out. Because we're dealing with smaller lots, they shouldn't have as many allowances. Two feet is pretty tight to your property line. We will fix that, too, because that's in our codes. If you're ten feet behind the house and want to go in the corner, you can build in two feet of the corner. That is against our code. We can change it and put the building back five feet.

Commissioner Spendlove agreed. He thought it was smart because drainage is the other problem. The drainage must be maintained. A bad rainstorm would push the water out onto the neighbor's property.

Derek added that people should take advantage of this because it is in the code now. We don't allow them to overhang. The two feet should still catch the water. On good rainstorms, this can go wherever it wants to, but we're trying to correct that to drain it away. In this instance, for these smaller lots, even in the R16, we need to take that (A) out so they don't have that ability.

Commissioner Bice asked about these garages: Can they be detached garages, or do they have to be part of a house?

Derek answered they have to be attached.

Commissioner Spendlove felt that they needed to discuss what size of development would require this common recreation area, like a playground. He didn't want to make it to the point where development wasn't feasible and without enough space. With the 4,000 to 6,000 lots, you're getting a lot more kids because that's what's reasonable to purchase compared to other lots. Should it be discussed now, or if we can look at other codes, we need to determine how many lots would be considered to have this common area requirement.

Derek asked how big an acre is.

Commissioner Spendlove answered its 43,560 sq. ft.

Derek asked how many lots at 4,000 could fit in an acre.

Commissioner Spendlove replied you could get 10-11 units.

Derek continued to say that for a 5-acre parcel, you will get 55 units. Most of our codes I've read seem to hit a 5-acre mark as to determine the need to have the amenities. Because that's 55 homes, that's half of Zion's estate,

and you see how many homes are there. Look at Cottonwood Hollow, and they've only got 33, and we're talking, about 5 acres is 55

Commissioner Bice said if we have three developers, each with four acres, that's 120 dwellings without requiring them to have open space. If the requirement is five acres, it would be much more beneficial for them to stop at four and a half acres.

Commissioner Spendlove added that we don't do it by acre if we do it per lot. And you say after 12 lots, any development over 12 lots it is required. Because the way this reads right now on the open space, no matter what, there has to be 100 square feet provided in this common recreation area. But then the question is, how many lots do you have to have to be able to require a common recreation area? So I feel like we have to rewrite that somehow.

Commissioner Juluson asked if this could be in a development agreement.

Derek replied that if it's in a development agreement, you're still going to have to stay pretty consistent with that, there still needs to be a range that can be worked with because you don't want to show any preferential treatment to anybody and then get us in trouble.

Commissioner Spendlove added. If you were to do 10, you'd have 1,000 square feet, which is not very big. So I don't think 2,000 square feet is too big for a recreational area.

Commissioner Bice commented that maybe we could allow them to cluster with other developers and not have 16 tiny playgrounds.

Commissioner Spendlove agreed there only needs to be one big one or a few bigger ones. He felt that however we come up with the numbers, we need to make sure that it's very clearly spelled out in open space, that if there's not whatever the amount we come up with, if there's not that amount of lots, then there is no need. It's not required to have the 100 square feet because if not, you'll get these little pockets that don't make sense. So it's got to be spelled out, let's say if we came up with 10, then we need to make sure (H) is written, that once the subdivision reaches 10 units or 10-4,000 square foot lots, that's when you'd have to have this 100 square feet provided in a common recreational area. That's when that would hit. If not, you're going to have 4 lots, and you're going to have 400 square feet of open space. To get around the 10, what if they just make a couple of bigger lots? Developers will do what they can, but I think they will look at it because they want to put a lot of units to make money, so they're gonna put an open space.

Derek replied that it gives me something I can start researching, but I like what you're saying. That's great. It's a great comment because you don't want to be too small, and it might not make sense, but you don't want to get too big where you don't have what you need. I think I like that start right there. I could take a lot of these suggestions and bring it back, I think even the R-1-6 should have something comparable to the R-1-4. At the council meeting, citizens assumed this targeted the Squire's property. They had come over to talk to me about it. Someone was telling one of the ladies there that they would not support any high-density as far as that residential is concerned. But he said he could see that being like an R-1-6 there. To him, that would meet the Corridor study and make more sense because he knows that the bigger lots R-1-14s are a thing of the past. No developer will come in and develop any property as an R-1-14 because they won't be cost-effective.

Commissioner Bice asked Derek how he felt about R-1-4.

Commissioner Juluson commented that some of the houses could be built pretty big. The problem of that type would be more people in a smaller area. This might be a problem.

Derek replied that the R-1-6, the east subdivision, is 8 and 8 on the sides and 10 in the back. We're allowing them two more feet on each side and two more feet on the back side, possibly moving five feet further on the main portion of the building by the setback. We're providing an additional room that way, that they could be a little bit wider, but they could be two stories. Many people call and want to know what is the smallest house we have to build? The code distinguishes a kitchen, an open area, and a couple of other things. So around 600 square feet is a house that somebody minimally would have to build is 600 feet on a 4,000 square foot lot.

Commissioner Spendlove commented, If you look at his house, he has a 1,700-square-foot house. So mine could easily fit on a 4,000-square-foot lot. He is on an acre, but he could fit on a 4,000-square-foot lot, and still feel like it's huge.

Commissioner Juluson said the patio homes are built on what? What size lot are they putting those on? There are quite a few up in Hurricane Views. They're 1,400 square feet, but they take up pretty much the entire lot.

Commissioner Bice asked Commissioner Spendlove's house would fit on 4,000 square foot lot, but if the entire street were housed your size on 4,000 square feet, would it feel crowded?

Commissioner Spendlove replied it would be a higher density, but he thought if people are going to buy in that area or build in that area it's because they can afford it. We have to be careful how we place them and where we place them, but he thought there's going to be a lot of people who are interested in that.

Commissioner Juluson added that outside of the parking we have here, do we need extra parking? It requires two stalls in the garage and two outside. Did you have some common parking?

Derek replied there can be some parking ability on the streets, but it's not a preferred option.

Commissioner Juluson suggested a quarter spot per housing unit, something like that.

Commissioner Spendlove added that it requires every dwelling to have two enclosed parking spaces, which would be the garage, and two additional off-street spaces, which would be the driveway. So you've got four.

Derek commented it was assumed that there was R-1-6, which we just had down in Spanish Gardens. We assumed that the two off-street parking spaces like Matt's trying to say, and we didn't include the spots behind the garage.

Commissioner Spendlove suggested that if that's how we want to do it, just specify no tandem parking.

Derek agreed that this could really create some problems.

Commissioner Spendlove added one other thought based on the sizing or making it feel really crowded. A few developments that would look nice with these smaller lots. Maybe we can specify you can do the 100 square feet or, whatever we determine for the open space footage, you can provide a trail system between units. There's a development that I've been looking at that has all the units with street parking. And instead of having a backyard, it's a shared trail system. So they have access to a trail that's got some parking. And that could be a way of saying to these developers, you can either have some parks, or you can provide trail systems.

Commissioner Bice said something like that might work for the sixth-house subdivision's 100-square-foot open space because it seems unfair that if you have 12, you now have to come up with 100 square feet, but if you have 9, you get away free.

Commissioner Spendlove agreed that you could keep it up to them, and they would have to develop something that keeps the open space.

Commissioner Bice added that they could cluster with smaller developments.

Derek suggested that maybe that's when they come to the city and submit the development agreement, including their plan for open spaces.

Commissioner Richard Howard said he is interested in the R-1-4, which, depending on where it is allowed, could be beneficial.

Commissioner Bice suggested they have certain pieces of land for that so that developers won't put in R-1-4 lots to make a bigger profit.

G. Adjourn:

The motion was made by Commissioner Kyson Spendlove to adjourn, seconded by Commissioner Matt Juluson. Bice-yes, Juluson-yes, Valenti-yes, Richard Howard-yes, Spendlove-yes. The motion was carried unanimously at 7:10 p.m.

Planning Commission Chair

Date Approved

This document outlines the AFCU development agreement. We have thoughtfully highlighted in yellow the sections that have raised concerns, which have been further clarified by the developer's attorney. Our comments aim to shed light on several key aspects that the Planning Commission has mentioned. We believe that by focusing on these highlighted sections and our comments, the core issues will be more clearly understood. The remainder of the document contains legal terminology that may be less central to our discussions.

****Attachment Two****

This attachment provides a summary of the AFCU development agreement, prepared by the developer's attorney.

Thank you for your assistance.

EXECUTIVE SUMMARY
DEVELOPMENT AGREEMENT
FOR
LA VERKIN MESA PROJECT

This summary is for convenience and discussion only and does not include all relevant terms and conditions contained in the proposed Development Agreement.

1. The Property: 490 acres owned by America First Credit Union, in the La Verkin Mesa area of the city. The Property is currently zoned Planned Community Development (PCD) but a PCD Project Plan for the property has not been approved.
2. The Developer: Although AFCU is the owner of the Property, and may be the first “Developer” in the Agreement, the Property is under contract for sale to a third party. The purchaser is expected to assume all responsibilities as Developer under the Agreement.
3. PCD Project Plan: The Agreement is meant to provide a framework for a future PCD Project Plan. A future PCD Project Plan is expected to contain a variety of desirable uses in the Project. A PCD Project Plan is not being proposed with the Agreement, but any PCD Project Plan proposed in the future by a Developer must comply with the Agreement. The Agreement does not take the place of or relieve Developer from having to obtain all entitlements required by City ordinances, such as additional zone changes, subdivision plat approvals, etc.
4. Key Entitlements: The following are key entitlements promised to the Developer in the Agreement. These key entitlements are necessary in order to make the Property marketable to a future Developer.
 - a. A maximum of 1,600 total equivalent residential units (ERUs) is allowed.
 - b. Short term rentals are allowed (actual number to be set forth in future PCD Project Plan). Each short term rental unit will reduce the total ERUs available for other uses on a 1-to-1 ratio.
 - c. Density transfers between development parcels within the Project are allowed (for example, to encourage clustering and preservation of Open Space), with conditions.
 - d. City will bear the cost of any public infrastructure upsizing, through impact fee credit or reimbursement or otherwise.
 - e. City acknowledges Developer may seek approval of one or more Public Infrastructure Districts (PIDs) to help with financing of improvement sots.rfdc
5. Key Requirements: The following are key requirements imposed on Developer.
 - a. A minimum of 15% of total acreage (less acreage preserved as Open Space) must be commercial uses. Commercial uses reduce total ERUs available for other uses based on the water connection table in the Agreement.

- b. Developer must preserve a minimum of 25% of overall acreage in the form of parks, trails, or unimproved open space, and must design and construct master trail improvements.
- c. Developer must report things like overall base density, number of ERUs and densities sought, and remaining unallocated base density, with each development application.
- d. Developer must comply with all current and future land use approvals.
- e. Developer must complete all required infrastructure to support the Project, including but not limited to:
 - i. Water storage tank (site is selected and tank is being planned in conjunction with Town and WCWCD).
 - ii. Water distribution.
 - iii. Sewer (in conjunction with Ash Creek Special Service District).
 - iv. Road dedication and improvement (private roads must be approved on case-by-case basis, but only if allowed by City code).
 - v. Storm drain and flood control.
 - vi. Dedication for civic cite (police/fire).
 - vii. Telecom (in conjunction with appropriate providers).
 - viii. Power (in conjunction with Rocky Mountain Power).
 - ix. Gas (in conjunction with Dominion).

6. Other Miscellaneous Terms:

- a. Developer must provide all required performance guarantees.
- b. Agreement binding on successors and assigns.
- c. Includes default provisions protecting both the City and the Developer.
- d. Agreement will be recorded on the Property.
- e. City may review annually to determine Developer's compliance and may declare default with proper notice.
- f. Agreement may only be amended with City Council approval and written and signed by both City and Developer.

When recorded, return to:

La Verkin City
435 North Main Street
La Verkin, Utah 84745

Parcel Nos.:

LV-2-1-19-1311
LV-2-1-19-132
LV-159-F-2

**DEVELOPMENT AGREEMENT
FOR
LA VERKIN MESA PROJECT
(A Planned Community Development)**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 2024, by and between [America First Federal Credit Union entity], a Utah _____, and its successors and assigns ("Developer") and La Verkin City, a Utah municipal corporation ("City") (all together, the "Parties").

RECITALS

A. WHEREAS, Developer is the owner of approximately 490 acres of land located within the City's current municipal boundaries and described more fully in *Exhibit "A"*, attached hereto and incorporated herein by this reference ("Subject Property").

B. WHEREAS, Developer anticipates planning and designing the Subject Property into a phased master-planned community which includes residential, commercial and community related development currently proposed as the La Verkin Mesa Project ("LVM Project"). The general layout and design of the LVM Project is to be determined with a future application to the City for approval of a PCD Project Plan as defined in § 10-defined 15A-3 of the City's Zoning Code, subject to the provisions of this Agreement (the "PCD Project Plan").

C. WHEREAS, on _____, the La Verkin City Council, after receiving a recommendation from the La Verkin City Planning Commission which also conducted a public hearing, approved this Agreement allowing a total of **1600 ERUs** in the Project, including residential and commercial development as more particularly set forth herein.

Commented [D11]: 1600 ERUs

1600 ERUs (not dwellings) see page 6 section 4-c-iii (table) ERUs are defined by meter size, not by individual dwelling units

D. WHEREAS, the entire Subject Property is currently zoned Planned Community Development (PCD).

E. WHEREAS, City finds that this Agreement: (i) does not conflict with any applicable policy of the La Verkin General Plan; (ii) meets the spirit and intent of Title 10,

Chapter 15 of the City's Ordinances (Planned Community Development); (iii) allows integrated planning and design of the Subject Property and, on the whole, create better development than would be possible under conventional zoning regulations; and (iv) meets applicable use limitations and other requirements of the Planned Community Development Zone.

I. WHEREAS, each of the Parties are willing to enter into this Agreement in order to implement the purposes and conditions of the Zone Change Approvals, this Agreement, and all future entitlements for the LVM Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and City's Zoning Code.

J. WHEREAS, acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, and after all required public notice and hearings, City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) City's Zoning Code. As a result of such determination, the City (i) has elected to regulate the LVM Project in a manner resulting in **negotiation**, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

Commented [DI2]: Key word being NEGOTIATION

AGREEMENT

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

1. Incorporation of Recitals. The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.

2. Definitions. Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by La Verkin Land Management Code, ("City's Land Use Ordinance") in effect on the date this Agreement is executed, or, if different, by this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

a. "Agreement" means this Development Agreement.

b. "After-Acquired Property" means any property acquired by Developer after the execution of this Agreement that is adjacent to the LVM Project.

c. "Ash Creek SSD" means the Ash Creek Special Service District, a body politic created for the purpose of providing sewer and waste water removal and treatment to the Hurricane Valley Basin Area, which includes the LVM Project.

d. "Base Density" means the maximum number of ERU's set forth in Paragraph 7(b), below, which is allowed within the LVM Project as calculated pursuant to Title 10, Chapter 15 of the City's Land Use Ordinance and as approved by City under the Zone Change Approvals.

e. "BLM" means the U.S. Bureau of Land Management.

f. "City" means the City of La Verkin, a Utah municipal corporation and political subdivision of the State of Utah.

g. "City Standards and Specification for Public Improvements" means those design and construction guidelines, standards and specifications contained in City's Zoning Code.

h. "Commercial Uses" or "Commercial Structure" means any commercial building, structure or use that complies with the limitations and types of use set forth in the various Commercial Zoning Districts of the City (found in Chapter 6, Articles G, G1, G2, and G3 of the City's Zoning Code) and this Agreement.

i. "CC&Rs" means Covenants, Conditions and Restrictions and specifically the Master Declaration of Covenants, Conditions and Restrictions recorded against the LVM Project as a whole ("Master Declaration") and the Declaration of Covenants, Conditions and Restrictions that may be recorded against an individual Development Parcel.

j. "Density Transfer" means the ability of Developer to transfer densities from one Development Parcel to other Development Parcels within the LVM Project subject to the conditions set forth in Paragraphs 7(f) and 7(g) of this Agreement.

k. "Design Standards" means the design standards or guidelines (architectural and other wise, including landscaping standards) adopted by Developer and as approved by City.

l. "Developer" means [America First Federal Credit Union entity] and its successors and assigns.

m. "Developer's Initial Obligations" means those duties and obligations set forth in Paragraph 11, below.

n. "Development Activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

o. "Development Agreement Approval" means the City's approval of this Development Agreement for the Subject Property, which was subject to certain findings and conditions set forth in *Exhibit "C"*.

p. "Development Parcel" means an area within the LVM Project that shall hold the potential of being developed, in part or in whole by Developer, or its successors and assigns, into one or more separate residential or commercial subdivision phases. Development Parcel includes "super pads", subdivision phases, or multiple lots within a subdivision phase as may be shown on the PCD Project Plan which is later approved by the City.

q. "ERU" means equivalent residential unit. An equivalent residential unit means a dwelling unit as defined by City's Land Use Ordinance.

r. "Final Plat" means a final plat of a residential or commercial subdivision to be constructed as a phase within a Development Parcel which, after approval by City's governing body, is to be recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

s. "Land Use Application" means any application for development within the LVM Project submitted to City by Developer or any Sub-Developer subsequent to the execution of this Agreement.

t. "Multi-Family Uses" means all residential uses other than single family detached housing, including without limitation: duplexes, garden homes, condominiums, timeshares, hotel, and town homes and other forms of multi-family land uses.

u. "Ordinances" means the La Verkin City Code of Ordinances, including but not limited to the City's Building Regulations (Title 9), Zoning Code (Title 10), and Subdivision Regulations (Title 15).

v. "PCD Project Plan" means a PCD Project Plan as defined in § 10-15A-3 of the Zoning Code. It is anticipated that Developer will apply for approval of a PCD Project Plan for the LVM Project after approval and execution of this Agreement, in accordance with city ordinances and this Agreement.

w. "Planning Commission" means the La Verkin City Planning Commission.

x. "Project" and "LVM Project" mean the La Verkin Mesa Project planned to be developed as set forth herein, on the Subject Property described and depicted on the attached "*Exhibit A*".

y. "Project Improvements" means site improvements and facilities that

are planned and designed to provide service for the LVM Project development resulting from a Development Activity, and which are planned to be dedicated to the City or other public entities; and necessary for the use and convenience of the occupants or users of development resulting from a development activity. "Project Improvements" does not mean System Improvements.

z. "Proportionate Share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

aa. "Rocky Mountain Power" means Rocky Mountain Power, a division of PacifiCorp, currently the exclusive electrical power provider to the La Verkin area where the LVM Project is located.

bb. "Short Term Rental" means occupancy and use of a residential unit based on a rental term for remuneration of twenty-nine (29) days or less, and including "Vacation Rentals" as defined in §10-1-6 of the Zoning Code, but excluding "Transient Lodging Facilities" as defined in §3-11-1 of the Ordinances.

cc. "Sub-Developer" means any person, entity, group or association responsible to construct and/or prepare a Development Parcel, or any part thereof, for the construction or pre-construction of structures.

dd. "Subject Property" means the approximate +/- 490 acres of the property included within the LVM Project particularly described in *Exhibit "A"* attached hereto.

ee. "System improvements" means existing public facilities that are designed to provide services to service areas within the community at large; and future public facilities identified in a capital facilities plan that are intended to provide services to service areas within the community at large. "System improvements" does not mean Project Improvements.

ff. "Water Storage Site" means that area near the LVM Project that will be identified prior to the approval of the first Final Plat which will be constructed and dedicated to the City pursuant to Paragraph 10.a.i.1. below for the purpose of receiving, holding, storing and transmitting water to the LVM Project.

gg. "Water Distribution System" means the system of water transmission lines within the LVM Project to be designed, constructed by the Developer and dedicated to the City for the purpose of distributing water to ERU's and Commercial Uses in the LVM Project.

hh. "WCWCD" means the Washington County Water Conservancy District.

ii. "Zone Change Approvals" means those zone change requests previously approved by the City approving Planned Community Development (PCD) as the zoning designation for the entire Subject Property, subject to Chapter 15 of the City's Zoning Code.

jj. "Zoning Code" means Title 10 of the La Verkin City Code of Ordinances, as amended from time to time.

3. Summary of LVM Project. The LVM Project is anticipated to be a phased master-planned community which will include residential and commercial development consisting of approximately +/- 490 acres located near the eastern edge of the City's current municipal boundaries. The LVM Project is anticipated to consist of a number of Development Parcels to be depicted in the PCD Project Plan. It is anticipated that the said Development Parcels may be further split up into Sub-Development Parcels. Developer will act as a master developer of the LVM Project. As such, Developer will oversee and/or coordinate the design and construction of all major "on-site" and "off-site" infrastructure and amenities for the LVM Project. Developer anticipates either constructing individual portions of Development Parcels itself or conveying the same to Sub-Developers in a phased manner. Sub-Developers shall be bound by and shall cause its employees and agents to act in accordance with the terms of this Agreement.

4. General Conditions of the Zone Change Approvals. The following general development conditions and guidelines for the LVM Project shall apply:

a. Maximum Development Area. The entire LVM Project and the corresponding PCD zone shall be limited to the Subject Property described in *Exhibit "A"*, unless changed by a future amendment to this Agreement.

b. Permitted Residential Density. The maximum number of residential units with the LVM Project shall be not more than one thousand six hundred (1,600) ERUs. The ERU limitation may only be increased by amending the Zone Change Approvals and any approved PCD Project Plan. There shall be no diminution in the maximum number of ERU's for property dedicated to the City or other entities for public amenities (such as school sites, church sites, parks, trails and rights of ways) and open space areas.

c. Commercial Density. The LVM Project shall include Commercial Uses on a minimum of fifteen percent (15%) of total Project acreage, minus any acreage preserved as Open Space or Park under Section 9.e.a.ii. below.

i. Commercial Uses must be located in the areas designated on the approved PCD Project Plan as "commercial" and in such other areas as approved by the City. Any location of Commercial Uses outside of the areas designated on the approved PCD Project Plan shall be considered material modifications to the PCD Project Plan and will require City

Commented [DI3]: Increase to the ERUs
ERUs can only be increased through a zone change and by following the requirements outlined in the PCD ordinance. This firmly places the Planning Commission in control, as all requests for an increase must first gain the commission's approval.

Council approval.

Commented [D14]: All Commercial use must remain within the approved area designated by the Planning Commission and City Council. Additionally, any commercial use outside of the approved area must receive prior approval from the Planning Commission and City Council.

- ii. In the event that Developer acquires additional property for development adjacent to the LVM Project, then the minimum Commercial Use percentage set forth in Paragraph c. above shall apply to Developer's acreage in the aggregate.
- iii. Each developed Commercial Use shall reduce the number or remaining ERUs available for Residential development in the LVM Property based on the size of municipal culinary water connection required to service such Commercial Use, as set forth on the following table.

Commented [D15]: Land acquired outside of the PCD (SITLA - BLM) would follow the same percentages as stipulated in paragraph C.

<i>Size of Required Commercial Connection</i>	<i>Equivalent Reduction in Available ERUs</i>
¾ inch connection	1.3 ERUs
1 inch connection	3.3 ERUs
1 ½ inch connection	8.2 ERUs
2 inch connection	13.6 ERUs

Commented [D16]: ERUs table

- iv. LVM Project acreage developed as golf courses or other public recreational amenities will not be considered Commercial acreage for purposes of the minimum acreage requirement set forth in Paragraph c. above, regardless of whether fees are charged for use.
- v. LVM Project acreage developed as Short Term Rentals will be considered Commercial acreage for purposes of the minimum acreage requirement set forth in Paragraph c. above, regardless of the designation of the Development Parcel in which the Short Term Rentals are located (commercial or residential), or whether or not such Short Term Rentals are approved as part of an overlay zone or otherwise.

d. Short Term Rentals. Short Term Rentals shall be permitted in the LVM Project.

- i. The actual number of Short Term Rental ERUs to be permitted in the LVM Project shall be set forth in the PCD Project Plan to be approved by the City Council.
- ii. Short Term Rental ERUs shall be clustered together in one or more areas of the LVM Project as to be depicted in the approved PCD Project Plan.

iii. Short Term Rental uses shall reduce the number of ERUs

available for Residential development in the LVM Project by a number equal to one (1) Residential ERU for each one (1) Short Term Rental Unit.

Commented [D17]: Short term rentals shall have an ERU of (1)
The ERUs chart shows a % meter is (1.3) ERUs ?

e. Phasing. City acknowledges that Developer intends either to develop individual Development Parcels itself or convey Development Parcels to various Sub-Developers for development. Accordingly, City may receive multiple land use applications for the LVM Project at any given time. The timing and phasing of the development and construction of improvements on individual Development Parcels shall be determined by Developer and/or Sub-Developers in their sole discretion. Developer, and its successor and assigns, agree to coordinate with City for the provision of services and facilities that will be needed because of any development and/or construction or commercial uses generated within the LVM Project. The Parties acknowledge that said coordination shall include the development phase sequencing that provides for the logical extension of all required infrastructure and the provision of all reasonably municipal/utility related services including, but not limited to, adequate fire protection and necessary rights of way for ingress and egress.

f. Restrictive Covenants. Several Sub-Developers and contractors, in addition to Developer may be designing and constructing improvements upon different Development Parcels at the same time. Developer recognizes the importance of ensuring continuity in the LVM Project as it develops. Therefore prior to approval of any Final Plat within the LVM Project as required by City Code § 10-15B-3, Developer shall adopt and record CC&R's that will guide development and construction over the entire area of the LVM Project.

g. Phase Densities. The Parties acknowledge that each Development Parcel, or portion thereof, submitted to City for subdivision approval may have densities greater than its pro rata portion of the Base Density specified in the Zone Change Approvals and the approved PCD Project Plan so long as the cumulative number of approved ERUs do not exceed the maximum number of ERUs allowed for the entire LVM Project. So long as the overall density of the LVM Project is at or below the Base Density permitted by this Agreement, the density of any particular phase, except for the final phase resulting in complete build out, shall not be grounds for City to deny approval for the subdivision of a Development Parcel for residential purposes or a commercial site plan, or any portion thereof.

Commented [D18]: When developing a portion of land, the density of that portion can be greater than its fair share of the base density. This means that the allocated land can be divided and used unequally, as long as the Equivalent Residential Units (ERUs) do not exceed the maximum allowed for the project.

h. Density Transfers. Developer may transfer of density units from one Development Parcel to others within the LVM Project, provided that: (i) the Ordinances and General Plan regarding compatibility between parcels and minimum requirements are satisfied; (ii) in the event the Development Parcel from which density units are transferred is not owned by the owner of the Development Parcel(s) to which the density units are transferred, the owner of the Development Parcel from which units are transferred consents in writing to such transfer (which written consent may be a general consent to such transfers and is not required to be

specific to any particular transfer) and (iii) infrastructure is sufficient and available to meet the demands created by such transfer as reasonably determined by City.

i. Requirements for Land Use Approval Applications for the Residential Development of Development Parcels. Each residential development application submitted by a Developer or Sub-Developer relating to a Development Parcel within the LVM Project, shall, in addition to those items required by City's Zoning Code, include a statement of (i) the Base Density within the entire LVM Project as of the date of the application; (ii) the number of ERUs and densities sought under the particular land use application for that particular Development Parcel and (iii) the balance of the unallocated Base Density. The City shall not approve any Land Use Approval Application for residential development where the proposed development will create a situation where the Base Density is exceeded.

j. Requirements for Land Use Approval Applications for Commercial Use on Development Parcels. Each application for the development of a Commercial Use of a Development Parcel submitted by Developer or a Sub-Developer shall include, in addition to those items required by City's Ordinance, a statement of (i) the total number of acres Commercial Uses allowed under the Zone Change Approvals and this Agreement; (ii) the cumulative total number of acres Commercial Uses previously approved for all of the Development Parcels within the LVM Project as of the date the application was submitted to City; (iii) the number of acres of Commercial Use that is sought under that land use application and (iv) the balance of Commercial Use square footage remaining allowable to overall LVM Project. The City shall not approve any Land Use Approval Application for the development of Commercial Uses where the proposed development will create a situation where the maximum percentage of Commercial Uses within the LVM Project pursuant to this Paragraph is exceeded.

k. Appeal of Land Use Decisions. Any decision by City which is adverse to the Developer, its successors or assigns, regarding a development application, subdivision plat or amendment, certificate of compliance, conditional use, variance, building permit or any other approval required from City, may be appealed as provided in City's Land Use Ordinance.

5. General Rights and Responsibilities of Developer.

a. Conditions of Zone Change Approvals and Impact Fees. With respect to the LVM Project, Developer and its successors and assigns, accepts and agrees to pay all plan review, impact, connection, building and other fees currently assessed by City, or as later amended unless deferred or otherwise waived by City in consideration of the infrastructure and amenity funding provided by Developer to the benefit of City and the LVM Project. City agrees that its current fee schedule will be applied uniformly within LVM Project, as applicable.

b. Vested Rights Granted by the Zone Change Approvals and

Development Agreement Approval. To the fullest extent permissible under the law, it is the intent of City and Developer that the execution of this Agreement grants and vests in Developer, and its successors and assigns, all rights, consistent with the Zone Change Approvals and this Agreement, to develop the LVM Project under applicable law as provided in Paragraph 5 of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by City that Developer and Owners may assign all or portions of its rights and obligations under this Agreement and the Zone Change Approvals provided such assignees agree to be bound by the terms of this Agreement as provided in Paragraph 13, below. Notwithstanding any statute, ordinance or other legal authority to the contrary, the vested rights contained in the Zone Change Approvals and this agreement shall be perpetual and shall not terminate unless by mutual consent of the City and Developer or its successors and assigns, or in compliance with Sections 12 and 14.a, below.

c. Dedication of Infrastructure Improvements. Unless otherwise specifically provided herein, Developer and Developer's successors and assigns shall dedicate all Project Improvements and System Improvements in the LVM Project to the City (or another appropriate entity; for example, for sewer improvements, to the Ash Creek SSD) at such time as those improvements are accepted as complete by City or other receiving entity. Said dedication shall reserve for the benefit of Developer and Developer's successors and assigns, all capacity in said infrastructure improvements that exceeds the amount necessary for that portion of the LVM Project being developed; provided, however, that the City may manage such improvements to achieve operating efficiencies as the City may determine. This Subparagraph shall not apply to any upsizing of infrastructure improvements required, and paid for, by the City. Timing of the Dedication of the Water Storage Site, arterial rights of way, open space and the park site shall be designated elsewhere in this Agreement.

6. General Rights and Responsibilities of City

a. Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards or rules regulating development. Notwithstanding the foregoing, any ordinance, plan, or regulations which operates to reduce the Base Density, increase exactions or dedications or modify the uses approved in the Zone Change Approvals, the approved PCD Project Plan or this Agreement shall be deemed to be inapplicable to and waived by the City insofar as it relates to the LVM Project.

b. Project and System Improvements – Cost Sharing. Developer shall bear the entire cost of constructing Project Improvements needed to service the LVM Project. Developer shall also bear the initial cost of constructing System Improvements required as a result of the LVM Project but shall be entitled to be reimbursed for the cost of such System Improvements except for Developer's

proportionate share of the System Improvement costs. System Improvements may include, but are not limited to, the following regardless of whether such improvements are located within the LVM Project or off-site: easements and rights-of-way, street construction, curb and gutter and curb cuts, sidewalks, street signs, water distribution facilities, fire hydrants, sewage disposal facilities, storm drainage facilities, street signalization and telecommunications equipment and conduit, street lighting, electrical utilities, flood control facilities, bridges, parks, survey monuments, water rights, landscaping and revegetation.

c. Reimbursement Agreement. Prior to constructing any System Improvement required for the LVM Project as authorized by the City's approval of a Final Plat, final commercial site plan, or other permit, Developer and the City shall execute an agreement whereby Developer shall be reimbursed or shall receive appropriate credits for the cost of constructing such System Improvements, less Developer's proportionate share of the cost thereof. Developer shall furnish an estimate of the cost of constructing such improvements prepared by an engineer registered to practice in the State of Utah and approved by City. Any reimbursement agreement shall assure that neither Developer nor City bears more than their respective proportionate share of the cost of System Improvements and shall take into consideration the provisions of Subparagraph 9(d) below.

Commented [D19]: Reimbursement Agreement: In the event that the developer undertakes additional work beyond the project requirements while on site, the city will assume responsibility for any associated extra costs.

d. Impact Fee Credits. In the event Developer constructs, prior to the date such impact fee would be due, any System Improvements for which an impact fee is normally collected, Developer's cost of constructing such improvement shall be reimbursed or shall be credited against the impact fee otherwise charged, consistent with the Utah Impact Fee Act. Developer shall also be given a reimbursement or credit for impact fees for land and water source supplies dedicated to and accepted by City. In each instance, Developer shall submit to City invoices demonstrating the reasonable and verified costs incurred for such improvements/supply sources or appraisals indicating the fair market value of dedicated land or water source. The amount of the credit shall be equal to the impact fee otherwise required, or, in the case of dedicated land or water source, the fair market value of such. If the impact fee credit for dedicated land or water sources is calculated using the fair market value at the time of dedication, a credit shall also be given which discounts the impact fee to an amount that was commensurate with impact fees at the time of dedication.

Commented [D110]: Impact Fee Credits: If the developer begins construction before obtaining a permit (that is impact fee eligible), they may not be charged or could receive a credit for that impact fee.

e. Compliance with City Requirements and Standards. Except as provided in Subparagraph 5(a) of this Agreement, Developer acknowledges it shall comply with all applicable ordinances, resolutions, policies and procedures and constructions guidelines of City necessary for approval of subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc. for the LVM Project in effect at the time the land use approval is sought. Said compliance includes the payment of uniform application and approval fees.

f. Power of Eminent Domain. City agrees that in the event Developer needs to obtain easements or rights of way for the purpose of constructing infrastructure improvements for the LVM Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Developer. Developer shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees and costs. The decision whether or not to exercise the power of eminent domain is within the sole discretion of the City, which discretion and the use the City will not unreasonably withhold.

g. Cooperation of City, Including with Respect to Public Infrastructure Districts. City will cooperate with Developer in connection with financing of the LVM Project including, without limitation, consideration of the creation of one or more Public Infrastructure Districts to finance the construction of Project Improvements and System Improvements within the Project. The scope and priorities of Project Improvements and System Improvements to be financed by such Public Improvement Districts will be determined in consultation between the City and Developer and their respective advisors, and determined as set forth in a Governing Document to be approved by the City at the time the creation of such Public Infrastructure District(s) are authorized.

Commented [DI11]: PID: Public Infrastructure District The developer can apply for financing to install basic infrastructure (such as water, sewer, etc.) for the project where the cost would be prohibitive. The PID financing would be paid back by the citizens who build in the Topside development (ONLY) through their property taxes until it is paid back. This would not affect the properties on the lower bench.

7. Specific Rights And Responsibilities

a. Water

i. Developer's Obligations

1. Water Storage Site. Developer shall coordinate the design, funding, and construction of a "Water Storage Site" which is anticipated to include one (1) above-ground water storage tank. The Water Storage Site is anticipated to be on U.S. Bureau of Land Management property near the Project, and Developer, the City, and WCWCD have already entered a memorandum of understanding to begin the process of locating the Site and performing the preliminary design of the tank. The final location and elevation of the Water Storage Site shall be subject to final approval by the City. The Water Storage Site shall have sufficient capacity to serve the LVM Project, at a minimum, as reasonably determined by City. The BLM right of way required for access and water transmission to and from the Water Storage Site is anticipated to be held by WCWCD for the benefit of WCWCD and the City, pursuant to shared use and maintenance agreements to be finalized in conjunction with construction of the tank.

2. Water Distribution System. Developer shall design, fund, and construct an adequate "Water Distribution System" of water transmission lines for the collection and distribution of both culinary and raw water to the Water Storage Site and then to each ERU or commercial structure within the LVM Project, pursuant to utilities plans to be submitted and approved by the City during the PCD site plan approval process for each phase of the project.

3. Easements and Rights of Way. As part of the preparation, installation, operation and maintenance of the Water Storage Site and the Water Distribution System, Developer shall grant to City such easements, rights of way, rights of entry, or other servitudes as may be necessary for City to introduce raw or culinary water throughout the LVM Project.

ii. City Obligations.

1. Operation and Management of Water Storage Site and Water Distribution System. City shall operate and maintain the Water Storage Site and Water Distribution System and shall provide all Development Parcels and amenities within the LVM Project with culinary water service and raw water service.

Commented [DI12]: The management of the aboveground tank would be a joint responsibility between the City and the WCWCD. The aboveground tank would need to have a capacity of at least 2 million gallons for the topside. Additionally, the WCWCD is considering increasing the water tank capacity by an additional 2 to 3 million gallons to provide storage and backup for Virgin City.

2. Reimbursement and Impact Fee Credits. Developer shall be reimbursed for any System Improvement costs expended by Developer which are eligible for reimbursement or credit under the Utah Impact Fee Act.

3. Obtainment of Easements and Rights of Way for Water Distribution System. If needed and pursuant to Subparagraph 6.f. above, City may obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of the Water Distribution System's collection and transmission lines.

b. Sanitary Sewer Service and Facilities

i. The LVM Project is located within the service boundaries of the Ash Creek SSD. Developer will work with Ash Creek SSD to design, fund and assist with construction, if necessary, of a sewer and waste water collection system to service the LVM Project in compliance with all regulations and specifications of Ash Creek SSD.

c. Transportation And Traffic Mitigation

i. Developer Obligations. Developer shall provide the

following transportation infrastructure and take the following traffic mitigation measures:

1. General Road Improvements. Developer shall design, construct or improve and dedicate all access roads to the LVM Project. Likewise, Developer shall design, construct and dedicate all other roads (including collector or arterial roads within the LVM Project. All road system improvements within the LVM Project shall be constructed according to City specifications and standards in phases according to a schedule determined by Developer and approved by City, unless otherwise modified or amended.

2. Dedication of Roads. Following Developer's completion of the construction of any road improvements, Developer shall dedicate such improvements to City. Notwithstanding the foregoing, in the event Developer, or its successors and assigns desire to utilize private roads in any portion of the LVM Project, Developer may seek approval from City, which approval shall not be unreasonably withheld so long as private roads are permitted by City's Land Use Ordinance.

Commented [DI13]: City does not allow private roads at this point

ii. City Obligations.

1. Street Rights-of-Way. City shall cooperate with Developer, as necessary, to obtain all necessary rights-of-way for ingress and egress and connectivity upon property located inside or outside of the LVM Project including, if required and mutually agreed to by City and Developer, the exercise of eminent domain by City. Said power to eminent domain shall only be requested of City to insure the desired location of arterial, parkway and collector streets necessary for the LVM Project. Developer or Sub-Developer shall pay all costs incurred by City including attorney and expert fees in acquiring right-of-way for its property, whether or not by eminent domain.

2. Street Design. The street design cross sections, as contained in the City Standards and Specification for Public Improvements, as amended from time to time, (except those regarding private streets as set forth in Subparagraph 7(c)(i)(2), above), shall be the governing specifications and standards for the street design of all parkway, arterial and collector streets within the LVM Project.

3. Acceptance of Dedication and Maintenance of Streets & Roads. City shall accept via dedication and maintain all

arterial, parkway and collector streets and roads in the LVM Project, so long as such streets are constructed to City specifications and standards and are dedicated without liens or encumbrances.

d. Police and Fire Protection

i. Developer's Obligation. Upon the recording of the Final Plat or Final Site Plan which approves the construction of a building lot for the 500th ERU (if residential) or the 40th acre of Commercial Use (if commercial), whichever comes first, Developer shall dedicate a site or sites, as may be reasonably acceptable to City, totaling no more than three (3) acres for police and fire protection facility.

ii. City Obligations. City shall provide to all residential uses and Commercial Uses in the LVM Project, police and fire protection services. This obligation shall not be enforceable by or against any third-party claiming to be a beneficiary as provided in Paragraph 23 of this Agreement.

e. Parks, Trails, Open Space, School & Church Areas/Sites

i. Developer's Obligations. In order to reserve open space areas and improve park and recreational amenities in the LVM Project, Developer, and its successors and assigns, agrees as follows:

1. Trails System. Developer shall design, fund and assist City in constructing the system of trails and trail heads throughout the LVM Project. Said trails shall be designed for purposes of walking, hiking, and/or biking activities, and may include both improved and unimproved trails. To accomplish this purpose Developer will, with the input and advice from the City, develop a trails master plan. Developer shall dedicate any areas of the trail system that run through, or are adjacent to, a Development Parcel at the time of approval and recording of any Final Plat or Final Site Plan for said Parcel as may be indicated on said trails master plan, unless the City at the time of platting some or all of a Development Parcel approves certain master planned trails to remain in private ownership.

2. Open Space & Parks. Following approval of a PCD Project Plan, Developer shall dedicate to the City all areas designated upon the approved PCD Project Plan for dedication as "Open Space," "Trail," or "Park," but in any event shall preserve a minimum of twenty-five percent (25%) of the entire LVM Project area dedicated to the City for preservation as publicly-accessible parks, trails, or unimproved open space.

Commented [DI14]: Trails System:
The developer (with input from the City) design - Construct and develop a master trail plan.
The Developer shall dedicate any areas of the trail system that run through or are adjacent to

3. Church Sites. At the time and in the manner so determined by the Developer, the Developer shall convey and or transfer any property so designated in the approved PCD Project Plan to a religious denomination or denominations of its choosing.

4. School Sites. Developer shall work closely with the City and the Washington County School District to determine, plan necessary sites for elementary, intermediate and high school buildings (if necessary) within the LVM Project.

ii. City Obligations

1. Level of Service. After construction and dedication of any trails, parks or open space, contemplated in the Master Conceptual Plan, this Agreement or otherwise, the City shall provide to the public, recreational services and maintenance to said amenities at a level generally provided to other areas of City. City may, under the Utah Special Service District Act, create one or more recreation districts in the LVM Project and in other areas of City to provide funding for recreational amenities.

2. Use of Park and Recreation Impact Fees. As permitted by applicable state law and City ordinance, and as practical, City shall use park and recreation impact fees, imposed on all subdivision plats and site plan approvals for Development Parcels within the LVM Project, to improve park areas located within the LVM Project. Said impact fees shall be collected as provided in City's ordinances. City acknowledges that Developer shall not be required to pay impact fees otherwise imposed on a Developer in the event that Developer dedicates land or constructs and dedicates any improvement within the LVM Project for which the impact fee would customarily be imposed, consistent with Subparagraphs 6.d. and 7.a.ii.2., above.

f. Electrical Power

i. Developer Obligations. The LVM Project is located in the within the service boundaries of Rocky Mountain Power. Developer will work with Rocky Mountain Power to design, and assist with construction, if necessary, of an electrical power transmission system to service the LVM Project in compliance with all regulations and specifications of the Public Utilities Service Commission and Rocky Mountain Power. It is anticipated that said electrical power transmission system will included the construction of a power substation in a location to be determined at a later date within the LVM Project.

ii. City Obligations.

1. Obtainment of Easements and Rights of Way for Electrical Power Transmission System. If needed and pursuant to Subparagraph 6.f., City may obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of any transmission lines or other components of an electrical power transmission system constructed by Developer and Rocky Mountain Power to service the LVM Project.

g. Miscellaneous Utilities.

i. Developer's Obligations. Developer shall be responsible for the provision of miscellaneous utility infrastructure to the perimeter of, and within, the LVM Project, including (but not necessarily limited to) the following:

1. Runoff and storm drainage consistent with City's storm water master plan to be prepared by City and commented upon by Developer;

Commented [D115]: The City just approved a new master drainage master plan.

2. Design and engineering for natural gas to be provided to the LVM Project by a natural gas provider;

3. Installation of telecom transmission systems to the LVM Project to be provided by the various service providers; and

4. Conduit and pull boxes to accommodate a future fiber optic telecommunications network to be installed to the LVM Project.

5. Developer shall provide, and or dedicate to City or reserve to itself, as applicable, all easements, rights of way, right of entry, or other servitudes as may be necessary for the installation and maintenance of the miscellaneous utilities infrastructure within the LVM Project.

ii. City's Obligations. Subject to the location of existing or planned miscellaneous utility infrastructure, City agrees to dedicate easements and infrastructure on property owned by City as may be necessary to connect, link, construct or accommodate such utility improvements in the LVM Project, provided that City shall have the authority to determine the route for such improvements.

8. **Financial Assurance.** As a condition of approval and recording of any final subdivision plat in the Project, the applicant for such final plat, whether Developer or a sub-developer, shall provide such performance guarantees to the City as are required by the City Code to show that the applicant currently possesses or is reasonably certain to obtain sufficient financial resources necessary to undertake and complete construction of all public improvements required to be constructed to support and serve such subdivision.

9. **Term.** The purpose of this Agreement is to ensure development of the LVM Project as provided in Paragraph 4(d) of this Agreement. Accordingly, the term of this Agreement shall (i) commence on the date this Agreement has been recorded in the Official Records of Washington County and (ii) shall expire when all public and private infrastructure improvements in the LVM Project have been constructed and accepted as complete by City and certificates of occupancy have been issued for all buildings and/or ERUs in the LVM Project. This Agreement may also terminate in the event of default and the City has followed the procedure prescribed in Paragraph 14.a, below, regarding termination.

10. **Successors and Assigns.** This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, Developer shall not longer be liable for the performance of obligations contained in this Agreement in the event that prior to such sale or transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

11. **Default.** Failure by a party to perform any of the Party's obligations under this Agreement within a ninety (90) day period (the "Cure Period") after written notice thereof from the other party shall constitute a default ("Default") by such failing party under this Agreement; *provided, however*, that if the failure cannot reasonably be cured within ninety (90) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing party commences its efforts to cure within the initial ninety (90) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. 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 may terminate this Agreement. If the Default is

cured, then no Default shall exist and the noticing Party shall take no further action.

a. Termination. If City elects to consider terminating this Agreement due to a Default by Developer, then City shall give to Developer written notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. City may thereafter pursue any and all remedies at law or equity.

b. No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages against City for breach of this Agreement but shall only be entitled to specific performance as may be determined by the court.

c. Breach by City; Equitable Relief. In the event of a breach by the City of this Agreement, as a result of, among other things, an attempt by the City to limit or restrict Developer's vested rights as set forth herein, Developer shall have the right to seek equitable relief, including emergency injunctive relief as may be warranted, from a court of competent jurisdiction consistent with this Agreement.

d. Specific Acts of Default by Developer. The Parties hereto agree that any of the following occurrences, acts or failure to act shall constitute a Default by Developer, for which City may elect to terminate the agreement in accordance with this section, following notice and the Cure Period: (a) the filing of a petition in bankruptcy by Developer, (b) foreclosure on any portion of the Property which has the effect of creating an unapproved or illegal subdivision under Utah law or City ordinances, (c) the Developer's failure to comply with the requirements of any term or condition of this Agreement, or (d) Developer's failure, without good cause as determined in good faith by City, for a period of five (5) years to commence construction of improvements in any new development phase or new Development Parcel. Upon such termination, all approvals or development rights granted hereunder to Developer shall lapse and all obligations of City hereunder shall cease.

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

13. Notice and Filings. All notices, filings, consents, approvals and other

communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served in writing and delivered personally, sent by certified United States Mail, postage prepaid, or by a national express overnight delivery service, freight prepaid, if to:

City: LA VERKIN CITY
435 North Main Street
La Verkin, Utah 84745
Attn: Kyle Gubler, City Administrator
kyle.gubler@laverkincity.org

With a copy to: Fay Reber, City Attorney
435 North Main Street
La Verkin, Utah 84745
kevin.bennett@laverkincity.org

Developer: [America First Federal Credit Union entity]

Attn: Dave Christensen
dchrste@americafirst.com

With a copy to: Snow Jensen & Reece, PC
912 West 1600 South, Ste. B200
St. George, UT 84770
Attn: Matthew J. Ence
mence@snowjensen.com

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

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

15. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

16. Further Acts. Each of the Parties shall execute and deliver all such

documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

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

18. Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, except as provided in Paragraph 13 of this Agreement.

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

20. Entire Agreement. This Agreement, together with its exhibits and the Zone Change Approvals, shall constitute the entire agreement between the Parties pertaining to the subject matter hereof. The PCD Project Plan, once approved by the City and as may be amended from time to time, shall be deemed incorporated herein without requiring any further action by the Parties. All other prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

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

22. State and Federal Law; Invalidity. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of Utah. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes mandated by state or federal laws or regulations applicable to the Annexed Property. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void.

23. Recordation. No later than ten (10) days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, at Developer's expense, in the Official Records of Washington County, Utah.

24. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after ninety (90) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such ninety (90) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

25. Annual Review. City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 14 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

26. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the La Verkin City Council taken with the same formality as the vote approving this Agreement.

DATED effective the first date set forth above.

CITY:

LA VERKIN CITY
a Utah municipal corporation

Attest:

Kelly Wilson, Mayor

Christy Ballard, Recorder

DEVELOPER:

[AMERICA FIRST FEDERAL CREDIT UNION ENTITY]

[Name]

[Title]

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Kelly Wilson and Christy Ballard, being first duly sworn, depose and say that they are respectively the Mayor and City Recorder of La Verkin City, a Utah municipal corporation; that they have read the foregoing Development Agreement and know the contents thereof; and that they signed the said document for its intended purpose under the authority given by the La Verkin City Council.

NOTARY PUBLIC

Address: _____

My Commission Expires: _____

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

_____, being first duly sworn, deposes and says that he/she is the [Title] of [America First Federal Credit Union entity], that he/she has read the foregoing Development Agreement and knows the contents thereof; and that he/she signed the said document for its intended purpose.

NOTARY PUBLIC

Address: _____

My Commission Expires: _____

EXHIBIT A

Legal Description of the Project

EXHIBIT B

Recommendation of La Verkin City Planning Commission

EXHIBIT C

Approvals given by La Verkin City Council

