

10th DRAFT 06/16/20

WHEN RECORDED, MAIL TO:

TOQUERVILLE CITY

Attn: City Recorder

212 N Toquer Blvd

P.O. Box 27

Toquerville, UT 84774

Affects Parcel Nos: T-103
 T-3-0-34-3000
 T-3-0-34-140
 T-3-0-27-321
 T-3166
 T-101-A

DEVELOPMENT AGREEMENT

FOR

TOQUER RIDGE

(A Master Planned Mixed Use Development – Toquerville, Utah)

July 9, 2020

Prepared by:

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**DEVELOPMENT AGREEMENT
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TOQUER RIDGE**

(A Master Planned Mixed Use Development – Toquerville, Utah)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this 9th day of July, 2020 by and between LOWE LAND TK, LLC, a Utah limited liability company (“Developer”) and Toquerville City, a Utah municipal corporation (“City”). Throughout this Agreement, Developer and City may individually be referred to as a “Party” and collectively as “the Parties”.

RECITALS

A. WHEREAS, Developer is the owner of approximately 715.72 acres of land located near the Northwestern edge of the City’s current municipal boundaries which is described more fully in *Exhibit A*, attached hereto and incorporated herein by this reference (“Subject Property”).

B. WHEREAS, Developer has planned and designed the Subject Property as a phased master planned mixed-use development which includes residential, commercial and community related development currently proposed as the Toquer Ridge project (“TR Project”). The general layout and design of the TR Project is also depicted in the “Master Plan/MPDO Concept Submittal” provided to the City on August 15, 2019, prepared by Pro Value Engineering (Hurricane, UT) and Cousins Architecture and Planning (Boston, MA). Since the submittal the Developer has worked with the City to further refine this master plan and has resubmitted a version that is acceptable to the city (“Lowe Master Plan”). A copy of the Lowe Master Plan is referenced in *Exhibit B* hereto.

C. WHEREAS, Developer has submitted a zone change application to the City requesting a rezoning of all of the Subject Property from its current Multi-Use 20 (one equivalent dwelling unit (“EDU”) per 20 acres) (“MU-20 Zone”) zoning designation to Residential 1-12 (one EDU per 12,000 square feet – approx. 4 EDU’s per acre) (“R-1-12 Zone”) zoning but later modified their application at the request of the City to rezone the Subject Property to the Residential 1-20 (one EDU per 20,000 square feet – approx. 2 EDU’s per acre) (“R-1-20 Zone”) (“Lowe Re-zone Request”). In connection with the Lowe Re-zone Request, Developer also requested approval of a conceptual Master Planned Development Overlay plan (“Lowe MPDO Plan”) and designation for the entire Subject Property.

D. WHEREAS, the Toquerville City Planning Commission (“Planning Commission”) held a public hearing on May 20, 2020 and at the conclusion of their June 10, 2020 meeting voted to recommend the final approval of the Lowe Re-zone Request and the approval of the Lowe MPDO Plan with certain findings and conditions and forward their recommendations to the Toquerville City Council (“City Council”) for its consideration.

E. WHEREAS, on June 11, 2020 upon receiving the recommendation from the Planning Commission, the City Council approved unanimously the Lowe Re-Zone Request and the Lowe MPDO Plan at its regularly scheduled business meeting.

F. WHEREAS, the final approval of the Lowe Re-zone Request, and Lowe MPDO Plan was granted subject to certain findings and conditions as set forth in *Exhibit “C”*, attached hereto and incorporated herein.

G. WHEREAS, Subject to the conditions set forth in *Exhibit "C"*, the City finds the Lowe Re-zone Request and the Lowe MPDO Plan: (i) meets the spirit and intent of the Toquerville General Plan (as amended & restated November 2017) and thus no General Plan Amendment is needed; (ii) meets the spirit and intent of Title 10, Chapter 15, Article C of the Toquerville City Code (Master Planned Development Overlay); (iii) will allow integrated planning and design of the Subject Property and, on the whole, create better development than would be possible under conventional zoning regulations; (iv) meet applicable use limitations and other requirements of the R-1-20 Zone with which the MPDO Overlay designation will be combined; and (v) meet the EDU density limitations of the R-1-20 zone.

H. WHEREAS, City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Subject Property to ensure development will occur as approved; (ii) the financial capability to carry out the TR Project; and (iii) the capability to complete performance of its "Developer's Initial Obligations" as set forth in Section 11 herein below.

I. WHEREAS, Developer has expended considerable time and money in developing the TR Project to its current status and will continue to expend considerable time and money to complete its development based upon the approvals given by City.

J. WHEREAS, City likewise has expended considerable time and money in reviewing the TR Project and assuming Developer elects to proceed with the Project, will continue to do so to ensure compliance with City's land management ordinances for the benefit of persons who ultimately will live, work and utilize the TR Project as well as citizens of Toquerville generally.

K. WHEREAS, each of the Parties are willing to enter into this Agreement in order to implement the purposes and conditions contained in *Exhibit "C"* relating to the Lowe Re-zone Request and the Lowe MPDO Plan and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and the City's land management ordinances.

L. WHEREAS, acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, and after all required public notice and hearings, the 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 land management ordinances. As a result of such determination the City (i) has elected to regulate the TR 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.

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 the City's land management ordinances ("City 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. “After-Acquired Property” means any property now owned or later acquired by Developer after the execution of this Agreement that is adjacent to the TR Project and to which the Developer wishes to annex and incorporate into the Project.

b. “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 Area, which includes the TR Project.

c. “Base Density” means the maximum number of EDU’s and commercial floor space of commercial or mixed-use structures set forth in Section 7(b), below, which is allowed within the TR Project as calculated for a Mixed Use Project pursuant to Chapter 15C of the City’s Land Use Ordinance and as approved by the City Council when granting approval of the Lowe Re-zone Request and the Lowe MPDO Plan.

d. “City” means the Toquerville City, a Utah municipal corporation and political subdivision of the State of Utah.

e. “City Council” means the Toquerville City Council, the governing body of the City.

f. “City Land Use Ordinance” means Title 10 of the Toquerville City Code as re-codified and adopted May 9, 2013, and amended from time to time thereafter.

g. “City Standards and Specification for Public Improvements” means those design and construction guidelines, standards and specifications contained in City’s Land Use Ordinances regarding the construction of public and quasi-public infrastructure within the City.

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 Project Design Code and this Agreement. Commercial uses shall be located in both Commercial Structures and Mixed Use Structures, as defined in the Project Design Code.

i. “CC&Rs” means Covenants, Conditions and Restrictions and specifically the Master Declaration of Covenants, Conditions and Restrictions recorded against the TR Project as a whole (“Master Declaration”), the Project Design Code and any specific development 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 TR Project subject to the conditions set forth in Sections 7(f) and 7(g) of this Agreement.

k. “Developer” means collectively Lowe Land TK, LLC, its successors and assigns.

l. “Developer’s Initial Obligations” means those duties and obligations set forth in Section 11, below.

m. “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 Facility Improvements.

n. “Development Parcel” means an area within the TR 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 or commercial building pads as generally shown in the Lowe Master Plan or as may be designated in future revisions of the Lowe Master Plan.

o. “Development Guidelines” means the Master Declaration, the Project Design Code and separate plans that will be adopted by Developer, including the Culinary and Raw Water Plans, the Sewer and Storm Water Management Plans, Roads and Trail Plans and Parks/Recreation Plans for the purpose of providing continuity throughout the TR Project.

p. “Dwelling Unit” or “DU” means a structure or portion thereof designed and capable of daily residential occupancy. A Dwelling Unit must contain at least a kitchen, a bathroom and one or more bedrooms. A Dwelling Unit is an EDU as defined below and as defined in the Project Design Code.

q. “Electrical Power Supplier” means Rocky Mountain Power, a division of PacifiCorp, or any other electrical power supplier who may provide electrical power service to the area of the City where the TR Project is located in the future.

r. “EDU” means equivalent dwelling unit. An equivalent dwelling unit means a Dwelling Unit as defined by City’s Land Use Ordinance and as modified by the Project Design Code. For purposes of Commercial Uses and Commercial Structures, an EDU will have a conversion factor equivalent of one (1) EDU for each 2,000 square feet of commercial use developed into either exclusively Commercial Structures or Mixed Use Structures within the areas designated for residential use.

s. “Final Plat” means a final plat of a residential or commercial subdivision, condominium buildings or a commercial site plan to be located upon a Development Parcel which, after approval by City Council, is to be recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

t. “Land Use Application” means any application for development within the TR Project submitted to City by Developer or any Sub-Developer subsequent to the execution of this Agreement.

u. “Lowe Master Plan” “Lowe MPDO Plan” “Lowe MPDO Overlay Request” and “Plan” means the master plan for the TR Project approved by the City in connection with Lowe MPDO Plan approval, the final version of which is referenced specifically by title and date in *Exhibit “B”* and due to size is maintained in the Official Records of the City. The Lowe MPDO Plan was prepared by Pro Value Engineering (Hurricane, UT) and Cousins Architecture and Planning (Boston, MA). Except for densities, uses, the location of the Parkway and Parkway intersections, the Lowe Master Plan is conceptual in nature and the actual layout and design of Development Parcels, neighborhoods, roads, common areas, parks, lots, building pads or general

public infrastructure within neighborhoods is not fixed by the Lowe Master Plan (including Master Plan Project Book, Concept Master Plan Narrative, and Summary Design Code), but will remain flexible until individual subdivision plats or site plans and engineered construction drawings are submitted and approved by the City for a Development Parcel.

v. “Lowe 80 Acre Parcel” means that parcel of real property not presently included in the TR Project identified as Parcel No. T-3167 by the Washington County Assessor’s Office.

w. “Modification Application” means the application and process prescribed for modifying this Agreement or the Lowe Master Plan as set forth in Section 6, below.

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

y. “Ordinance” means the Toquerville City Code, including the City Land Use Ordinance.

z. “Parkway” means that by-pass road (to be known as the “Toquerville Parkway”) depicted in the Lowe Master Plan (*Exhibit “B”*) and the UDOT Transfer Agreement (*Exhibit “D”*) which the City and the UDOT desire to be constructed as means to realign SR-17 and have it by-pass to the West of the historic downtown portion of the City.

aa. “Parkway Phase 1” means that portion of the Parkway sufficient to provide two lanes of safe vehicular travel (one in both directions) from the Northern intersection with SR-17 at approximately Mile Post 1.1 to its Southern intersection with SR-17 at approximately Mile Post 5.4. The Parkway Phase 1 may be constructed beginning at any location, whether the north, south, or middle.

bb. “Planning Commission” means the Toquerville City Planning Commission.

cc. “Project Improvements” means site improvements and facilities that are planned and designed to provide service for the TR Project development resulting from a Development Activity; and necessary for the use and convenience of the occupants or users of TR Project. “Project Improvements” do not include System Improvements. Project Improvements are further defined in Utah Code Ann. § 11-36a-102(14) and may include common area improvements owned and managed by property owners associations such as small parks, their improvements, and common access drives.

dd. “Project Design Code” means the design standards or guidelines (for infrastructure, platting, lot regulations, public space design, architecture, lighting, signage, landscaping, and other building programming) for the TR Project to be adopted by Developer and approved, in summary format as part of the Lowe MPDO Plan by the City (for general compliance with the City’s health and safety standards). The Project Design Code shall be comprised of the documents listed in Exhibit “B” and retained by the City in its Official Records and may be amended by the Developer from time to time. In case of conflict between the Project Design Code and City Ordinances, the Project Design Code shall take precedence – subject to the City’s standards for health and safety.

ee. “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.

ff. “Public Facility Improvements” are improvements of a public nature, both Project Improvements and System Improvements which are owned and maintained by the City or a public utility provider for areas within the municipal boundaries of the City.

gg. “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.

hh. “Subject Property” means the approximate 715.72 acres of the property included within the TR Project particularly described in *Exhibit “A”* and depicted in *Exhibit “B”* attached hereto.

ii. “System improvements” means existing public facilities that are designed to provide services to service areas within the City 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. System Improvements are further defined in Utah Code Ann. § 11-36a-102(21) and may include, but are not limited to, the following - regardless of whether such improvements are located within the TR Project or such improvements off-site required to serve the project: easements and rights-of-way, street construction, curb and gutter, curb cuts, sidewalks, street signs, water distribution facilities, water storage facilities, fire hydrants, storm drainage facilities, street signalization and telecommunications equipment and conduit, street lighting, electrical utilities, flood control facilities, bridges, dedicated public parks, survey monuments, water rights, landscaping and revegetation within public parks, open space, and rights-of-way.

jj. “Toquerville Master Transportation Plan” means the plan which was the ultimate result of the Transportation Master Plan Study commissioned by the City and conducted by Jones & DeMille Engineering approved by the City Council in March of 2018, as may be amended from time to time.

kk. “TR Project” and “Project” mean the Toquer Ridge, a master planned mixed-use development located in Toquerville, Utah described more fully in Section 3, below, and further described or depicted on the attached *Exhibit “A”* and *Exhibit “B”*.

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

mm. “UDOT Parkway Design & Standards” means the design standards, cross sections and guidelines for the Parkway found in Exhibit A to the UDOT Transfer Agreement. Design of specific intersections shall require review by the Developer and changes to those Design and Standards may be requested of UDOT and City by Developer, which changes may be accepted at UDOT’s sole discretion.

nn. “UDOT Transfer Agreement” means that agreement entered into between the City and UDOT entitled “Cooperative Maintenance and Transfer Agreement: Toquerville Parkway and SR-17” dated effective the 25th day of April, 2020, as amended from time to time, attached hereto,

marked *Exhibit “D”* and incorporated herein by this reference.

oo. “Water Storage Site(s)” means those areas within the TR Project selected for the purpose of receiving, holding and storing culinary water to the TR Project the first of which will be identified and dedicated to the City as part of Developer’s Initial Obligations contained in Section 11, below. The System Improvements for the first Water Storage Site must be constructed, inspected and accepted by the City before the first Final Plat is recorded pursuant to Section 10.a.i.1. below.

pp. “Water Distribution System” means the system of water transmission lines within the TR Project to be designed, constructed by the Developer and dedicated to the City for the purpose of distributing culinary and raw water to EDU’s and Commercial Uses in the TR Project. The Water Distribution System may deliver culinary only, in the City’s discretion.

qq. “Zone Change Approvals” means the combination of the City Council’s final approval for the Lowe Re-zone Request and the Lowe MPDO Overlay Request.

rr. “Mixed Use” means the combination of commercial and residential uses within one structure or within one lot.

3. Summary of TR Project. The TR Project is a phased master planned mixed-use development which includes residential, commercial and community related development consisting of approximately 715.72 +/- acres located near the Northwestern edge of the City’s municipal boundaries. The TR Project consists of a number of Development Parcels (described as neighborhoods) as depicted in the Lowe Master Plan. It is anticipated that the said Development parcels will be further split up into Sub-Development Parcels. Developer will act as a master developer of the TR 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 TR 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. Developer intends to adopt and record a detailed Project Design Code which will govern the TR Project, a summary of which shall be reviewed and approved by the City (for compliance with its general health and safety standards) at the time of this Development Agreement. Said Project Design Code shall be consistent with the provisions of this Agreement and the Lowe Master Plan (including the Summary Design Code), and shall include standards and requirements that – when diverging in areas from the current City Land Use Ordinance – are consistent with the flexibility granted with the MPDO entitlement.

4. Material Condition Precedent to Effectiveness of Agreement. The Parties acknowledge and agree that this Agreement and the Parties obligations and covenants contained herein including those expressly set forth in Sections 5 thru 11 below, are conditioned upon the City granting and approving the Zone Change Approvals together with the documents referenced in Exhibit “B” constituting the Lowe Master Plan. The City’s issuance of the executed ordinance granting the Lowe Re-zone Request and vote to approve the Lowe Master Plan shall constitute satisfaction of this material condition and the time periods for the Initial Obligations and other covenants and warranties shall commence once this Agreement shall be executed and recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

5. Findings and Authority

a. Compliance and Benefits to City. The City finds that (i) the Lowe Re-zone Request, the Lowe Master Plan and this Agreement are consistent with the Toquerville City General Plan, as amended, the City's MPDO Ordinance (Title 10, Chapter 15C of the Toquerville City Code) and all other applicable ordinances, rules, regulations and policies of City; and (ii) the development of the TR Project pursuant to this Agreement, the Zone Change Approvals and the Lowe Master Plan will result in significant planning and economic benefits to and will further the health, safety and general welfare of City and its residents by, among other things: (A) requiring development of the TR Project in a manner consistent with the applicable rules, regulations and policies of City; (B) providing for the dedication of infrastructure improvements to be completed in several phases as set forth herein; (C) increasing sales and/or property tax and other revenues to City derived from businesses and residences to be constructed in the TR Project; (D) creating jobs from new businesses to be located within the TR Project; and (E) the dedication and construction of part, if not all of the Parkway and other public amenities.

b. Reliance by the Parties. City acknowledges that Developer is relying on the execution and continuing validity of this Agreement, the conditions set forth in this Agreement, the Zone Change Approvals and the Lowe Master Plan. Developer has expended substantial funds in the development of the TR Project and, with reliance upon this Agreement, will continue to expend additional funds. Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement, the conditions set forth in the Zone Change Approval's and the Lowe Master Plan in continuing to perform the obligations of Developer hereunder.

c. Purpose: Authorization to Develop. The Parties desire that City have reasonable certainty concerning the manner in which the TR Project will be developed and that Developer and its successors and assigns will have reasonable certainty in proceeding with development of the TR Project. Through this Agreement, Developer and its successors and assigns agree to comply with the terms of the Zone Change Approvals, the Lowe Master Plan and this Agreement, and in exchange, City authorizes Developer and its successors and assigns to develop the TR Project as set forth in the Zone Change Approvals, the Lowe Master Plan and this Agreement, subject only to future modification as set forth in Section 6, below.

d. Applicable Laws and Regulations. The Parties acknowledge that the Subject Property is located solely within the municipal boundaries of City. The Parties agree that all development and improvements of any sort, on or off-site, relating to the TR Project shall therefore comply with the City Land Use Ordinances, this Agreement, the City's Standards and Specifications for Public Improvements or those modified by the Project Design Code and all other regulations, requirements, and procedures established by the City. The Parties further acknowledge that in certain instances, such as the construction of the Parkway, coordination of design and other building standards may be necessary with other public and quasi- public entities.

e. Binding Effect of Zone Change Approvals. The Zone Change Approvals and the approved Lowe Master Plan shall not be affected by any subsequent inconsistent or contrary ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the Base Density, land uses, site improvements, rights of way, infrastructure, open space, school sites, church sites and parks and public amenities as shown in the Lowe Master Plan.

f. Land Use Applications. Any Land Use Application made subsequent to the execution of this Agreement shall conform to the recorded Lowe MPDO Plan documents, as well

as to applicable provisions of the City Land Use Ordinance in effect when a complete application is submitted, so long as Ordinances in effect are not in conflict with the Master Plan documents and so long as the conflicting ordinance does not contain uniform health and safety adopted by the City.

g. Building Permits. Any person or entity applying for a building permit within the TR Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances relating to the construction of any structure in effect when a person or entity files with City a complete application for such building permit.

h. Later Enacted State or Federal Law. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent applicable to the TR Project and controlling over the City's Ordinances.

i. Moratorium. The rights of Developer under this Agreement, the Lowe Master Plan comprised of the documents listed in Appendix B and the Zone Change Approvals shall only be subject to a subsequent moratorium or ordinance enacted by City to respond to a bona fide threat to the public health and safety or which involves facts and circumstances beyond the control of City and which threat represents a "compelling and countervailing public interest" as such term is used in the Utah Municipal Land Use Development and Management Act and the case law construing such term. The City acknowledges that, as of the date of this Agreement, to its best knowledge, information and belief, it is not aware of any existing facts under which such a moratorium or ordinance might be enacted.

6. Process for Modifying the Zone Change Approvals and Lowe Master Plan.

a. Intent/Flexibility. City acknowledges that the Lowe Master Plan is a generalized depiction and summary of the proposed development of the TR Project with specific land uses permitted as shown in the Lowe Master Plan. This Agreement contemplates that Developer may modify the Lowe Master Plan so long as the total base density allowed, land uses permitted and exactions depicted and described in the Lowe Master Plan, are not changed or increased. Subject to this limitation, and as provided in this Section and other related provisions throughout this Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Parcels and their phasing within the Lowe Master Plan, or its amendments approved pursuant to this Section. The purpose of this provision is to allow Developer the opportunity to change the configuration of uses shown on the Lowe Master Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of public improvements which have been constructed or which materially and adversely impact other public improvements depicted and planned on the Lowe Master Plan, as reasonably determined by City.

i. Major Modification. Any proposed modification of the Lowe Master Plan which increases the total base density allowed or adds other land uses or property not depicted or described in the Lowe Master Plan shall be accomplished only as provided in this Section 6 of the Agreement and other related sections of City's Land Use Ordinance, as amended.

ii. Minor Modification. Any proposed modification of the Lowe Master Plan

which does not increase base density allowed, adds other land uses to the property, requires alteration of infrastructure installed, or modifies the exactions depicted in the Lowe Master Plan shall be permitted without prior review by the City or adherence to paragraphs b. through e. of this Section 6. Minor modifications to the Lowe Master Plan shall be provided to the City with a Modified Lowe Master Plan containing the revision date and supplemental summary of the minor modifications referencing the revision date.

b. Submittal of Major Modification Application. If Developer or its successors and assigns, desire to modify the Lowe Master Plan as described in Section 6(a)(i), above, Developer shall submit a Lowe Master Plan Major Modification Application, together with any required fee to City, in the form and amount prescribed by the City (“Major Modification Application”). Any Major Modification Application which, after the review of the City’s staff, are deemed to be within the scope of modifications permitted by Subsection 6(a), as reasonably determined by City, may be modified by Developer by providing City with a modified Lowe Master Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Lowe Master Plan. Said Major Modifications shall be deemed complete upon receipt by City of a modified Lowe Master Plan and the supplemental summary.

c. City Acceptance of Major Modification Application. City shall have thirty (30) calendar days after submittal of a Major Modification Application to inform Developer whether City considers the Major Modification Application to be complete. If City does not notify Developer in writing of any additional information required to complete said application, the Major Modification Application shall thereafter be deemed complete. If City determines the Major Modification Application is not complete as submitted, City shall notify Developer in writing within said thirty (30) days specifying in detail any incomplete or missing information. If City does not notify Developer in writing within the thirty (30) days after submittal of the additional information requested, the Major Modification Application shall be deemed complete. If City determines that the required additional information for the Major Modification Application is not complete as submitted, it shall notify Developer in writing within thirty (30) days after submittal of the additional information requested the Major Modification Application the information required.

d. City Review. The City shall have sixty (60) calendar days to review the changes proposed in the Major Modification Application after said application is accepted as complete or deemed complete. If City does not object within sixty (60) days, the final completed Major Modification Application shall be deemed accepted by City and shall constitute a modification of the Zone Change Approvals and the Lowe Master Plan, provided that any such modification conforms to applicable law set forth in Section 5 of this Agreement. If any applicable law requires further public hearing or procedure to be followed, the Parties agree to follow said procedures as expeditiously as possible.

e. City’s Objections. If City objects, disagrees, or disapproves of the changes contemplated by the Major Modification Application, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City’s General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement, including the right of Developer to modify the Lowe Master Plan as described in Section 6(a) above.

f. Mediation. The City and Developer shall meet within fifteen (15) calendar days (“Mediation Deadline”) of after receiving an objection asserted by City pursuant to the preceding Subsection, to mediate and resolve all outstanding issues.

g. Arbitration. If City and Developer are unable to resolve the issues via mediation pursuant to the preceding Subsection, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Major Modification Application. The party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Major Modification Application and issue a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties and shall constitute an approved modification of the Zone Change Approvals and the Lowe Master Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each party's position in the arbitration.

7. General Conditions of the Zone Change Approvals. As part of the Zone Change Approvals, the following general development density conditions and guidelines (“Base Density”) for the TR Project shall apply:

a. Maximum Development Area. The entire TR Project and the corresponding MPDO zone shall be limited to the Subject Property described in *Exhibit “A”*, unless changed by a future amendment to the Zone Change Approvals and Lowe Master Plan as provided in Section 6, above and the City Land Use Ordinance to include After Acquired Property.

b. Residential Density. The maximum number of Equivalent Dwelling Units (“EDU’s”) within the TR Project shall be not more than 1,834, and shall be located within the areas designated for residential uses and mixed uses. The EDU limitation may only be increased by amending the Zone Change Approvals and the Lowe Master Plan wherein the City approves the inclusion of After-Acquired Property into the TR Project. Notwithstanding the preceding sentences of this Section, the maximum number of EDUs shall be decreased by one (1) EDU for each 2,000 square feet of commercial use developed into exclusively Commercial Structures within the areas designated for residential use. There shall be no diminution in the maximum number of EDU’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 TR Project may include up to 715,000 square feet (as currently identified in the project’s proposed program) of commercial uses within the areas designated for commercial uses and mixed uses, and may include up to twenty percent (20%) of the Project’s total developable acreage to be utilized for Commercial Uses located within Commercial Structures or within Mixed Use Structures. Likewise, the TR Project shall have no less than 50 acres designated and zoned for Commercial Use and Mixed Use. Any zoning of areas designated on the Lowe Master Plan as “Park”, “Open Space”, “School” or “Church” may not be utilized to purposes of calculating the 50 acre minimum set forth in the preceding sentence. Commercial Uses must be located in the areas designated on the Lowe Master Plan as

“commercial” and “mixed use” (as designated in the Project Design Code) and in such other areas as approved by the City. Any location of Commercial Uses outside of the areas designated on the Lowe Master Plan shall be considered material modifications to said document and the Zone Change Approvals and shall require the submittal and approval of a Modification Application pursuant to Section 6, above. The maximum Commercial Use percentage set forth in this Section shall not apply to golf courses or other public recreational amenities regardless of whether fees are charged for use.

d. Mixed Use Density. There is not a separate density for mixed uses and mixed use buildings. Commercial uses may be planned for mixed use lots and structures in the designated neighborhood centers, for example as ground floor office space under upper floor residential condominiums, but the commercial space shall be counted as part of the 715,000 suggested commercial square feet and the residential units are counted as part of the 1,834 total EDU's. The combination of both the maximum Residential Density and the maximum Commercial Density shall constitute the Base Density for the TR Project.

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 TR 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 TR 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 reasonable municipal/utility related services including, but not limited to, adequate fire protection and necessary rights of way for ingress and egress. To comply with Developer's Initial Obligations, Developer agrees to submit a Final Site Plan or Final Plat, obtain approval thereof and construct at least one commercial development or residential subdivision as set forth in 11.c. below.

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 TR Project as it develops. Therefore prior to approval of any Final Plat or Commercial Site Plan within the TR Project, Developer may adopt and record CC&R's and a more detailed Project Design Code that will guide development and construction over the entire area of the TR Project. Developer agrees to allow the City to review the CC&R's and extended Project Design Code to ensure consistency between the City Land Use Ordinances and the use/design provisions of the CC&R's and Project Design Code for that purpose only and City may provide written suggestions to Developer for Developer's consideration. The Developer's consideration of the City's suggestions does not bind the Developer to a strict consistency with the City's Land Use Ordinances, due to the flexibility approved by the MPDO. Notwithstanding the City's right to review the CC&R's and any expansion of the Project Design Code, the City shall not have any obligations to enforce the covenants contained therein.

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 Lowe Master Plan

so long as the cumulative number of approved EDUs and commercial space do not exceed the maximum number of EDUs and commercial space allowed for the entire TR Project.

h. Density Transfers. Developer's transfer of density units from one Neighborhood or Development Parcel to others within the TR Project shall proceed in accordance with Section 6 and 7 hereof, provided that: (i) the Ordinances, General Plan, and the Project Design Code 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 TR Project, shall, in addition to those items required by City's Land Use Ordinances, include a statement of: (i) the Base Density within the entire TR Project as of the date of the application; (ii) the number of EDUs and commercial space 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 and Mixed Use on Development Parcels. Each application for the development of a Commercial Use or 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 (and the allocation of Commercial Use within Mixed Use structures) allowed under the Zone Change Approvals, the Lowe Master Plan and this Agreement; (ii) the cumulative total number of acres of Commercial Uses previously approved within the TR Project as of the date the application was submitted to City; (iii) the number of acres of Commercial Uses that is sought under that land use application, (iv) the total of Commercial floor space allowed under the Zone Change Approvals, the Lowe Master Plan and this Agreement, (v) the cumulative amount of commercial floor space previously approved within the TR Project as of the date the application was submitted to the City, and (vi) the amount of commercial floor space sought under that land use application. The City shall not approve any Land Use Approval Application for the development of Commercial Uses or Mixed Use where the proposed development will create a situation where the maximum limits of Commercial Use acreage and commercial floor space within the TR Project pursuant to this Section is exceeded.

k. Appeal of Adverse Land Use Applications Other Than MPDO Modifications. 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, other than a Master Plan Modification Application, may be appealed as provided in City's Land Use Ordinance.

8. General Rights and Responsibilities of Developer

a. Conditions of Zone Change Approvals and Impact Fees. With respect to the TR Project, Developer and its successors and assigns, accept and agree 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 TR Project. City agrees that its current fee schedule and all future revisions thereto will be applied uniformly within TR Project, as applicable.

b. Vested Rights Granted by the Zone Change Approvals. 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, the Lowe Master Plan and its recorded documents, and the City's Land Use Ordinance, to develop the TR Project according to the Lowe Master Plan under applicable law as provided in Section 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 under this Agreement and the Zone Change Approvals provided such assignees agree to be bound by the terms of this Agreement as provided in Section 13, below. Notwithstanding any statute, ordinance or other legal authority to the contrary, the vested rights contained in the Zone Change and MPDO 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 may dedicate all Project Improvements and shall dedicate all System Improvements in the TR Project to the City at such time as those improvements are accepted as complete by City. Said dedication shall reserve for the benefit of Developer and Developer's successors and assigns, all capacity in said infrastructure improvements that is necessary for the TR Project; provided, however, that the City may manage such improvements to achieve operating efficiencies as the City may determine. This Subsection shall not apply to any upsizing of infrastructure improvements required, and paid for, by the City. If the City requires and pays for any upsizing of infrastructure all additional capacity in excess of that required for the TR Project shall be dedicated and reserved for the benefit of the City. Timing of the Dedication of the Parkway, the Water Storage Site and other Public Facilities and Public Spaces site shall be designated elsewhere in this Agreement. The Parties agree that upon completion of construction (as determined by the City's Engineer) and dedication of any infrastructure to the City, the City will conditionally accept said dedications subject to the warranty periods prescribed the City's Land Use Ordinances and the City's Construction and Design Standards for Public Improvements.

d. Mitigation of the Effects of Construction. Prior to the commencement of any construction or Development Activity within the TR Project, Developer and all Sub-Developers, their successors and assigns, shall develop a "Construction Mitigation Plan" which shall be approved by the City. The Construction Mitigation Plan shall include procedure and requirements to be adhered to by the Developer while conducting any Development Activity within the TR Project. Said Construction Mitigation Plan shall provide for the temporary construction of alternative construction routes and for the mitigation and/or elimination of fugitive dust, debris, smells, odors and noise. The standards and requirements set forth in the Construction Mitigation Plan shall comply with all local, state and federal environmental regulations and statutes. The Construction Mitigation Plan shall provide that all construction traffic shall be conducted only on

the Parkway or alternate routes other than existing City streets. Developer shall comply with all hours of construction restrictions prescribed by the City's Standards and Specifications for Public Improvements and other general ordinances.

9. 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. However, any statute, 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 Lowe Master Plan or otherwise conflicts with this Agreement shall be deemed to be waived by the City insofar as it relates to the TR Project.

b. Project and System Improvements – Cost Sharing. Developer shall bear the entire cost of constructing Project Improvements needed to service the TR Project. Developer shall also bear the initial cost of constructing System Improvements required as a result of the TR Project but shall be entitled to be reimbursed by City as set forth in Section 9(c) 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 TR Project or off-site (as long as they serve the TR Project): easements and rights-of-way, street construction, curb and gutter and curb cuts, sidewalks, street signs, water distribution facilities, water storage facilities, fire hydrants, 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. Agreements for Reimbursement of System Improvements. Prior to constructing any System Improvement required for the TR 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 over time, credited, or paid upfront for the cost of constructing such System Improvements less Developer's proportionate share of the cost thereof as determined by the City's Engineer. 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. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective proportionate share of the cost of System Improvements. Each agreement shall be negotiated on a case by case basis at the time said improvements are constructed.

d. Compliance with City Requirements and Standards. Except as provided in Section 5 of this Agreement, Developer acknowledges it shall comply with all other 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 TR Project in effect at the time the land use approval is sought. Said compliance includes the payment of uniform impact fees and application fees. City and Developer recognize that, consistent with the guidelines of the Project Design Code (Summary) referenced in Exhibit B, the Project Design Code may relax and allow for a reduction or modification of certain standards and that, as long as said relaxed standards do not violate the City's uniform health & safety codes, may be utilized by Developer.

e. Power of Eminent Domain. City agrees that in the event Developer needs to obtain

easements or rights of way for the purpose of constructing Project Improvements or System Improvements which partially benefit the TR 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 and absolute discretion of the City.

f. Cooperation of City. City may cooperate with Developer in connection with financing of the TR Project including, without limitation, consideration of the issuance of bonds or creation of a special assessment areas ("SAAs") or public improvements districts ("PIDs"). The decision whether or not to create an SAA, PID or bond for public improvements within (or for the benefit of) the TR Project is within the sole and absolute discretion of the City.

10. Specific Rights And Responsibilities

a. Water

i. Developer's Obligations for Project Improvements

1. Water Storage Site(s). Developer shall design, fund, and construct (in phases if necessary) "Water Storage Site(s)" which is anticipated, but subject to change, to include water storage tanks for culinary and, if deemed necessary by the Developer, secondary water within the TR Project. The general location and elevation of the Water Storage Site(s) shall be approved by the City. The Water Storage Site(s) shall have sufficient capacity to serve the TR Project, at a minimum, as reasonably determined by City. Developer shall dedicate and convey to the City the first Water Storage Site as part of its Initial Obligations prior to the recording of the first subdivision final plat, or commercial site plan within the Project, and if later phases of Water Storage capacity are required, Developer shall dedicate and convey to the City additional Water Storage Site(s) prior to the recording of plat dependent upon the additional stored water.

2. Water Distribution System. Except transmission lines and stubs thereto located within the Parkway Phase 1, Developer shall design, fund, and construct (in phases if necessary) an adequate "Water Distribution System" of water transmission lines for the collection and distribution of culinary and secondary water to the Water Storage Site(s) and then to each EDU or commercial structure within the TR Project. The City may approve culinary only water transmission lines, in the City's discretion.

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 culinary and pressurized secondary water throughout the TR 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(s) and Water Distribution System and shall provide all Development Parcels and amenities within the TR Project with an adequate supply of culinary water service.

2. Obtaining of Easements and Rights of Way for Water Distribution System. If needed and pursuant to Subsection 9(e), above, the 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.

3. System Improvements – Cost Sharing. To the extent System Improvements relating to water are required, the City shall enter into a reasonable cost-sharing Agreement with Developer to ensure timely completion of such Improvements.

b. Sanitary Sewer Service and Facilities

i. The TR Project is located within the service boundaries of the Ash Creek SSD. Developer will work with Ash Creek SSD to extend its sewer and waste water collection system to service the TR Project in compliance with all regulations and specifications of Ash Creek SSD. All administrative and regulatory authority in approving and maintaining sanitary sewer services and facilities within the Ash Creek SSD shall be vested in Ash Creek SSD, and/or its successors and assigns.

c. Transportation and Roads

i. Developer Obligations. Developer shall provide the following transportation infrastructure and take the following traffic mitigation measures:

1. General Road Improvements. With the exception of the Parkway which is discussed in Subsection 10.c.i.3. below, Developer shall design, construct or improve and dedicate all needed access roads leading directly into to the TR Project, unless the City decides to construct them first. City may, in its sole discretion, exercise its power of eminent domain or negotiate to acquire such property for these purposes. Likewise, Developer shall design, construct and dedicate all other roads (including collector or arterial roads) within the TR Project. All road system improvements within the TR Project shall be constructed according to the City's Standards and Specifications for Public Improvements except those waived by the Project's Design Code so long as they meet minimum health and safety standards required by the various uniform codes adopted by the City such as the International Fire Code and the International Building Code. All road system improvements shall be of the general size and location as identified in the Transportation Master Plan. Prior to the construction of any road system improvements or road intersection improvements within the TR Project, the City shall review and approve or reject with suggested changes, all plans, drawings and specification with respect to the alignment and construction of such road and intersection improvements.

2. Dedication of Roads. With the exception of the Parkway which is discussed in Subsection 10.c.i.3. below, 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 TR Project, Developer may seek approval from City, which approval may be granted on a case by case basis only if Developer's request complies with the City's Land Use Ordinance and the City's Standards and Specifications for Public Improvements. The width and construction standards for such private streets shall be determined by applicable provisions of City's Land Use Ordinance and the Project Design Code. Developer shall be required to design, construct or improve/widen and dedicate those roads that: a) access , b) are located within, or c) create a need for their existence and size as a result of the approval of a Final Plat or Final Site Plan at the time said Plat or Plan is recorded.

3. Parkway. Upon the execution and recording of this Agreement in the Official Records on file in the Office of the Recorder of Washington County, State of Utah and as a final condition of the Zone Change Approvals, Developer shall execute and allow to be recorded in the Official Records on file in the Office of the Recorder of Washington County, State of Utah a warranty deed ("Donation Deed") conveying title to that portion of the Parkway located within the TR Project ("Parkway ROW Area"). The Donation Deed shall contain a metes and bonds legal description of the centerline of the Parkway ROW Area and indicate that it is One Hundred Twenty Feet (120' – 0") in width throughout. The Parkway ROW Area shall be conveyed to the City without charge, however Developer shall be allowed to treat the conveyance as a "donation" under the IRS Code and to seek any sort of favorable tax treatment as a result thereof based upon a donative value, which shall be independently determined by a certified appraiser within 60 days of the donation and paid for by Developer with up to a \$6,000 reimbursement from the City. The Parties recognize and acknowledge that the City desires and intends to ultimately convey the Parkway (including the Parkway ROW Area) to UDOT for full buildout and perpetual maintenance pursuant to the UDOT Transfer Agreement.

4. Design Approval and Additional Property for Parkway Intersections within the Project. Developer may review and provide timely input to the City and UDOT with regards to the final design of the Parkway within and across the TR Project and if during the final design and preparation of construction drawings for the Parkway located within the TR Project it is determined that additional property is needed to properly construct safe and efficient Parkway intersections, Developer may dedicate and convey additional property to the City or UDOT for said intersections.

5. Slope Stability and Mitigation Caused by the Parkway within the Project. If during the final design and preparation of construction drawings for the Parkway located within the TR Project it is determined that in order to accommodate cuts and fills caused by the Parkway design to achieve safe and stable slope ratios, additional property is needed after attempting to design and employ retaining walls of similar cost and expense up to a height and design

approved by the Developer, Developer further agrees at Developers discretion to either: a) dedicate and convey to the City or UDOT additional property for stabilized slopes; or b) allow stabilized slopes to be constructed on their property but designate those areas as “no build zones” by means of recorded preservation easements or future subdivision plats and commercial site plans including that area and creating a mechanism through which those areas are maintained and preserved. Developer shall not plat nor develop permanent structures within the “no build zones”, except to build minor recreation improvements, which shall not jeopardize the stability of the soils.

6. Parkway Construction Staging. In the event it is determined by the City, UDOT or the contractor retained by said entities to construct the Parkway Phase 1 Improvements, that additional areas outside of the Parkway ROW Area is needed for construction staging and storage, Developer agrees to work in good faith with said entities and their contractor to designate, in Developer’s sole discretion, temporary staging areas on the condition that the staging areas are restored to their pre-construction condition within the time periods prescribed in Section 10.c.ii.4.n., below.

ii. City Obligations.

1. Street Design Generally. Except for the Parkway and those street design cross sections modified by the Project Design Code, the street design cross sections, as contained in the City Standards and Specification for Public Improvements, as amended from time to time, shall be the governing specifications and standards for the street design of all streets and roadways within the Project.

2. Acceptance of Dedication and Maintenance of Streets & Roads. City shall accept via dedication and maintain all streets and roadways within the TR Project, so long as such streets and roadways are: a) constructed to the City’s Standards and Specifications for Public Improvements, the Project Design Code or the UDOT Parkway Design & Standards contained in the UDOT Transfer Agreement (as applicable), b) dedicated without liens or encumbrances, and c) dedicated subject to the City’s standard warranty requirements for public improvements. The City shall first inspect the street or roadway for compliance. Upon acceptance of the dedication and the expiration of any warranty period prescribed by the City Land Use Ordinances, the City shall maintain the streets and roadways within the TR Project at a level equal to, or higher than, that level of service with which other roads within the City are maintained.

3. Parkway Design/Landscaping. The design standards, cross section and guidelines for the Parkway shall be those set forth in the UDOT Parkway Design & Standards. If UDOT does not mandate the type of landscape planting allowed within the center medians of the Parkway, the City shall so dictate utilizing desert and drought tolerant plantings and/or xeriscaping where possible. In the event UDOT does not mandate landscape and planting standards and Developer desires to have medians and landscaping within the Parkway ROW Area that are more dense and/or which require more frequent upkeep and maintenance, it may negotiate the same with the City on the grounds that said maintenance and upkeep

is borne primarily by the Developer or a master owners association for the TR Project.

4. Parkway Donation Consideration. In exchange for the Developer conveying the Parkway ROW Area and any additional property needed for safe and efficient intersections within the TR Project, the City agrees to do the following:

a. “Substantially Complete” the Parkway Phase 1 by no later than March 15, 2027 otherwise the City shall return Parkway ROW to Developer if Developer so chooses, unless extended by written agreement of the Parties (“Parkway Phase 1 Substantial Completion Deadline”).

i. For purposes of this Agreement, the “Parkway Phase 1” shall mean two fully constructed lanes of travel (one in each direction) commencing at the Parkway’s North Intersection with SR-17 (as designated and defined in the Lowe Master Plan and the UDOT Transfer Agreement at milepost 1.15) running all the way through the TR Project and connecting back into SR-17 at the Parkway’s South Intersection with SR-17 (as defined in the UDOT Transfer Agreement at milepost 5.4). The Parkway Phase 1 will be built utilizing the East side of the Parkway ROW thru the TR Project. Construction may be commenced in sub-phases and may start at either the north or south intersection with SR-17 or in the middle.

ii. For purpose of this Agreement the terms “Substantially Complete” or “Substantial Completion: relating to the Parkway Phase 1 shall mean when both travel lanes have been constructed, inspected, approved and officially opened for vehicular travel by the public from its Northern intersection with SR-17 at milepost 1.15 to its Southern intersection with SR-17 at milepost 5.4.

b. The design, engineering and construction of the Parkway Phase 1 shall be done in conformity with the UDOT Parkway Design & Standards and at no expense to the Developer unless Developer desires to commence Development Activity within the TR Project which necessitates the construction of part or all of the Parkway Phase 1. In said instance the City will work with Developer to determine which portion of the Parkway Phase 1 constitutes a Project Improvement and what portion constitutes a System Improvement and a reimbursement agreement between the Parties is reached in writing as to how much and when the Developer will be reimbursed for its cost of construction by the City. For purposes of this section, the City will not include or allow the TR Project to be assessed under a Special Assessment Area or Public Improvement District created in part for the purpose of financing the construction of the Parkway Phase 1 or the utility transmission or outflow lines to be installed within the Parkway ROW Area.

c. Upon commencement of construction of the Parkway Phase 1, cause to be erected a livestock fence along with gates placed at the five intersections indicated in the Lowe Master Plan meeting UDOT standards on both sides of the Parkway ROW Area at no expense to the Developer.

d. During construction of the Parkway Phase 1 and any future expansions of the Parkway through the Project, the City will construct and extend a box culvert at least 12' x 12' and in the location designated in the Lowe Master Plan at no expense to the Developer.

e. During construction of the Parkway Phase 1 and any future expansions of the Parkway through the Project install utility sleeves in the location, size and quantities designated in the Lowe Master Plan at no expense to the Developer.

f. Allow Developer, and its successors and assigns, to construct intersections with the Parkway within the Project at the general locations designated in the Lowe Master Plan and the UDOT Parkway Design & Standards. Developer agrees that the TR Project will have no more than 5 intersections with the Parkway.

g. Except for purposes of geotechnical testing, environmental and cultural resource analysis, the City shall restrict and not commit any disturbance of the Parkway ROW Area or any approved construction staging areas prior to commencement of construction on the Parkway Phase 1 improvements.

h. Restrict access by the public of the Parkway ROW Area and any approved construction staging areas until the Parkway Phase 1 is Substantially Complete.

i. Until commencement of construction on the Parkway Phase 1, and during construction to the extent allowable by applicable safety regulations, allow Developer to maintain its cattle and livestock to graze upon the Parkway ROW Area.

j. During construction of the Parkway Phase 1, all utility transmission (or outflow) trunk lines (power, water, sewer, natural gas, etc.) will be constructed and installed within the Parkway ROW Area in a size sufficient to provide utility services to the planned future residents and owners within the TR Project and likely to areas outside the TR Project. Likewise, stubs into said transmission lines will be installed in reasonably spaced locations and as approved by the Developer so as to minimize Developer's need to make costly encroachments into the Parkway to connect thereto in the future. Developer shall have no obligation to pay for the construction and/or installation of said transmission and outflow lines (and stubs thereto).

k. Pay all Greenbelt Rollback Taxes the Developer may incur once the Parkway ROW Area ceases to be used for livestock grazing.

l. Waive the application fees Developer would normally have to pay for the submission of the Lowe Zone Change Request and the Lowe MPDO Overlay Request and pay for all costs of publication relating to the necessary public hearings required under Utah law and the City Land Use Ordinance regarding zoning amendments.

m. As private property owners adjacent to the TR Project and the Lowe 80 Acre Parcel develop their property, the City will ensure that roadways and city utility infrastructure sufficient in size and capacity are extended to said Parcel such that it is not landlocked without vehicular/pedestrian access and access to the utility transmission lines.

n. Restore any construction staging area utilized by the City or its contractors owned by the Developer to its pre-construction condition within 120 days of Substantial Completion of the Parkway Phase 1 Improvements.

5. Transfer/Exchange of Parkway and Bypassed SR-17 Ownership, Jurisdiction and Maintenance Obligations. The City and UDOT have negotiated and entered into the UDOT Transfer Agreement wherein both governmental entities have agreed to re-align SR-17 to include the Parkway once Substantial Completion of the Parkway Phase 1 has occurred. The City shall use its best efforts to construct the Parkway Phase 1 improvements by the Parkway Phase 1 Substantial Completion Deadline. Pursuant to the UDOT Transfer Agreement, once 2 lanes of traffic (one in each direction) are constructed, inspected and opened for public use for the entire expanse of the Parkway, UDOT and the City (by deed) will convey/transfer ownership and jurisdiction of Parkway and that segment of SR-17 bypassed by the Parkway to the other entity. Once the transfer/exchange contemplated by the UDOT Transfer Agreement has occurred, the City shall maintain the former portion of SR-17 (to be known as an extension of Toquer Boulevard) at its sole expense to a level of service equal to other roads within the City and allow TR Project interior roads to connect with it in locations that meet applicable safety standards and guidelines.

6. Abandonment of Excess ROW. Upon the City's receipt of title to the bypassed portion of the current SR-17, City agrees to timely abandon those portions of the former SR-17 right of way that are unnecessary for the City to maintain or expand the roadway as a minor arterial street. Presently the City's Standards and Specifications for Public Improvements and the Toquerville Master Transportation Plan require minor arterials streets to have a right of way of no less than 90 feet in width. City shall abandon all areas adjacent to property owned by Developer such that a 90 foot ROW is maintained. Said abandonment shall be accomplished by ordinance and quit claim deed, both of which shall be recorded in the Official Records on file in the Office of the Recorder of Washington County,

State of Utah.

7. Inclusion of Future East/West Road in Toquerville Master Transportation Plan. The City will, when undertaking the next update to the Toquerville Master Transportation Plan include a future master-planned road commencing at the Parkway and running Westerly along the easement held by the Washington Water Conservancy District for the transmission line from the Cottam well to a point where it connects with either: a) the final segment of the Southern Parkway that will extend from SR-9 to I-15, b) a master-planned road of similar size and capacity originating within the Town of Leeds, or c) rotating North by Northwest to a point where it intersects with the Southern frontage road along I-15 (known as North Main Street in Leeds and the unincorporated area of Washington County). The master-planned road, where possible, shall be located to straddle equally over boundaries between the Developer and adjacent property owners. Because the final connection/termination point of the future master-planned road will occur outside of the City's municipal boundaries and be partially constructed by governmental entities or land owners outside of the control of the City, Developer acknowledges that its final alignment may change over time.

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 EDU (if residential) or the 40th acre of Commercial Use (if commercial), Developer shall dedicate a site or sites, as may be acceptable to the Hurricane Valley Fire District or Washington County, totaling no more than 3 acres for a police, emergency response and fire protection facility. Likewise the Developer shall comply with all reasonable requirements of these entities including the installation of all necessary fire protection infrastructure within Development Parcels in the Project.

ii. City Obligations. Presently the City does not provide emergency response or fire protection services to within its municipal boundaries. These services are provided by the Hurricane Valley Fire District which is a Special Service District created by Washington County and is its own independent political subdivision of the State of Utah. Likewise, the City does not provide police and law enforcement services within its municipal boundaries. Rather these services are contracted for with the Washington County Sherriff's Department. If, in the event, the City creates its own police department or fire department and provides the afore-mentioned services to areas of the City including the Project, the City shall provide said services to the same level of service it provides to other areas of the City.

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

i. Developer's Obligations. In order to preserve open space areas and improve park and recreational amenities in the TR 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 TR 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 parks, trails and open master plan for the TR Project (“Parks, Trails and Open Space Master Plan”). Developer shall prepare and receive approval from the City of the Parks, Trails and Open Space Master Plan by no later than the time they, or their successors or assigns apply for approval of the 3rd Final Plat or Final Site Plan (or combination of both) with the TR Project. Developer shall dedicate any parks, trails or open space that lie within 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 Parks, Trails and Open Space 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. Parks. As part of Developer’s Initial Obligations, Developer shall dedicate to the City the areas designated on final subdivision plat or final site plan as being Public Facilities or Public Spaces. Said dedication shall occur as part of a final subdivision plat or final site plan is recorded which contains the property to be dedicated. Furthermore Developer agrees to construct and dedicate neighborhood parks at the time a Final Plat for a Development Parcel, or phase or portion thereof, is recorded which, as determined by City and in a location approved by Developer, is needed for the area. The Parties agree that the standard ratio shall be a One Half (.5) acre park for every 241 EDUs (“Parks Standard”). Unless the Developer dedicates land and/or constructs Regional Park of a size of no less than eight (8) acres within the TR Project and said park is identified as a capital project on the City’s Parks and Recreation Capital Facilities Plan, Developer shall not be entitled to impact fee credits pursuant to Section 10.d., above, for the construction of Community Common Facilities or Spaces as designated and defined in the Lowe Master Plan.

3. Open Space. At the time Developer records a final subdivision plat or final site plan, Developer shall also dedicate said open space within the subdivision plat or final site plan to the City or ensure that the area is owned by a Master Common Interest Community Association or Neighborhood Common Interest Community Sub-Association. Nothing in this provision shall restrict Developer from dedicating any open space area depicted in the Lowe Master Plan to the City prior to the recording of Final Plat for property contiguous thereto.

4. 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 Lowe Master Plan to a religious denomination or denominations of its choosing.

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

ii. City Obligations

1. Level of Service. After construction, inspection, acceptance and dedication of any trails, parks, Public Facilities or Public Spaces or open space, contemplated in the Master Lowe Plan, this Agreement or otherwise, the City shall provide to the public and maintain said amenities at a level generally provided to other areas of City. Parks and recreation areas constructed by the Developer in excess of the City's current level of service at the time of construction may be accepted by the City by dedication for ownership and maintenance purposes at the City's sole discretion. The City will provide an indication of its willingness to own and maintain a park or recreation area within the TR Project within 120 days of Developer providing the City with conceptual plans for the same and prior to the commencement of construction. If not accepted by the City, yet still constructed by Developer, the park or recreation area shall be maintained at the sole cost and expense of the Developer or a master owners association for the TR Project.

f. Electrical Power

i. Developer Obligations. The TR Project and other areas of the City currently do not receive electrical power service from the City rather it receives said service from Rocky Mountain Power a privately owned power company regulated by the Utah Public Utilities Service Commission ("Electrical Power Provider"). Except distribution lines, junctions, transformers and stubs thereto located within the Parkway Phase 1, Developer will work with the Electrical Power Provider to design, and assist with construction, if necessary, of an electrical power transmission system, along with easements associated therewith, to service the TR Project in compliance with all regulations and specifications of the Utah Public Utilities Service Commission and the Electrical Power Provider. It is anticipated that said electrical power transmission system will include the construction of a power substation in a location to be determined by the Developer and Power Provider at a later date within the TR Project.

ii. City Obligations.

1. Acquisition of Easements and Rights of Way for Electrical Power Transmission System. If needed and pursuant to Subsection 10(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 Public Utility Provider to service the TR 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 TR Project, including (but not necessarily limited to) the following:

1. Runoff and storm drainage consistent with City's Storm Water Master Plan for the area to be prepared by City and commented upon by Developer;

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

3. Installation of telephone and cable television transmission systems to the TR 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 TR 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 TR 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 TR Project, provided that City shall have the authority to determine the route for such improvements.

11. Initial Obligations. Developer agrees to perform the following obligations set forth below (collectively "Initial Obligations"):

a. Execute and allow the Donation Deed for the Parkway ROW Area to be recorded no later than fifteen (15) days after this Development Agreement and all associated documents have been finally approved by the City, without appeal.

b. Locate and dedicate to the City the first Water Storage Site as set forth in Section 10.a.i.1. prior to the recording of the first subdivision final plat, or commercial site plan within the Project, and

c. Submit a Final Site Plan or Final Plat, obtain approval thereof and construct at least one commercial development or residential subdivision within twenty years from the date this Agreement is recorded and the Parkway Phase 1 is fully completed.

12. Term. The purpose of this Agreement is to ensure development of the TR Project as provided in Section 4 of this Agreement. Accordingly, the term of this Agreement shall commence on the date this Agreement has been recorded in the Official Records of Washington County and shall expire the earlier of when (i) all public and private infrastructure improvements in the TR Project have been constructed and accepted as complete by City and certificates of occupancy have been issued for all buildings and/or EDUs in the TR Project, or (ii) the Developer, or its successors and assigns fail to comply with the Initial Obligations by the time periods prescribed in Section 11, above. This Agreement may also terminate in the event of default and the City has followed the procedure prescribed in Section 14.a, below, regarding termination.

13. 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, 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.

14. 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 seek judicial termination of 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. Limitation on Damages. Any breach of this Agreement by the City or the Developer shall not give rise to monetary damages against the other party, but shall be enforceable only by resort to an action for specific performance.

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.

15. 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.

16. 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: TOQUERVILLE CITY
c/o Mayor, City Manager or Clerk
212 Toquer Boulevard
PO Box 27
Toquerville, Utah 84774

With a copy to: BINGHAM SNOW & CALDWELL, LLP
c/o Heath H. Snow, Esq.
253 West St. George Blvd., Suite 100
St. George, Utah 84770

DEVELOPER: LOWE LAND TK, LLC
c/o Lorin Lowe, Manager
1038 E 760 N
Orem, UT 84097

With a copy to: RAY QUINNEY & NEBEKER, PC
c/o Jeffrey W. Appel, Esq.
36 South State Street, Suite 1400
Salt Lake City, Utah 84111

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.

17. 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.

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

19. 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.

20. Time is of the Essence; Force Majeure. Except as otherwise provided in this Section, time is of the essence for this Agreement. If either party is delayed or hindered in or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war 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.

21. 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 Section 13 of this Agreement.

22. 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.

23. Entire Agreement. This Agreement, together with its exhibits, the Zone Change Approvals and the Lowe Master Plan, shall constitute the entire agreement between the Parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

24. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Property.

25. Good-Standing: Authority. The Parties warrant and represent as follows:

a. Developer hereby represents and warrants to City: (i) Developers collectively are registered business entities in good standing with the State of Utah; (ii) the individual(s) executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

b. City hereby represents and warrants to Developer that: (i) City is a Utah municipal corporation; (ii) City has power and authority pursuant to enabling legislation, the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 *et seq*), and City's Land Use Ordinances to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement on behalf of City are duly authorized and empowered to bind City; and (iv) this Agreement is valid, binding, and enforceable against City in accordance with its terms.

26. 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.

27. State and Federal Law; Invalidity. 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.

28. Governing Law. This Agreement is entered into in Utah and shall be construed and

interpreted under the laws of Utah.

29. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

30. Recordation. No later than 15 days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, at City's expense, in the Official Records of Washington County, Utah.

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

32. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any activity connected with the Project; the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project; or which arises out of claims for personal injury, including health, and claims for property damage. The obligations of Developer under this section shall not be applicable to any claim arising by reason of breach of contract, the negligence or intentional tort actions of the City. The City shall give written notice of any claim, demand, action or proceeding which it believes falls within the above-described hold harmless covenant of this Section as soon as practicable but not later than 30 days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

33. 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 take such action as may be deemed appropriate under law until such conditions have been rectified by Developer. Any such action shall be taken contemporaneously with the Default provisions of Section 14 hereof. City shall be free from any liability arising out of the exercise of its rights under this section.

34. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

35. 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 Section 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.

36. 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 City Council taken with the same formality as the vote approving this Agreement.

(Signature Pages to Follow)

DRAFT

DATED effective the first date set forth above.

CITY:

TOQUERVILLE CITY
a Utah municipal corporation

Attest:

Lynn Chamberlain, Mayor

Ruth Evans, Recorder

DEVELOPER:

LOWE LAND TK, LLC
a Utah limited liability company

Lorin Lowe, Manager

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Lynn Chamberlain and Ruth Evans, being first duly sworn, deposes and says that they are the Mayor and City Recorder of Toquerville City, a Utah municipal corporation; that they have read the foregoing Development Agreement for Lowe Land TK, LLC and knows the contents thereof; and that they signed the said document for its intended purpose under the authority given by the Toquerville City Council.

NOTARY PUBLIC

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

Lorin Lowe, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Toquer Ridge and knows the contents thereof; and that he is a Manager of Lowe Land TK, LLC and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company.

NOTARY PUBLIC

EXHIBIT A

Legal Description of Subject Property

PARCEL 1:

The Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$); Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 27, Township 40 South, Range 13 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING THEREFROM that portion lying within existing Highway U-15.

PARCEL 2:

All of Lots 2, 3, 6 and 7 in the North One-Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$); Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 34, Township 40 South, Range 13 West, Salt Lake Base and Meridian.

LESS AND EXCEPTING THEREFROM that portion lying within existing Highway U-15.

PARCEL 3:

The Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$); Southwest Quarter (SW $\frac{1}{4}$) of Section 34, Township 40 South, Range 13 West, Salt Lake Base and Meridian.

PARCEL 9:

Beginning at the Northeast Corner of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 3, Township 41 South, Range 13 West, Salt Lake Base and Meridian and running thence South 1045.44 feet; thence West 300.00 feet; thence South 505.28 feet; thence North 77° West, 1050.05 feet, more or less, to the Southwest corner; thence North 1320.00 feet; thence East 1320.00 feet to the point of beginning.

PARCEL 10:

The Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$); North One-Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 3, Township 41 South, Range 13 West, Salt Lake Base and Meridian.

PARCEL 11:

The Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 4, Township 41 South, Range 13 West, Salt Lake Base and Meridian.

EXHIBIT B

Lowe Master Plan

List of documents comprising the Lowe Master Plan (due to size of documents they will not be attached to this Agreement but rather kept in the Official Records of the City for review and inspection.

1. Master Plan Project Book (updated June 1, 2020)
2. Concept Master Plan Narrative (updated May 28, 2020)
3. Project Design Code (Summary) (updated May 28, 2020)

DRAFT

EXHIBIT C

Conditions of Approval of Lowe Re-zone Request & Lowe MPDO Overlay Request

FINDINGS FOR APPROVAL:

A. The re-zoning of the Subject Property to R-1-20 coupled with its master planning and the gifting of the ROW for the last section of the Toquerville Parkway addresses a recognized and demonstrated need in the community for improved traffic circulation and added and varied housing options, added commercial and residential tax base as well as additional recreational and public facilities such as parks and trails.

B. The re-zoning and the master planned development will not be adverse to the character of the neighborhood and surrounding structures in use, scale, mass and circulation because presently the area is fully undeveloped with limited vehicular access.

C. The re-zoning and the master planned development will not result in an over intensive use of the land or excessive depletion of natural resources, especially because of the clustered and planned nature of the development identified in the master plan such that open space and sensitive lands are preserved.

D. The re-zoning and the master planned development will not have a material adverse effect on community capital improvement programs as the planned development will need to construct all new capital improvements within the development, except for Toquerville Parkway which is a necessary and vital road to the City's Master Transportation Plan as well as UDOT's and its construction will be funded by various sources.

E. The re-zoning and the master planned development will not require a level of community facilities and services greater than that which is available and if it contain said facilities, built at the developments expense, those excess facilities will be maintained and funded by a master property owners association to be created for the development.

F. The re-zoning and the master planned development will not result in undue traffic congestion and traffic hazards in part because of the new Toquerville Parkway that is facilitated because of it.

G. The re-zoning and the master planned development, due to its residential and mix-use commercial nature that is clustered leaving open spaces and preserving sensitive lands will not cause significant air, odor, water, light or noise pollution.

H. The re-zoning and the master planned development will not otherwise be detrimental to the health, safety or welfare of the present or future inhabitants of the City.

I. The re-zoning and the master planned development meet the requirements of the general plan in both use and purpose.

CONDITIONS OF APPROVAL:

A. Each development phase will require a preliminary and final site plan or plat application and each application will be dealt with according the regulations set forth in the Toquerville Land

Management Code (Toquerville City Code, Title 10) and in compliance with the Lowe MPDO Plan for the Toquer Ridge development.

B. Each development phase must produce construction drawings acceptable to the City and any affected utility or entity for all improvements, utility installations, landscaping and architectural features required for the phase.

C. Bonding and other financial security deemed necessary will conform to the requirements and amounts set forth in the Toquerville Land Management Code at the time each phase or application is submitted.

D. Details, specifications and other pertinent items of the master planned development shall be memorialized in a development agreement between the Applicant and the City and recorded against the entire Subject Property.

E. Pursuant to the development agreement between the Applicant and the City, the Applicant will execute and deliver to the City a deed of dedication conveying a 120 foot right of way in fee simple to the City in the location identified in the conceptual Lowe MPDO Plan and the development agreement without charge, expense or consideration given by the City other than the entitlements received by the approval of the re-zone, the conceptual Lowe MPDO Plan and the development agreement.

F. Upon performance of the Initial Obligations contained the development agreement Applicant will be deemed to have commenced development under the Lowe MPDO Plan in satisfaction of Section 15C-12 of the Toquerville Land Management Code, Title 10.

G. The Lowe MPDO Plan will be deemed approved and become effective upon the Planning Commission recommending after a public hearing and City Council amending Chapter 16A, Section 5 and Section 6 to allow for use of areas with slopes greater than 30% for purposes of calculating/determining maximum density in situations where a master planned development contains open space in an excess amount greater than said 30%+ slope area for purposes of determining maximum density.

EXHIBIT D

UDOT Transfer Agreement & UDOT Resolution

(Document to Follow)

DRAFT

EXHIBIT E

Donation Deed

DRAFT

(Instrument to Follow)

WHEN RECORDED, MAIL TO:

TOQUERVILLE CITY
Attn: City Recorder
212 N Toquer Blvd
P.O. Box 27
Toquerville, UT 84774

Affects Parcel Nos: T-103, T-3-0-34-3000,
T-3-0-34-140, T-3-0-27-321

SPECIAL WARRANTY DEED

(Deed of Donation with Reversionary Clause)

LOWE LAND TK, LLC, a Utah limited liability company (“Grantor”) hereby donates, conveys and warrants against all who claim by, through, or under Grantor to TOQUERVILLE CITY, a Utah municipal corporation (“Grantee”), for the sum of Ten Dollars and no/100 (\$10.00), and other good and valuable consideration, the following described tract of land located in Washington County, State of Utah, to-wit:

See Exhibit “1”

This Deed of Donation is subject to the reserved rights of Grantor and its related entities and permittees to full access, as necessary, to, from, across and along, this tract of land, up to and through the construction of the road, currently known as the Toquerville Parkway in the Development Agreement for Toquer Ridge as Document No. ___ recorded on the ___ day of ___, 2020 in the Official Records on file in the Office of the Recorder of Washington County, State of Utah. In addition, Grantor reserves the right to continued reasonable access through construction and access after construction is completed by means of the connecting roads and intersections necessary for the Toquer Ridge Development, as approved by the City. In the event at least two lanes of the Toquerville Parkway have not been fully constructed by March 15, 2027, the entirety of the donated property and the improvements constructed thereon will revert to the Grantor.

WITNESS the hand of said Grantor, this ___ day of ___, 2020.

LOWE LAND TK, LLC
a Utah limited liability company

Lorin Lowe, Manager

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this ___ day of ___, 2020, before me personally appeared Lorin Lowe, whose identity was personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is a Manager of Lowe Land TK, LLC, a Utah limited liability company, that he has read the foregoing deed and knows the contents thereof; and that he signed the said instrument for its intended purpose under the authority given him by the Operating Agreement of such company or by special resolution of the members of the company.

NOTARY PUBLIC

EXHIBIT "1"
TO SPECIAL WARRANTY DEED

(Legal Description)

A 120.00 FOOT WIDE ROADWAY PARCEL, DESCRIBED AS FOLLOWS: 60 FEET ON BOTH SIDES OF THE FOLLOWING CENTERLINE - BEGINNING AT A POINT LOCATED S00°07'26"W ALONG THE SECTION LINE 1334.83 FEET AND N89°14'52"W ALONG THE EAST-WEST 1/16 SECTION LINE 1570.16 FEET FROM THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N13°40'27"E DEPARTING SAID EAST-WEST 1/16 SECTION LINE, 194.68 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A 1500.00 FOOT RADIUS CURVE TO THE LEFT 1189.30 FEET (CHORD BEARS: N09°02'23"W 1158.40 FEET) TO A POINT ON THE NORTH SECTION LINE OF SECTION 3 AND ENTERING SECTION 34, T40S, R13W, SLB&M; (SAID POINT IS LOCATED N89°21'52"W ALONG THE SECTION LINE 1709.00' FROM THE SOUTHEAST CORNER OF SAID SECTION 34); THENCE RUNNING NORTHERLY THE FOLLOWING SEVEN COURSES: THENCE NORTHWESTERLY ALONG THE ARC OF A 1500.00 FOOT RADIUS COMPOUND CURVE TO THE LEFT 294.81 FEET (CHORD BEARS: N37°23'03"W 294.33 FEET); THENCE N43°00'52"W 1322.39 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A 1500.00 FOOT RADIUS CURVE TO THE RIGHT 613.92 FEET (CHORD BEARS: N31°17'22"W 609.65 FEET); THENCE N19°33'52"W 550.85 FEET; THENCE NORTHERLY ALONG THE ARC OF A 2000.00 FOOT RADIUS CURVE TO THE RIGHT 1150.16 FEET (CHORD BEARS: N03°05'23"W 1134.37 FEET); THENCE N13°23'06"E 1619.67 FEET; THENCE NORTHERLY ALONG THE ARC OF A 2000.00 FOOT RADIUS CURVE TO THE LEFT 1071.63 FEET (CHORD BEARS: N01°57'54"W 1058.86 FEET, ARC CROSSES INTO SECTION 27 AT 304.57 FEET ALONG THE ARC, SAID CROSSING IS LOCATED S89°51'09"E ALONG THE SECTION LINE 2333.09' FROM THE SOUTHWEST CORNER OF SECTION 27, T40S, R13W, SLB&M) TO THE SOUTH RIGHT-OF-WAY LINE OF UDOT HIGHWAY SR-17 BEING THE POINT OF ENDING.