AFTER RECORDING, RETURN TO:

Copius, LLC
Attn: Jared Ericksen
P.O. Box 1192
Farmington, Utah
84025

Parcel Nos.: 02-035-0046; 02-038-0009; 02-038-0056; 02-040-0001; 02-040-0002; 02-040-0011; 02-043-0013

(space above for Recorder's use)

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into this ___ day of_____ ______, 2020, by and among WILLARD CITY, ("**City**") a body corporate and politic of the State of Utah located in Box Elder County, COPIUS, LLC, a Utah limited liability company, ("**Developer**"), and SAMUEL W. KUNZLER SOLE TRUSTEE OF THE WALTER KUNZLER AND JOSIE MAE KUNZLER TRUST DATED MAY 16, 1980 ("**Owner**"). City, Developer, and Owner may hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**." This Agreement supersedes and replaces any previous agreements entered into or representations made by and between the Developer and the City involving the Property (defined below).

RECITALS

A. Developer intends to construct and develop a residential development project in Willard, Box Elder County, Utah (the "**Project**"). The Project encompasses that certain real property more particularly described on **Exhibit A** attached hereto (the "**Property**").

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

C. Pursuant to the Willard City Zoning Ordinance (the "**Code**"), including, without limitation, Chapter 12-106 *et seq.* therein related to the City's Planned Development Zone ("**PDZ Ordinance**"), the City approved Developer's Planned Development Zone ("**PDZ**") application including the concept site plan (the "**Plan**") on November 14, 2019. Said application proposes that the Property be developed for residential uses.

D. Under the PDZ Ordinance, and Chapter 12-111, Table I, Section 7(b) of the Code, the City allows the clustering of density in the underlying zoning district and is required to make certain findings of the development standards and other provisions that apply to, govern and vest the development, use, and mitigation of the development impact of the real property included in the PDZ approval.

E. Developer and the City desire to enter into this Agreement in order to implement the PDZ's Approval and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable State law. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of, Utah Code Ann. § 10-9a-102 (2020).

F. The Parties agree that the development of the Property will require increased municipal services from the City in order to serve the Project and will further require the installation of certain improvements primarily of benefit to the Property and not to the City as a whole.

AGREEMENT

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

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SECTION 1. EFFECTIVE DATE AND TERM

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

B. Term. The term of this Agreement (the "**Term**") shall commence upon the Effective Date and continue for a period of twenty-five (25) years, unless earlier terminated by Developer upon notice by Developer to the City upon completion. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the approvals, dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.

SECTION 2. DEFINITIONS

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

Agreement – This Agreement including all of its exhibits.

Applicable Laws – Means the laws of the State of Utah and the ordinances, policies, standards and procedures of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that were in effect on November 14, 2019.

Approval – shall mean the City's approval of Developer's PDZ application and Plan.

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

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

Future Laws – The laws, ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a development application is submitted for a part of the Project and which may or may not be applicable to the development application depending upon the provisions of this Agreement and Utah law.

Improvements – are defined in Section 8(A).

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

Subsequent Approvals – shall mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts this Agreement.

SECTION 3. CONSISTENCY WITH LAW; CONDITION

The Project is consistent with the Code and the PDZ Ordinance. This Agreement is consistent with the terms and conditions of the PDZ approval. The Project has been processed, considered and executed under existing zoning ordinances to facilitate development of the Property, pursuant to the City's legislative authority in accordance with the PDZ Ordinance and the Code. This Agreement shall only be effective if the legislative authority approves this Agreement and simultaneously approves an ordinance applying a PDZ to the Property pursuant to Sections 12-106-2 and 12-103-3 of the PDZ Ordinance.

SECTION 4. PROJECT DESCRIPTION

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

B. Project Elements. The Project includes a mix of Intended Uses, which include the following elements and is depicted generally in Exhibits "B" and "C," except as may be modified pursuant to Section 5(e).

Residential Density	
Single Family Units	76 units
Multi-Family Units	170 units
Open Space	
Overall Open Space	22.32 Acres (30%)

SECTION 5. GENERAL CONDITIONS

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

B. Development Agreement Subject to Applicable Laws. This Agreement is subject to and consistent with Applicable Laws.

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

D. Development Activities. This Agreement shall govern all Development Activities related to the Property. No Development Activities may occur on the Property until this Agreement is filed of record and the City has approved the phase Final Plat [defined below].

E. Phased Development. The Project will consist of multiple phases, as shown in Plan, a copy of which is attached hereto as Exhibit "B" that Developer may amend from time to time without amending this Agreement. The Parties acknowledge that the most efficient and economic development of the Project depends on numerous factors, such as permitting, market orientation and demand, interest rates, competition, and similar factors. Accordingly, the Developer may determine the timing, sequencing, and phasing of development in its sole subjective business judgment and discretion. Furthermore, the densities, configurations, and product types shown in the Plan may be reconfigured on a phase-by-phase basis with each submission of a Final Plat. Notwithstanding modifications to the densities, configurations, and product types shown in the Plan, so long as each proposed Final Plat is substantially similar to the Plan, the Developer shall not be required to produce a concept plan or preliminary plat for any phase within the Project, and City Council approval will only be required where Developer seeks to materially modify the Plan. For purposes of this Agreement, a change is "substantially similar" if it does not exceed the maximum density approved in the Plan and only affects the configuration of the density or uses shown in the Plan. A change is a material modification if it is attempts increase the density or introduce uses not allowed by the underlying zone or shown in the Plan.

SECTION 6. OBLIGATIONS OF DEVELOPER AND THE CITY

A. Obligations of the Developer:

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

ii. Conditions for Current Approvals. Development of the Project shall be governed by this Agreement and must comply with the following:

a. Payment of Fees: Developer agrees to pay all applicable Willard City fees as a condition of developing the Project on the Property. Developer shall pay to the City any water

impact fees and sewer impact fees at the time of the issuance of each building permit.

b. Water Rights: The Developer has the water rights shares described in Exhibit "D." The City acknowledges and agrees that Developer's dedication of said water rights will occur, in phases, as each Final Plat is recorded.

c. Covenants, Conditions, and Restrictions: Any covenants, conditions and restrictions related to the Property must be submitted for review and comment by City staff prior to the City's approval of the first Final Plat.

d. Common Areas and Open Space: Common and open space design and standards must generally reflect the representations made by the developer in the exhibits attached hereto. To preserve open space areas there must be notes on subdivision plats, conservation easements or other dedications to preserve such areas as open space. Construction drawings must be submitted for all common areas and amenities, if any, as shown on the attached exhibits.

e. Landscaping Requirements: Landscaping within the Project should be designed for predominantly low-or moderate-water use.

f. Large Game and Farm Animals: No large game or farm animals will be allowed within the areas of the Project where a Final Plat has been approved and building permits have been issued.

g. Recorded Drawings: Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of the Project. Utilities will not be initially accepted without as-built drawings submittal by the Developer and approval of the same by the City. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

B. Obligations of the City:

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

ii. Conditions of Approval: The City shall not impose any further Conditions on Current Approvals other than those detailed in this Agreement, and on any Final Plat, unless agreed to in writing by the Parties. The Developer shall remain bound by Applicable Law unless specifically agreed to otherwise herein. Any architectural regulations must be finalized prior to approval of a Final Plat. Upon execution of this Agreement and satisfaction of the condition in Section 3, these conditions of approval in this subsection constitute the Agreement for Property's development.

iii. Acceptance of Improvements: The City agrees to accept all public Improvements intended for the City and constructed by the Developer, or the Developer's contractors, subcontractors, agents or employees, provided that 1) the Willard City Planning and Engineering Departments review and approve the plans for any such public Improvements prior to construction; 2) the Developer permits Willard City Planning and Engineering representatives to inspect upon request any and all of said public Improvements during the course of construction; 3) the public Improvements are inspected by a licensed engineer who certifies that the public Improvements have been constructed in accordance with the approved plans and specifications; 4) the Developer has warranted the public Improvements as required by the Willard City Planning and Engineering Departments and applicable law; and 5) the public Improvements pass a final inspection by the Willard City Planning and Engineering Departments.

iv. Access to Project: The Parties acknowledge that the primary access point to the Project is from Utah's Department of Transportation Highway 89 ("**Highway 89**"). The City represents and warrants that it owns property that connects the Project to Highway 89. The City shall grant Developer access and utility connectivity to the Project over the City's property and the City shall complete road improvements. To the extent required, the City will cooperate with the Developer to obtain the appropriate Utah Department of Transportation approvals.

SECTION 7. VESTED RIGHTS AND APPLICABLE LAW

A. Vested Rights: The Developer is vested with the right to pursue the Project in accordance with this Agreement and Applicable Law. The Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve the Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable Ordinances, Resolutions, regulations, policies and procedures of the City. Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on a Final Plat, so long as development is substantially similar to the plans and specifications attached as Exhibit B hereto, and the Final Plat (the "Development Documents"), the terms and conditions of this Agreement,

and compliance with all Applicable Laws. Developer is vested with the right to the densities described in the Development Documents and all other uses available under Applicable Law. Developer may allocate total approved density from phase to phase within the Project so long as the total allocations for the entire Project does not exceed the total unit count approved on the Concept Site plan. Developer is vested with the right to locate the approved densities and uses so long as development is substantially similar to the Development Documents, subject to the completion of site plans and subdivision plats in accordance with Applicable Law and this Agreement. Developer is vested with the right to connect to existing public roads and infrastructure as depicted in the Plan; construct new roads of the widths, type and dimensions depicted in the Plan; and develop the Project in accordance with setback, parking, height, open space and other dimensional and location requirements which cannot be more restrictive or onerous than depicted and described in the Plan or as allowed by Applicable Law.

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

i. Future Laws that Master Developer agrees in writing to the application thereof to the Property;

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

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

iv. Future Laws that are health and environmental standards based on the City's obligations to comply with federal or State environmental laws;

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

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

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

SECTION 8. UPSIZING/REIMBURSEMENTS TO DEVELOPER

A. Public Improvements and Offsite Improvements.

i. Water Lines: Subject to reimbursement pursuant to the provisions set forth in Section 8(B), Developer shall be responsible for the construction or upsize of the culinary water line in Hargis Hill road, starting at Main Street and continuing to the northern most edge of the Property as per the approved plan. Developer is also responsible for the construction of a new culinary water line on the Property under 200 West (the "**200 West Line")**. The City represents and warrants to Developer that sufficient water rights and associated water capacity, storage, and water main extensions exist to allow Developer to proceed with the development of up to seventy-five (75) units. Developer may construct up to seventy-five (75) units prior to constructing the 200 West Line so long as the size of the homes does not exceed 3,600 square feet. Developer shall prepay water impact fees to secure water (specifically water storage in existing water storage tanks) for up to seventy-five (75) units.

ii. Water Storage Tank: The City represents and warrants to Developer that the City has sufficient culinary water storage capacity to allow Developer to construct up to seventy-five (75) units. The City agrees that Developer has the right to develop up to seventy-five (75) units utilizing the City's existing water storage infrastructure. The Parties anticipate that additional culinary water storage capacity will be required for the Project beyond the initial seventy-five (75) units. If additional culinary water storage capacity is required, Developer shall pay for the initial cost and expense of the construction of a five hundred thousand (500,000) gallon water storage tank ("**Water Tank**"). In connection with the Water Tank's construction, the City shall construct or provide the following: 1) land for construction of the Water Tank; 2) any needed infrastructure or right of ways/easements required to supply the Water Tank; 3) any needed infrastructure, including but not limited to transmission lines, or right of ways/easements required to connect the Water Tank to the City's existing water transmission lines; and 4) if necessary, water rights required to provide water to the Water Tank. If the City fails to provide the land, easements, infrastructure, transmission lines, or water rights for the Water Tank, Developer may utilize any available water storage capacity in the City's existing culinary water storage tanks to construct additional units beyond the initial seventy-five (75) units described above.

iii. Sewage Lift Station: The Parties acknowledge that the sanitary needs of the northwestern most residential units may require that a small sewage lift

station ("**Lift Station**") be constructed. If an engineering assessment determines that a Lift Station is required, then Developer shall submit to the City a detailed engineering plan with specifications of said Lift Station prior to final approval/installation of the lines and Lift Station. The City agrees to allow the Lift Station, provided that: 1) Willard City Planning and Engineering Departments review and approve the plans; 2) the Developer permits Willard City Planning and Engineering representative to inspect upon request any and all of the Lift Station's construction; 3) the Lift Station is inspected by a licensed engineer who certifies that the Lift Station has been constructed in accordance with the approved plans and specifications; and 4) the Lift Station passes a final inspection by the City. Developer is solely responsible for the Lift Station's installation.

iv. Secondary Water Line. If the Developer's water rights shares described in Exhibit "D" are insufficient for the Project, Developer may, in Developer's sole discretion, install a secondary water piping system ("**Secondary Water System**") throughout the Project. If Developer elects to install the Secondary Water System, the City acknowledges and agrees that: 1) the Secondary Water System is strictly limited to the Project area and under no circumstances will Developer be required to construct, extend, install, or repair the Secondary Water System outside the Project area; 2) this Secondary Water System will not include any storage, transmission lines, or water rights; and 3) Developer will not be required to procure or dedicate any additional water rights shares beyond those water rights shares described in Exhibit "D".

v. Construction of Project Improvements: For each phase of the Project, Developer shall be solely responsible to design, install, construct, and/or develop, at the Developer's initial cost and expense, the following public Improvements: 1) all streets and roads in the Project, or in that phase of the Project, including grading, paving, temporary turn arounds, and all other aspects of road construction, as such is required by the City as shown on a Final Plat or for that particular phase of the Project; 2) fire hydrants, curbs, street signs, gutters, landscape, berms, and sidewalks along the streets and roads; 3) all necessary horizontal Improvements including, but not limited to, water lines, sanitary sewer lines, storm drain lines, storm water drainage basin(s), and all other utility lines required to service the Project (including, without limitation, telephone, gas, and power lines, and three-phase power); 4) the stubbing of the utilities referenced-above into any future streets that tie into the Project; 5) any lift stations required to provide sanitary sewer service to any of the lots within the Project; and 6) any other Improvements, facilities, or infrastructure required by the City for the dedication and acceptance of the public Improvements. Developer shall construct and install public Improvements: (a) in a good and workmanlike manner; and (b) in accordance with the City's requirements, approvals, regulations, ordinances, specifications, standards, and other governing documents; and (c) all public utilities shall be located underground. In addition, Developer

shall not pave any streets until all utilities placed therein have been completely installed, inspected, and accepted by the City, including all individual lot service lines (water and sewer) leading to and from the utility main and the lot line, all electrical lines, and all communication conduits. Nothing in this Agreement precludes Developer from entering into future reimbursement agreements with any party seeking to utilize or benefit from any portion of the public Improvements. The public Improvements required for each plat shall be determined by the City at the time of plat submittal and may be adjusted in accordance with the then-current City Regulations, Code, this Agreement, and Applicable Law but may not require the installation of Improvements not required to serve the units depicted in a phase or a Final Plat. Notwithstanding anything herein to the contrary, the public Improvements shall be completed within five (5) years from the approval date of a Final Plat of the last phase of the property. Upon completion of the Improvements, Developer shall warrant the Improvements for the period of time required by the Applicable Law.

vi. Dedication of Improvements: Developer and Owner shall dedicate to the City those public Improvements required for each phase of the Project upon the City's determination that the same have been constructed as required herein. If applicable, Developer and Owner shall further acquire, improve, dedicate, and convey to the City or shall cause to be acquired, improved, and dedicated and conveyed to the City all land, rights of way, easements necessary for the public dedication of the public Improvements required to be installed and dedicated by Developer and Owner pursuant to this Agreement. The City shall determine, consistent with the Plan, the alignment of all roads and utility lines and shall approve all descriptions of land, rights of way, and easements appurtenant to the public Improvements. Developer and Owner shall also be responsible for paying all property taxes including rollback taxes prior to the dedication or conveyance and prior to acceptance by the City. Developer and/or Owner shall acquire and provide to the City, for review and approval, a title report from a qualified title insurance company covering such land, rights of way, and easements associated with the Improvements. Developer shall consult with the City Attorney and obtain the City Attorney's approval of all instruments to convey and dedicate the public Improvements and any appurtenant land, rights of way, and/or easements hereunder to the City.

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

viii. <u>Construction Site Waste</u>: Developer shall, at all times during construction of the Improvements, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily; and at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to reasonably withhold building permits and/or certificates of occupancy under the circumstances until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If Developer fails to adequately clean such streets within two (2) days after receipt of written notice from the City, the City may have the streets cleaned at Developer's expense and Developer shall be responsible for the prompt payment of the City's actual and reasonable costs associated therewith. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

ix. <u>Cooperation with City Building Inspector, City Engineer, and City Public Works Director</u>: Developer shall require its contractors and subcontractors to cooperate with the City's Building Inspector, Engineer, or Public Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust which, in the City's reasonable opinion, is hazardous to the public health and welfare.

x. <u>Developer Compliance with EPA and other Regulations</u>: Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with the Project (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Agreement is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. Developer, for itself and its successor(s) in interest, shall indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third party pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of

hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Project, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public Improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification does not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with the Project. Failure of the City to give notice of any such claim to Developer within ninety (90) days after the City first receives a notice of such claim under the Utah Governmental Immunity Act for the same, causes this indemnity and hold harmless agreement by Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

B. Upsizing Improvements. The City shall not require Developer to upsize or build any system improvements for the City without first obtaining a written agreement and repayment or reimbursement terms acceptable to both Developer and the City.

C. Specific Improvements. The Parties agree that the Improvements considered in Section 8(A) serve a regional benefit. The Parties intend for developer to pay its "Proportionate Share" of Improvements for its Project as that term is defined in Utah Code § 11-36a-102.

i. Water Line Reimbursement: The City shall reimburse Developer for the entire cost of construction and upsizing of the water lines referenced in Section 8(A) from impact fees paid by other users within the City's system.

ii. Water Storage Tank Reimbursement: The City shall reimburse Developer for the entire cost of construction and upsizing of the water storage tank referenced in Section 8(A) from impact fees paid by other users within the City's system.

SECTION 9. AMENDMENT

A. Amendment. Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 9. Each such person or entity agrees to provide written evidence of that subjection and

subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

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

SECTION 10. COOPERATION AND IMPLEMENTATION

A. Submitting Documents: Developer shall submit to the City all plats, plans (including utility plans), reports and other documents required for approval of a final subdivision plat for the Project or a phase final plat if Developer desires to develop the Project in phases (each a "Final Plat"), according to the City's outlined policies, procedures, and ordinances including any specifications and standards incorporated therein unless specifically provided otherwise in this Agreement.

B. Issuance of Building Permits. The City will not issue any building permit for construction of any structure within the Project until: (i) all individual lots within the Project, as shown on a Final Plat, are staked by a licensed surveyor, and (ii) public water lines and stubs to each lot, charged fire hydrants, sanitary sewer lines and stubs to each lot, street lights and public streets (including all weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City or, in the alternative, Developer has provided a financial assurance for such Improvements as allowed by Utah Code Ann. 10-9a-604.5.

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

D. Processing of Subsequent Approvals. Upon submission by the Developer of all appropriate applications and processing fees for any "**Subsequent Approval**" to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, 1) the notice and holding of all required public hearings, and 2) the granting of the Subsequent Approval as set forth herein.

The City's obligations under this Section 10 are conditioned on the Developer's provision to the City, in a timely manner, of all documents, applications, plans and other information necessary for the City to meet such obligations. It is the express intent of the Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals. The City may deny an application for a Subsequent Approval by the Developer only if the application is incomplete, does not comply with existing law, or violates a City Ordinance or Resolution. If the City denies an application for a Subsequent Approval by the Developer, the City must specify the modifications required to obtain such approval.

SECTION 11. DEFAULT AND TERMINATION

A. Default by Developer. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement. If the default is cured, then no default shall exist, and the noticing Party shall take no further action.

B. Default by the City. In the event the City defaults under the terms of this Agreement, the Developer shall have all rights and remedies provided in this Section 11 of this Agreement, and as provided under Applicable Law.

C. Enforced Delay. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, epidemics or pandemics, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 12. NOTICE OF COMPLIANCE

A. Timing and Content. Within fifteen (15) days following any written request which the Developer may make from time to time, and to the extent that it is true, the City shall execute and deliver to the Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledge by the City, certifying that 1) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; 2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and 3) any other reasonable information requested by the Developer. The Developer shall be permitted to record the Notice of Compliance.

B. Failure to Deliver. Failure to deliver a Notice of Compliance, or a written refusal to deliver a Notice of Compliance if the Developer is not in compliance, within the time set forth in Section 12(A) shall constitute a presumption that as of fifteen (15) days from the date of the Developer's written request: 1) this Agreement was in full force and effect without modification except as represented by the Developer; and 2) there were no uncured defaults in the performance of the Developer. Nothing in this Section 12, however, shall preclude the City from conducting a

review under Section 11, or issuing a notice of default, notice of intent to terminate or notice of termination under Section 11 for defaults which commence prior to the presumption created under this Section 12, and which have continued uncured.

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

Prior to Developer assigning or transferring its rights and obligations under this Agreement, Developer shall obtain the City Council's written consent, provided that such consent shall not be unreasonably withheld or delayed. Notwithstanding this obligation, the City acknowledges and agrees that Developer may assign or transfer its rights and obligations under this Agreement to Nilson Homes or its affiliates, subsidiaries or related entities without the City's consent. This Agreement is binding on the successors and assigns of Developer. With limitations pursuant to Utah Code Ann. §10-9a-607, in the event Developer assigns any of its rights or obligations under this Agreement to a third party, Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of such assignment. In such event, Developer's successor in interest shall be bound by the terms of this Agreement.

SECTION 14. MISCELLANEOUS TERMS.

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

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

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

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

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

F. City Council Budgetary Discretion. Any financial obligation of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the City Council, in its discretion.

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

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

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

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

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

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

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

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

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

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

Exhibit A: Legal Description of the Property

Exhibit B: Approved Concept Plan

Exhibit C: Project Site Plan

Exhibit D: Developer's Water Rights

SECTION 15. NOTICES

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

If to the City:	Willard City Corp PO Box 593 Willard, UT 84302
If to Developer:	Copius, LLC Attn: Jared Ericksen P.O. Box 1192 Farmington, Utah 84025 Phone: (801) 725-2262 Email: land.jme@gmail.com

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

SECTION 16. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

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

SECTION 17. SIGNING AND RECORDATION OF AGREEMENT

Unless the City and the Developer mutually agree otherwise, this Agreement must be signed by both the Developer and the City no later than ninety (90) days after the Agreement is approved by a vote of the Willard City Council, or else the City's approval of the Project will be rescinded. The City Recorder shall cause to recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Box Elder no later than the date on which the Plat for the Project is recorded.

[Signatures and acknowledgements on following pages]

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

DEVELOPER:	**CITY**:
COPIUS, LLC, a Utah limited liability company	WILLARD CITY, a body corporate and politic of the State of Utah
By:________________________________ Name:______________________________ Its: _______________________________	By:________________________________ Name:______________________________ Its: _______________________________

STATE OF UTAH)
) ss.
COUNTY OF_____________)

The foregoing instrument was acknowledged before me this___day of_______________, 2018, by___________________as__________________________of COPIUS, LLC, a Utah limited liability company.

____

Notary Public

STATE OF UTAH)
) ss.
COUNTY OF_____________)

The foregoing instrument was acknowledged before me this___day of_______________, 2018, by ___________________ as _________________________ of WILLARD CITY, a body corporate and politic of the State of Utah.

____

Notary Public

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

OWNER:

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

____
By: Samuel W. Kunzler, Sole Trustee

STATE OF UTAH)
) ss.
COUNTY OF____________)

The foregoing instrument was acknowledged before me this___day of_
____,
2018, by Samuel W. Kunzler as Sole Trustee of the Walter Kunzler and Josie Mae Kunzler Trust dated May 16, 1980.

____
Notary Public

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Approved Concept Plan

EXHIBIT C

Project Site Plan

EXHIBIT D

Developer's Water Rights

Water Rights Shares	Ac Ft	Shares
29-244	20.60	
29-245	20.60	
29-3166	0.84	
North Willard Irrigation Co. Shares	37.5	30
Pine View Water		
Allocated to parcel 02-038-0056	28.39	
Allocated to parcel 02-040-0001	20	
Total	**127.93**	**30**