WHEN RECORDED, MAIL TO:
KARI JIMENEZ
IVINS CITY
55 NORTH MAIN
IVINS, UT 84738

APN: I-6-2-8-43101

DEVELOPMENT AGREEMENT
FOR THE RED MOUNTAIN TERRACE SUBDIVISION
IVINS CITY, WASHINGTON COUNTY, UTAH

This Development Agreement ("Agreement") is entered into as of this _____ day of October, 2020, by and between **B & V INVESTMENTS LLC,** a Utah Limited Liability Company, the owner and developer (collectively "Developer") of certain real property located in Ivins City, Washington County, Utah, on which they propose to develop a project known as the RED MOUNTAIN TERRACE SUBDIVISION (the "Project"), and **IVINS CITY**, a municipality and political subdivision of the State of Utah, by and through its City Council ("City").

RECITALS

A. Developer desires to develop approximately 7 acres of real property located in Ivins City, Washington County, Utah, the legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), on which it proposes the development of a certain subdivision known as the RED MOUNTAIN TERRACE SUBDIVISION consisting of a total of 24 residential lots, as more fully reflected on Exhibit "B" attached hereto and incorporated herein.

B. The Project shall be developed in two phases, with construction to begin after receipt of Final Plat approval. The number of units to be developed with each phase is twelve.

C. Developer acknowledges that it must comply with all City development standards and ordinances, including applicable zoning and subdivision ordinances, fencing regulations, design guidelines, and design & construction standards, as well as the standards and specifications set forth and/or incorporated herein.

D. This Development Agreement is intended to set forth the entire agreement between the Developer and the City regarding the development of the Project.

E. Ivins City is acting pursuant to authority under The Municipal Land Use, Development, and Management Act (U.C.A. §§10-9a-101 et. seq., as amended from time to time, hereinafter the "Act"), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, Developer and Ivins City hereby agree as follows:

(1) Recitals; Findings. The foregoing recitals are incorporated and made an integral part of this Agreement by this reference. The City finds that the development of the Property pursuant to this Agreement and applicable City ordinances will result in meaningful planning and economic benefits to, and shall further the health, safety and welfare of the City and its residents by, among other things: (i) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the City; (ii) providing for the dedication of infrastructure improvements to be completed as set forth herein and/or as consistent with current State or City regulations; and (iii) preserving the natural beauty and view of the surrounding environment through agreed upon construction materials and building height limitations. The City is entering into and approving this Agreement pursuant to its authority under the Act and City ordinances, policies and regulations and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

(2) Project Phasing. The development of the multiple phases of the Project shall be governed as set forth in Exhibit B attached hereto.

(a) The Final Plat for the first Subdivision Phase Final Plat must be recorded within one (1) year from the approval date of this Development Agreement; Final Plats for each subsequent phase shall be recorded within one (1) year from the approval date for the previous Final Plat.

(b) Before a Final Plat for any Subdivision Phase can be recorded, paved fire access roads that comply with City Code, shall either be fully installed or bonded for before the first Certificate of Occupancy can be issued.

(c) For any Subdivision Phase through which there is a right-of-way that is to be vacated, the statutory process for vacating the right-of-way must be completed before that Subdivision Phase can be recorded.

(3) Project Plans; Development Pursuant to this Agreement.

(a) Project Plans. The Project Plan previously approved for the Project, the Project Preliminary Plan as reflected in Exhibit B and the Final Plats to be approved, as well as any exhibits attached hereto (collectively the "Project Plans"), are integral parts of this Agreement. The City's approval of the Project is based upon the City's reliance that the Project will be developed in accordance with the standard and quality of improvements, unit densities, dedication of easements, roadways, and other improvements, as represented in the Project Plans and this Agreement.

(b) Development Guidelines. The following development guidelines shall be part of the Project Plans:

(i) Exterior materials shall only be stucco, stone, brick, exposed concrete or concrete block.

(ii) All exterior colors shall be in compliance to City Code;

(iii)No metal or vinyl siding shall be allowed, however metal detailing and accent may be on a case by case basis, i.e. copper, rusted steel patina.

(iv) All exterior lighting shall be in compliance with City Code.

(v) All fencing within or around the Project shall be constructed of colored masonry, rock, stucco, and/or exposed colored concrete throughout the Project; and

(vi) No metal roofing materials shall be allowed; however metal detailing and accent may be on a case by case basis. All other roofing material shall be in compliance with City Code.

(c) Development. Upon execution of this Agreement by the City, the Developer is authorized to develop the Property as set forth in this Agreement and in accordance with the types, densities and intents of the land uses set forth in the Project Plans and this Agreement.

(4) Documentation Supporting Provisions Herein. If the City determines that any provision of this Agreement requires a separate (recordable or otherwise) document/agreement to protect or clarify the City's rights pursuant to the intent of the parties under this Agreement, both parties shall cooperate in preparing and completing such documents.

(5) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by Ivins City in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement.

(6) Subdivision Plat Approvals and Compliance with City Design and Construction Standards. Developer expressly acknowledges and agrees that nothing in this Development Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of Ivins City necessary for approval and recordation of subdivision plats for the Project, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of Ivins City, including but not limited to, the Ivins City Subdivision Ordinance and Standards and Specifications for Design and Construction.

(7) Agreement to Run with the Land. This Agreement shall be recorded against the Property described in Exhibit "A" attached hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property. Additionally, Developer shall provide appropriate notes upon the Final Plat prior to recordation giving notice of the primary provisions of this Agreement.

(8) Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent signed by the Mayor with the approval of the City Council, which consent shall not be unreasonably withheld.

(9) 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. However, in the event Developer fails to proceed in a timely fashion resulting in the revocation or loss of Final Plat or Preliminary Plan approvals for the Project, the City may terminate this Agreement and require a new Development Agreement as part of any future approval process.

(10) No Joint Venture, Partnership or Third-Party Rights. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the 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.

(11) Integration. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

(12) Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant, or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(13) Previous Agreements. Except as otherwise expressly provided herein, this Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties pertaining to this Project.

(14) Moratoria. No City moratorium or other City ordinance, resolution, rule, or regulation (a "Moratorium Ordinance") enacted after the date of this Agreement that prohibits or regulates the erection, construction, reconstruction, or alteration of any building or structure, or affects the City's approval process for subdivisions in a manner inconsistent with the terms of this agreement, shall apply to or govern the development of the Property during the term of this Agreement unless the Moratorium Ordinance complies in all respects with applicable state law.

(15) Amendments. The Developer and the City agree to cooperate and pursue and amendments to this Agreement that are reasonably necessary to accomplish the goals expressed in this Agreement and the development of the Property in light of any changes in market conditions or development requirements. All amendments shall be in writing and shall be approved and signed by both the Developer and the City. Any amendment to this Agreement shall be recorded.

(16) Miscellaneous.

(a) Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs, and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

(b) Survival. It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

(c) Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(d) Plat Notes. Primary provisions of this Agreement, as determined by the City, shall be included as notes on any Final Plat of the Project, as well as incorporated into the Project Restrictive Covenants documents.

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

IVINS CITY:

_____

Chris Hart, Mayor

Attest:

_____

Kari Jimenez, Ivins City Recorder

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On this ___ day of October, 2020, before me personally appeared CHRIS HART and KARI JIMENEZ whose identities are 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 they are respectively the Mayor and Recorder of **Ivins City**, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

_____
Notary Public

OWNER / DEVELOPER:

B & V INVESTMENTS LLC

_____
Brett Kee, Manager

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On the ___ day of October, 2020, personally appeared before me
BRETT KEE, MANAGER, B & V INVESTMENTS LLC, whose identity is
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 B & V INVESTMENTS LLC is the Owner of the RED MOUNTAIN TERRACE SUBDIVISION and that the foregoing document was signed by him by authority, and he acknowledged before me that he executed the document for its stated purpose.

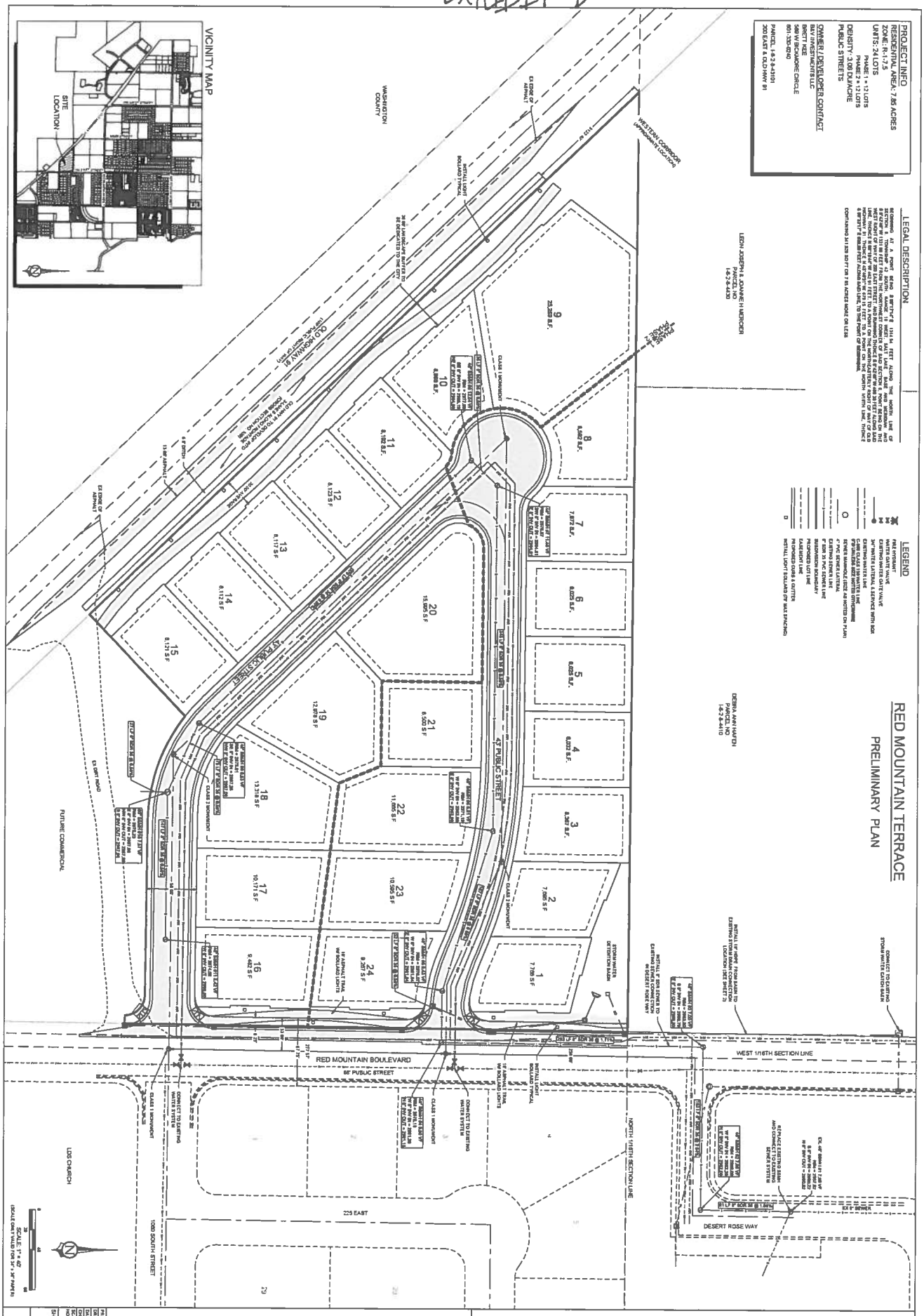
_____
Notary Public

EXHIBIT "A" - LEGAL DESCRIPTION

BEGINNING AT A POINT BEING S 89°17'14" E 1314.54 FEET ALONG THE NORTH LINE OF SECTION 8, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, AND S 0°42'49" W 1331.08 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 8, POINT BEING ON THE WEST RIGHT OF WAY OF 200 EAST STREET, AND RUNNING THENCE S 0°42'49" W 489.38 FEET ALONG SAID LINE; THENCE N 89°19'44" W 462.91 FEET, TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF OLD HIGHWAY 91; THENCE N 43°40'31" W 679.15 FEET, TO A POINT ON THE NORTH 1/16TH LINE; THENCE S 89°33'17" E 938.00 FEET ALONG SAID LINE, TO THE POINT OF BEGINNING.

CONTAINING 341,929 SQ FT OR 7.85 ACRES MORE OR LESS

EXHIBIT "B"


PROJECT INFO
RESIDENTIAL AREA: 7.85 ACRES
ZONE: R-1-7.5
UNITS: 24 LOTS
PHASE 1 = 12 LOTS
PHASE 2 = 12 LOTS
DENSITY: 3.06 DU/ACRE
PUBLIC STREETS
OWNER / DEVELOPER CONTACT
BAY WESTCHESTER LLC
SCOTT TOLMAN
589 W RICHMORE CIRCLE
801.330.0240
PARCEL 1-8-2-8-4101
300 EAST & OLD HWY 91
LEGAL DESCRIPTION
LEGEND
VICINITY MAP
SITE LOCATION
RED MOUNTAIN TERRACE
PRELIMINARY PLAN
RED MOUNTAIN BOULEVARD
80' PUBLIC STREET
45' PUBLIC STREET
DESERT ROSE WAY
WEST 1/16TH SECTION LINE
NORTH 1/16TH SECTION LINE
225 EAST
1080 SOUTH STREET
LDS CHURCH
FUTURE COMMERCIAL
WASHINGTON COUNTY
OLD HIGHWAY 91
WESTERN CORRIDOR APPROXIMATE LOCATION
LEON JOSEPH & JOANNE H MERCIER
PARCEL NO 1-8-2-8-4301
DEBRA ANN HAMILTON
PARCEL NO 1-8-2-8-4410
STORM WATER DETENTION BASIN
CLASS 1 MONUMENT
PRELIMINARY PLAN
LOCATED IN
NW 1/4 OF SECTION 8, TOWNSHIP 42 SOUTH, RANGE 16 WEST, AND THE SALT LAKE BASE & MERIDIAN
CivilScience
1453 S. DIXIE DRIVE, SUITE 150
ST. GEORGE, UT 84770
435 986 0100
PROJ # 20131
DRAWN BY SWWE
CHECKED BY TBB
SCALE AS NOTED FOR 11" x 17"
SCALE 1" = 40' FOR 24" x 36"
SHEET 1 OF 3