WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY
55 NORTH MAIN
IVINS, UT 84738

APN: I-SB-52-A-2; I-SB-54-E; I-SB-54-F; I-SB-54-D-1; I-6-2-6-313; I-SB-52-A-1-B

**DEVELOPMENT AGREEMENT**
**FOR PHASE 2 OF THE INDIGO TRAILS SUBDIVISION PROJECT**
**IVINS CITY, WASHINGTON COUNTY, UTAH**

This Development Agreement ("Agreement") is entered into as of this _____ day of August, 2021, by and between **ANA Enterprises LLC**, a Utah Limited Liability Company ("Owner / Developer"), the developer and owner of certain real property located in Ivins City, Washington County, Utah, on which they propose to develop a project known as the Indigo Trails Subdivision, Phase 2 (the "Project"), and **IVINS CITY**, a municipality and political subdivision of the State of Utah, by and through its City Council ("City").

**R E C I T A L S**

A. Developer is the owner of approximately 18.27 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 Indigo Trails Subdivision, Phase 2 consisting of 37 single family residential lots, as more fully reflected on Exhibit "B" attached hereto and incorporated herein.

B. The Project may be developed in multiple phases, with each phase to begin shortly after receipt of Final Plat approval. Phasing for the Project is set forth herein.

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.

**A G R E E M E N T**

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 multiple phases of the Project shall be governed as follows:

(a) Lots within the approved Preliminary Plan for Indigo Trails Phase 2 may be grouped together into phases and recorded on a Final Plat so long as the lots are part of the preliminary plan and there are fire access roads that comply with City Code as required by this Agreement.

(b) 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 subsequent phases shall be recorded within four (4) years from the approval date of this Development Agreement.

(c) 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.

(d) Also 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 Preliminary Plan previously approved 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 limited to subdued earth tones;

(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 reflective exterior surfaces or materials shall be treated to reduce reflective glare;

(v) All exterior lighting shall be shielded and low level;

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

(vii) All 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) Construction Standards on Project. All improvements in the Project shall be installed in accordance and consistent with the Project Preliminary Plan, approved Final Plats, approved construction drawings, exhibits referred to herein, and with Ivins City Design and Construction Standards and all other governmental and regulatory standards. All fencing in the Project must comply with the City fencing ordinances and regulations. Lighting in the Project shall be in accordance with current City lighting ordinances and regulations or with the lighting plan included with the Project Plans, whichever is more strict.

(5) Developer Provided Municipal/Public Improvements.

(a) Improvements. The Developer shall install, construct, and complete the following municipal/public improvements as set forth in and contemplated by the Project Plans (the "Developer's Municipal Improvements"), all such improvements to be constructed in a good and workmanlike manner and in accordance with applicable regulations and governmental standards and within the time periods for development set forth herein or as otherwise agreed to by the City:

(i) Water Distribution System. All pipes, valves, fittings, pressure reducing valve stations, air release valves, and other distribution facilities within the Property for the purpose of distributing water within the Property. Pumps shall be installed as necessary to ensure compliance with all applicable codes.

(ii) Sewer System. A gravity sewer system shall be installed to service all lots within the subdivision and sized to accommodate potential future sewer flows from adjacent properties.

(iii) Water Drainage. Developer shall install all necessary water drainage improvements per drainage study. Roadside treatments must be armored unless drainage study shows low erosive conditions (velocities less than 2f.p.s.) in a 10 year flood event.

(iv) Roads. Developer shall install roads per approved plans in accordance with the City's current Transportation Master Plan. Developer shall be allowed to cut roads to grade and then submit construction plans for approval prior to construction. Developer shall have the flexibility to build roads after approval of construction plans but prior to Final Plat approval so long as: a) the road alignments have been determined by an approved Preliminary Plan; and b) an approved Development Agreement allows this flexibility. After twenty-five (25) certificates of occupancy have been issued for homes in the subdivision,

Developer shall install a six foot (6') paved shoulder on along the south side of Highway 91 abutting the subdivision, as well as installing a right turn lane and a left turn lane on Highway 91 at the entrance to the subdivision.

(v) Highway 91 Trail. In lieu of a concrete sidewalk along the portion of Highway 91 abutting the Project, Developer will install a ten foot (10') wide asphalt trail instead, without bollard lighting.

(vi) Landscaping. Landscaping within the Highway 91 landscape buffer area shall be consistent with the type described in the City's Highway 91 Corridor Plan.

(vii) Erosion Controls. Developer shall not start grading roads without a storm water pollution prevention plan including the site specific erosion control plan as required by federal, state, and local laws. Developer shall also procure a Notice of Intent to discharge storm water associated with construction activities under the UPDES General Permit No. UTR300000. Developer shall satisfy all requirements of the permit including performance of documented periodic inspections. The permit shall remain open and renewed on an annual basis until the project site is stabilized.

(b) Warranty Period. Pursuant to Section 16.05.906 of the Ivins City Subdivision Ordinance, the warranty period for public improvements shall commence on the date that all city required improvements associated with the development have been completed to the satisfaction of the City and a final inspection thereof has been made approving the same. The warranty period shall commence at that date and shall continue for one (1) year thereafter for all improvements. If any deficiencies are found by the City during the warranty period in materials or workmanship, the developer shall promptly resolve such defects or deficiencies and request the City Engineer to re-inspect the improvements. If the defective or deficient improvements are not corrected, the City will give notice to the developer of the action to file on the security agreement for completion of the improvements. At the end of the one (1) year period, as applicable, the developer shall request the City staff to make a final warranty period inspection of all improvements. If the City Engineer verifies that the improvements are acceptable, the remaining security posted by the developer under the security agreement shall be released.

(c) Costs Associated with the Developer's Municipal/Public Improvements.

(i) Construction Costs. The Developer will pay all costs and all associated expenses to install, construct, and complete the Developer's Municipal/Public Improvements. If this Agreement makes no provisions for the City to provide, pay or reimburse Developer for any Municipal Improvements installed by Developer as anticipated in the construction drawings or in this Agreement, the City is not responsible for any such costs and Developer specifically waives any claims against the City therefor.

(ii) Maintenance Costs. Until such time as a particular component of Developer's Municipal/Public Improvements is dedicated to and accepted by the City, and standard maintenance thereof is assumed by the City, the Developer shall maintain, at its cost, such component of Developer's Municipal/Public Improvements.

(d) Inspection and Dedication of Developer's Municipal/Public Improvements. Upon completion of the Developer's Municipal/Public Improvements ("Offered Improvements"), the City shall inspect the Offered Improvements within a reasonable time after receipt of written notice from the Developer that such Offered Improvements are complete. The City shall approve and accept for dedication the Offered Improvements so long as they are constructed in accordance with the City's adopted standards therefor, as verified by the City's inspection. Following completion of the Offered Improvements, and the City's inspection and acceptance thereof, the City shall thereafter own, operate and maintain the Offered Improvements without charge or cost to the Developer, excepting that usual warranty bonding shall be provided to the City by the Developer.

(e) Other Utilities. The Developer shall install, construct and complete, without cost to the City, all other utilities required by the City or by regulation, ordinance or law to be installed. The Developer will pay all costs and all associated expenses to install, construct, and complete such other utilities, unless otherwise specifically provided herein for improvements which the City has specifically required of Developer, which Developer and the City specifically agree herein shall be paid (or reimbursed) to Developer by the City. If this Agreement makes no provisions for the City to provide, pay or reimburse Developer for any such other utilities installed by Developer, the City is not responsible for any such costs and Developer specifically waives any claims against the City there for.

(f) Fencing and Lighting. All fencing in the Project must comply with City fencing ordinances and regulations. Lighting in the Project shall be in accordance with current City lighting ordinances and regulations or with the lighting plan included with the Project Plans, whichever is more strict.

(g) 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.

(6) 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.

(7) 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.

(8) Bonding for Improvements. Developer shall comply with all bonding for completion, restoration and guarantee of improvements requirements of Ivins City. Specifically, as a condition of recording of any Final Plat for the Project, Developer shall provide the following bonds, or equivalent security as allowed by Ivins City ordinances:

(a) Completion of all Improvements or Completion Security. If the Developer does not complete all improvements prior to recordation of the Final Plat for any phase of the Project, a completion bond shall be provided to the City as required by the Ivins City Subdivision Ordinance. Such completion bond will be in the amount of 110% of the City engineer's estimated cost for applicable construction costs of the improvements. The security must be in a form acceptable to the City.

(b) Restoration Bond. If the Developer intends to install improvements rather than provide a completion bond, the Developer must provide a restoration bond to the City as required by the Ivins City Subdivision Ordinance. (If a completion bond is not provided, plat recording may not occur until all improvements are installed and approved by the City.)

(c) Warranty Security. At the completion of the improvements for which completion security is required, Developer shall provide the City with a warranty bond or other form of security, as required by the Ivins City Subdivision Ordinance, in the amount of 10% of the estimated construction costs referred to above. The security must be in a form acceptable to the City.

(d) Application. In case of any discrepancy between the bonding/security provisions in this Agreement and the City's subdivision ordinance provisions regarding bonding/security, the provision providing greater protection to the City (as such is determined by the City) shall be applicable.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(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:** Attest:

By: _____ _____
Chris Hart, Mayor Kari Jimenez, Ivins City Recorder

**DEVELOPER/OWNER:**

_____
ANA Enterprises LLC

STATE OF UTAH )
ss.
COUNTY OF WASHINGTON )

On this ___ day of August, 2021, 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

STATE OF UTAH )
ss.
COUNTY OF WASHINGTON )

On the ___ day of August, 2021, personally appeared before me KOLBY ANDERSON, MANAGING MEMBER OF ANA ENTERPRISES 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 ANA ENTERPRISES LLC is the Owner/Developer of the Indigo Trails Subdivisions 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 for the Property