RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:
Ivins City
Attn: Kari Jimenez
55 N Main
Ivins, Utah 84738
Parcel Nos.: _____(BDR should provide these for the Project)

(Above space for recorder's use only)

DEVELOPMENT AGREEMENT

between

Ivins City

and

ENLAW LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on this ___ of October, 2021, by and between Ivins City, a municipal corporation and subdivision of the State of Utah ("City"), and ENLAW LLC, a Utah limited liability company and its assigns ("**Developer**" and collectively with City referred to as the "**Parties**" or each individually as a "**Party**") for the land located in what is generally known as Black Desert Resort ("**Project**").

WHEREAS, Developer owns and has secured rights to develop 246.838 acres of real property within Ivins, hereinafter "**Development Property**," located within the City limits of Ivins City, Utah, and which is legally described in **Exhibit "A"** ("**Legal Description**") and physically depicted on those maps and site plans originally submitted as part of the CUP, which maps and site plans have been updated and are attached hereto as **Exhibit "B"** ("**Plat**") and collectively with the Legal Description of the "**Property**"); and

WHEREAS, Developer has contemplated development of this land for purposes consistent with the uses and purposes designated in the City's General Plan and planned residential zoning ordinances, including a destination resort type development; and

WHEREAS, Developer has agreed to phase the development of the Project into several phases the first of which will be a destination Hotel and condominium resort complex as so designated on the Plat, and which is depicted in more detail in the Schematic plans attached hereto as **Exhibit "C"** ("**Phase 1**"); and

WHEREAS, City and Developer desire numerous infrastructure and public amenity improvements including public streets, trails, riparian areas, lava flows, and open space within phases of the development; and

WHEREAS, Developer and City have worked together to establish a Public Infrastructure District ("PID") so that an assessment on the Development Property may be levied to help pay for the numerous infrastructure, public improvements, and public amenities that are anticipated to be developed within the Development Property, and which have been more specifically identified in the Governing Document for the PID; and

WHEREAS, consistent with the General Plan, this Project will be designed as a destination resort and provide recreational opportunities including a golf course, biking trails, walking trails, and park like settings that will be open and available to the general public. (General Plan, pp. 12-14); and

WHEREAS, this Project is intended to be a destination for both tourists and the local community and consequently will include a diverse mix of uses that range from residential, hotel, spa, pool, and fitness uses to retail, restaurants, office space, and educational uses; and

WHEREAS, consistent with a destination resort theme Developer plans to develop the Project and sell or operate, at various price points, a mix of residential, retail, commercial, and recreational sites. (General Plan pp. 12-14); and

WHEREAS, the Project has been approved for 1201 residential units pursuant to the conditional use permit granted on July 16, 2020.

WHEREAS, because this Project will be a tourist destination, it required the approval of a conditional use permit to allow for overnight rentals throughout the resort community; and

WHEREAS, Developer has applied for and received approval for a height exception within the Project that would limit the heights of the structures as set forth in the Developer Control Map attached hereto as Exhibit "D" ("Control Map"); and

WHEREAS, Developer is willing and has agreed to: (1) continue the bike trails along Snow Canyon Parkway; (2) restrict the height on the Hotel Site to the height set forth in the Control Map; (3) ensure that upon completion the entire Development Property is managed by the same entity with regard to hospitality and nightly rentals; (4) that the first phase of construction for the Project shall be as set forth in the attached Exhibit "C", and (5) deed a conservation easement to the City subject to the Parties' agreement upon terms related thereto and reduce such to writing to protect a substantial portion of the lava flow from vertical construction; and

WHEREAS, Developer has voluntarily represented to the City Council that it will enter into this binding development agreement; and

WHEREAS, Developer may dedicate a portion of the Development Property for public streets, trails, and open space within subdivision phases and "no build areas" outside subdivision phases, and may also "dedicate other portions of the Development Property" for parks and make certain improvements on its real property in a manner that is in harmony with the objectives of the City's General Plan, standards, ordinances and long-range development objectives and which addresses the more specific planning issues set forth in this agreement and is willing to abide by the terms of this Agreement; and

WHEREAS, the City, acting pursuant to its authority under UTAH CODE ANNOTATED 10-9a-101, et seq. and its ordinances, resolutions, and regulations and in furtherance of its land use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement; and

WHEREAS, the Developer understands that the Developer will have the responsibility to fund infrastructure needs caused by the development, subject to over-sizing of infrastructure in which funding the City will participate; and

WHEREAS, the Parties have agreed that Developer should construct certain improvements on the Property (as more particularly defined below, the "Developer Improvements") in accordance with the terms of a development agreement in the form hereof. and

WHEREAS, the Developer understands that the entire State of Utah, and Washington County in particular, has been and still is suffering from an extreme drought resulting in the potential shortage of culinary and secondary water in the City and further understands that building permits will be issued only upon the availability of water;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. RECITALS.

The Recitals above are hereby incorporated into this Agreement.

2. DEFINITIONS.

A. Association.

"Association" means and refers to one or more associations of the private owners of lots and parcels in the Project which will have, after the period of Developer administrative control, certain responsibilities including but not limited to: preserving and maintaining common areas, facilities and amenities which are retained and developed for the common use and benefit of all the owners, including commonly owned streetscapes; the development and enforcement of architectural and landscaping design guidelines for individual lots and parcels in the Project; developing and enforcing rules and regulations for the continuing operation of the various subdivisions and neighborhoods within the Project; and collecting regular and special assessments, fines, and penalties from the owners in the Project. The Association(s) shall be created by the Developer as a non-profit corporation organized under the laws of the State of Utah. It is anticipated that there will be one main Association, and other "sub-associations" may also be created with respect to the distinct Planning Areas and/or Secondary Phases of the Project. The Association and sub-associations shall be responsible for repairing, restoring, or replacing landscaping or other common nonpublic improvements upon property in the Project owned or controlled by the Association or sub-associations. In addition to annual, usual and special assessments for maintenance of common nonpublic improvements in the Project, the Association and sub-associations shall levy such assessments as may be necessary from time to time to repair, restore or replace landscaping, or other common nonpublic improvements, when necessitated by the installation, maintenance, repair, or replacement of public water, sewer, power, and drainage infrastructure.

B. Conservation Easement.

“Conservation Easement” means the portion of the Development Property that Developer will deed to the City pursuant to a conservation easement once the Parties have reached agreeable terms and reduced the same to a written and recorded easement. It is expected that certain limited development activities will be permitted within the area subject to the Conservation Easement. The limited development activities shall include the ability to construct structures and facilities attendant to the conservation uses such has trails, trailhead parking, and trailhead restrooms for hiking and biking.

C. Declaration.

"Declaration" means and refers to one or more declarations of covenants, conditions and restrictions for the subdivisions within the Project which shall be recorded in the Washington County Recorder's Office against the subdivisions within the Project and shall run with the land in the Project. The Declaration shall set forth the rights and obligations of the Developer, the Association, and the individual owners in the Project with respect to one another, shall establish a lien for the collection of assessments, and serve other purposes common to declarations in similar projects.

D. Developer.

"Developer" means Enlaw LLC, but this definition extends to its successors and assigns of all or any portion of the Development Property, provided such successors and assigns acquire all of the rights to the development of the Project which are currently held by Enlaw LLC or for a particular parcel or development area of the Development Property to be developed by such successor or assign (each successor or assign shall be a "Secondary Developer").

E. Development Property.

"Development Property" shall have the meaning set forth above and that is more specifically defined and depicted in Exhibits A and Exhibit B hereto.

F. Open Space.

"Open Space" means Improvable and Unimprovable Open Space as set forth in Paragraph 8.N below as well as those areas of Open Space within subdivision phases.

G. Off-Site Improvements.

"Off-Site Improvements" means and refers to all sewer, storm and culinary water, natural gas, underground utility systems, streets, curbs and gutters, sidewalks, traffic signals, or other improvements which are required to be developed by Developer outside the boundaries of the Project, as a condition of approval and permitting of the Project or distinct sub-parts thereof, as set forth in this Agreement.

H. On-site Improvements.

"On-site Improvements" means and refers to all sewer, storm and culinary water, natural gas, underground utility systems, streets, streetscapes, curbs and gutters, sidewalks, parks, trails, or other improvements which are required to be developed within the boundaries of the Project, but outside the boundaries of the distinctively defined Planning Areas, as a condition of approval and permitting of the Project or distinct sub-parts thereof, as set forth in this Agreement.

I. Parks Department.

"Parks Department" means and refers to the City department which is responsible for the development, operation and maintenance of parks within the City.

J. Plan.

"Plan" means and refers to the site plan originally approved by the City as part of the conditional use permit, which site plan has since been updated and is now reflected in the Project Plan approved by the City contemporaneously with the execution of this Agreement. The Plan is attached hereto as **Exhibit "B"** and the updated site plan contained in Exhibit B is hereby made a part of the conditional use permit approved in July 2020 by reference. Furthermore, prior to final approval of subsequent phases (after Phase 1) of the Project, detailed supplements to the Project Plan satisfying the requirements for approval of each such phase shall be submitted to the City for review and approval, in such order and at such time as Developer may choose it its discretion. The

Parties acknowledge and agree that the actual number of units in any one particular phase of the Project may differ from those set forth in the Plan, and that Developer may shift the number of units from one phase of the Project to another so long as the total aggregate number of units does not exceed the 1201 units approved by the City.

K. Project.

"Project" means and refers to the project known as “Black Desert" anticipated to be developed upon the Development Property pursuant to the terms of this Agreement and the Plan incorporated herein. The Developer, in its sole discretion, may change the name of the Project, provided that all subdivision plats within the Project comply with the naming requirements of paragraph 8.E. herein below.

L. Planning Area.

"Planning Area" means and refers to any one of the various distinct and individual phases of the Project. Each Planning Area may consist of subphases and may be developed in the order Developer chooses.

M. Secondary On-site Improvements.

"Secondary On-site Improvements" means and refers to all sewer, storm and culinary water, natural gas, underground utility systems, streets, curbs and gutters, sidewalks, traffic signals, parks, trails, or other improvements which are required to be developed within the boundaries of each of the distinctive Planning Areas in the Project, as a condition of approval and permitting of development of individual Planning Areas or sub- parts thereof, as set forth in this Agreement.

N. Secondary Phase.

"Secondary Phase" means and refers to a portion of any given Planning Area developed in multiple phases.

O. Traffic Impact Study.

"Traffic Impact Study" means and refers to the Traffic Impact Study completed on behalf of Developer by Hales Engineering on March 30, 2020 and accepted by City, as the same may be updated, supplemented, amended, or replaced as provided herein.

P. Unimproved Open Space/No Build Areas.

"Unimproved Open Space" and/or No Build Areas means and refers to each of those parcels of land designated in the Plan as such, which Developer has agreed to designate for the purpose of preservation for public access and use of the same, because of the unique and natural features of such parcels, including but not limited to natural or existing hiking and bicycling trails, canyons, and critical hillsides and riparian areas. At the election of Developer, Unimproved Open Space may be encumbered with a conservation easement restricting its use accordingly. Developer may donate said property in conjunction with the initial records of survey approved by the City. The Unimproved Open Space is more specifically defined and described in Section 8.N. of this Agreement.

3. PHASED DEVELOPMENT.

A. Phases of Project.

The Project will be developed in a series of phases. Each phase shall have its own Planning Area, which shall each enjoy the rights conferred by and be subject to the terms of this Agreement. Each phase shall be developed in accordance with the City's ordinances, regulations, and process with respect to entitlements and construction, and Developer shall have the discretion to decide in what order such development proceeds. Developer may also alter the number of units within a phase, or shift the number of units from one Individual Planning Area depicted in the schematic plan to another so long as the total number of units within the Project does not exceed 1201.

B. Phase 1.

Phase 1 is the area depicted in Exhibit as the area consisting of 12.39 acres of vertical construction and ___ acres of additional horizontal development for the golf course and has commonly been referred to as the Hotel Site. In addition, Phase 1 will also include the underground parking pedestrian bridge, and main entry road for the development. The Hotel Site will include the following features and amenities:

i. A full-service destination resort hotel with 148 Hotel rooms and approximately 302 condominium hotel rooms;
ii. A 19-hole championship golf course;
iii. Golf practice facilities, including a netless driving range, short game area, and putting facility;
iv. Robust waterwise landscaping;
v. Several resort community pools and hot tubs;
vi. At least two restaurants;
vii. A large Spa;
viii. Retail shops;
ix. Approximately 24,000 square feet of conference space;
x. Underground parking to largely remove the need for surface parking;
xi. Convention Space;
xii. Trails;
xiii. Roadways;
xiv. A pedestrian bridge and related improvements as part of a desert boardwalk amenity; and
xv. Event spaces for weddings, family reunions, and corporate events

4. VESTED RIGHTS AND RESERVED LEGISLATIVE POWERS.

With the recording for public record of this Agreement, and to the extent provided in the Conditional Use Permit, Developer's right to develop the Project as described herein is hereby vested, subject to the provisions hereof allowing for modification of specific requirements as development of individual sub-divisions or communities of the Project progress toward completion. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and

related land use plans, policies, ordinances and regulations after the date of this agreement provided that the adoption and exercise of such power is directed at a critical health, welfare and safety concern and shall not restrict Developer's vested rights to develop the Project as provided herein. Furthermore, as recognized in paragraph 5 below, the Project is still subject to the administrative procedures applicable to the development of the Project, including but not limited to all subdivision and permit applications, approvals and inspections applicable to the Project. In order to preserve the rights vested to Developer herein, Developer must reasonably pursue the development of the Project, including the creation of the individual Planning Areas as contemplated herein and the completion of improvements to infrastructure which development shall from time to time require. This Agreement is not intended to and does not bind the City Council in the independent exercise of its legislative discretion with respect to such zoning regulations, except to the extent specifically covenanted as set forth herein, the provisions of this Agreement by recording intended to run with the land to the benefit and burden of Developer and its successors and assigns. Notwithstanding any of the foregoing, nothing herein shall prohibit Developer from relying on the zoning in effect at the time any given sub-division application has been submitted, and pursuant to Utah Code Section 10-9a-509, Developer shall be entitled to approval of all completed applications on the basis of the zoning laws and regulations in effect at the time such application was submitted without regard to any subsequent changes to such laws or regulations.

5. COMPLIANCE WITH CITY DESIGN AND CONSTRUCTION STANDARDS.

Developer acknowledges and agrees that unless expressly stated otherwise, nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable laws and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with the City's design and construction standards for public improvements which are approved at the time of construction, except as may be specifically set forth otherwise herein.

6. TIME FOR CONSTRUCTION AND COMPLETION OF THE PROJECT.

Except as otherwise provided in this Agreement, Developer shall have the discretion as to the time of commencement, construction, phasing and completion of any and all development of the Project. Developer's discretion shall be confined within the time limitations set forth in City Code such as final plat expiration.

7. GENERAL OBLIGATIONS.

The parties shall do the following:

A. Road Dedications; Record of Survey and Street and Utility Plan.

i. *Road Dedications and Records of Survey.*

City and Developer will cooperate in the development of potential road dedications, if any, records of survey intended for the division of the Development Property into the distinct Planning Areas and the parcels that may potentially be dedicated at no cost to the City, as public parks, open space, redevelopment areas, and other public facilities. City and

Developer shall also cooperate in the development of street and utility plans to service the Project. Developer shall coordinate with City through Developer's engineer.

The submission, consideration and approval of the one or more road dedications may occur in parallel with the submission, consideration and approval of the records of survey, provided that an approved road dedication establishing the planned roads to service the Planning Areas in a given record of survey shall in all cases be recorded prior to the recordation of such record of survey. After recording, each record of survey map may be amended with the filing of an appropriate amendment thereto and deeds reflecting the same. The approval of the City shall be required to amend the record of survey if the amendment results in a change of more than 25% gross acreage adjustment for the subject road.

ii. Street and Utility Plan.

The street and utility plans prepared for each proposed road shall together serve as a "**Street and Utility Plan**" for the Development Property and shall contain construction standards at a level sufficient to ensure consistent quality throughout the development phases of the Development Property.

iii. Level of Detail in Street and Utility Plans.

The Street and Utility Plans will satisfy the design approval requirements as set forth by the City at the time the plans are submitted to the City for approval.

iv. Developer Responsibility for Dedications and Improvements Not Yet Accepted.

Developer acknowledges that dedication of any public roadway, if any, or utility right-of-way or the like shall not relieve Developer or any Secondary Developer, if applicable, for responsibility for the same, including completion of all improvements required to be constructed upon such roadway or right-of-way to service the Project. City reserves the right to review and accept all such improvements. Pursuant to City Ordinance, Developer, or the Association where applicable shall warranty all public improvements for one year after the City has approved and accepted the construction of the improvements. After acceptance of a public improvement by the City, the City shall assume responsibility for repair, maintenance and upkeep of the same pursuant to accepted City standards.

B. Sale of Individual Planning Areas.

City and Developer agree that, following approval and official filing for a Record of Survey map and associated deeds creating a particular Planning Area or Areas within the Project, Developer may proceed with sale of the individual Planning Area(s) so created thereby, to a third party who has been assigned Developer's rights under this agreement for that particular parcel.

C. Plan; Existing and Required City Approvals.

City agrees that Developer will be permitted to carry out the development of the Project in accordance with the densities set forth in the Plan and Section 13.B.i. (Residential Density

of the Project) subject to the terms and conditions of this Agreement. Pursuant to the terms of this Agreement and subject to Developer's public infrastructure obligations set forth in this Agreement, and subject also to re-zoning and/or subdivision plat approvals which may be required before the development of any particular Planning Area, development of the Project may proceed in conformance with the Plan. City and Developer agree that the Plan sets forth a degree of flexibility, but Developer may not increase the densities and types of use beyond the maximum set forth in the Plan without City approval, which shall not be unreasonably withheld. Developer and its successors or assigns hereby recognize each residential and commercial subdivision proposed within the Project may require additional regulatory approvals from the City, if applicable, prior to the issuance of any building permits in a given subdivision. Although it is not currently expected, nor would it be pursued without a bona fide public need, City agrees that in the event the City changes independent of any request from Developer, the Plan and its associated uses and densities in such manner that Developer believes it is not in its best interest to continue with the proposed development, then Developer at its sole discretion, may elect to terminate this Agreement and to be released from all further obligations set forth herein.

D. Notice of Zoning Actions.

City acknowledges that Developer has made and will make substantial investments in reliance on the Plan and the expectation of being able to obtain subdivision approvals based on applicable current zoning rules and regulations. City agrees to use its best efforts to provide written notice, which notice will include details of the proposed changes, to Developer at least one hundred and eighty (180) days prior to considering any changes to zoning rules or regulations which is not considered in conjunction with an application or proposed amendment initiated by Developer.

E. Requirements for Subdivision Names in the Project.

In order to simplify the identification of subdivisions located within the Project, each subdivision for which a preliminary plat and final plat is filed for approval by the City shall be named as follows: the name of the subdivision shall be followed by the name of the Project, and if the name of the subdivision is not unique from the name of another subdivision in the Project, the name shall also be followed with numbering or lettering designating the subdivision as a unique phase of development. The preliminary and final plats submitted to the City for approval shall clearly indicate the subdivision name in such format.

F. Improvement Costs.

Developer will bear the cost of all development and improvement necessitated by development of the Project that falls within the boundary of the Development Property, and City will bear the cost of any City-requested upsizing or additional capacities or additional improvements outside the Development Property including those that by nature would be brought to the Development Property boundary, consistent with City policy, including improvements specifically related to City owned trails, parks and public buildings to be constructed, unless otherwise specifically agreed to be borne by Developer.

G. Creation of Community Development Project Area and Related Notices.

The City and Developer have worked together to create a Public Infrastructure District for the Project. Pursuant to the Governing Document for the PID, the Developer has agreed to record a notice with the Recorder of Washington County, Utah and with the City. This notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Property Tax Levy of the District; (e) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion; and (f) a disclosure outlining the impact of any applicable property tax, in substantially the following form:

Under the maximum property tax rate of the District, a primary residence valued at $500,000 would have an additional annual property tax of $2,750 for the duration of the District's Bonds. A secondary residence or business property valued at $500,000 would have an additional annual property tax of $5,000 for the duration of the District's Bonds.

In addition, Developer and the PID Board shall ensure that Developer's affiliates, homebuilders, and commercial lessors, as applicable, disclose the foregoing information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants. Such disclosures shall be included on a separate colored page with the real estate purchase contract and closing documents on any sale of real property within the District and in any lease (if the tenant will be paying for property taxes), and shall require a signature from the end user acknowledging the foregoing.

H. Easement and Right of Way Dedication.

The Record of Survey filed at the Washington County Recorder's office with respect to the entire Project shall designate the street and utility plan easements and/or dedicated public rights of way as are reasonably necessary for service of each individual Planning Area and which shall be located to minimize impact on the servient property. Easements and public rights of way shall be granted or dedicated at no cost to the City as a part of the Record of Survey to benefit each Planning Area in an overall comprehensive plan for the Project. City and Developer shall grant cross easements as may be shown on the Record of Survey. The Developer shall reserve such easements as are reasonably necessary for drainage of the Project's runoff and irrigation. Such easements shall be located as to minimize impact on the servient property. Developer shall bear the cost of installing drainage and detention facilities within the boundaries of the Project..

I. City Facilities and Landscape Improvements..

City may permit and cooperate in Developer's efforts to ameliorate the landscaping and design impact of City's water, drainage, and other public utility systems. In addition, City may permit and cooperate in Developer's efforts to enhance and improve landscaping features on any City owned property within the Project. Developer and/or the Association

will be responsible for the maintenance of the landscaping features it installs on rights-of-way and easements which are dedicated to the City.

J. Height and Set Back Restrictions.

Developer applied for and received approval for a height exception within the Project that would limit the heights of the structures as set forth in the Developer Control Map, which shall control with respect to the heights for the vertical development of the Property. The height restrictions set forth in the Developer Control Map shall be measured up from the current unaltered natural grade. Consistent with the Developer Control Map, any structure built within 185' of Snow Canyon Parkway shall be subject to a height restriction of 16' measured from the current natural grade. Additionally, Developer agrees that it will not build any building within 60' of the current curb of Snow Canyon Parkway, but such restriction shall not prevent Developer from installing landscaping, berms, and fencing within such 60'.

i. *Resort Center Hotel Roof Top Access Restriction*

There shall be no public access to the area of the Resort Center Hotel roof set forth in the Developer Control Map. The elevator granting public access to the roof of the Resort Center Hotel depicted as "Removed" in the Developer Control Map shall not be constructed.

K. Utility Improvements, Extensions and Upsizing.

Certain improvements and utility extensions or upsizing which are anticipated to be designated in the Street & Utility Plan, if any, shall be installed on a joint and cooperative basis by City and Developer or Secondary Developer to avoid conflicts in construction and to achieve economies of scale. The Developer's Engineer and City representative(s) shall meet together in the development phase of such Record of Survey and associated Street and Utility Plan work, and ensure that the improvements and development contemplated therein are coordinated and that to the extent possible such improvements are developed in cooperation, and that the allocation of costs for such improvements is on a fair and reasonable basis, consistent with existing law, the other provisions of this Agreement, and other agreements for sharing costs of power, water, and other improvements between and among City, Developer, and third parties (if any). In the event that upsizing of utility improvements is required, City shall participate in the cost of such upsizing consistent with City policy regarding upsizing.

L. Impact Fee Credits.

Where Developer designs and constructs trails and other public facilities or amenities such design and construction shall be completed as may be required to develop the Project and as contemplated by the City's various capital facilities plans which would normally be financed through Impact Fees. Developer shall receive reimbursement of or credit for Impact Fees and other fees as may be normally assessed by the City for said public facilities when said facilities are designed and constructed by Developer. City and Developer agree that specific details with respect to the mechanisms and timing of reimbursement or credit

of impact fees, as well as timing for completion of public park improvements, may be set forth in a separate agreement between the Parties. Notwithstanding the foregoing, Impact Fee Credits shall not be available for the portion of such improvements required for the Project, such as the entry road to the resort hotel in the First Phase.

M. Intentionally Left Blank.

N. Density Clustering and Open Space Credit.

So long as the density for the development does not exceed the approved units over the entire Project, Developer may cluster or concentrate the density in certain areas of the Project to create neighborhoods of high density use while fostering open space.

O. Open Spaces.

The parties acknowledge that at the outset, the approved Plan for the Project reflects areas of open space. In keeping with the intent of the Project, the open space has been aggregated in the Plan, in large part, outside of the Planning Areas in order to provide a cohesive, usable open space and to preserve the natural lava flows, canyons, trails, and arroyos to the extent reasonably possible to benefit the entire Project and the public at large. The Open Space anticipated to be preserved in the Project shall be preserved in one of two forms on the Plan as follows:

i. Unimproved Open Space.

All of the Open Space in the Planned Community that is the subject of a Conservation Easement or that may later become the subject of a Conservation Easement "Unimproved Open Space". But for the Conservation Easement the Unimproved Open Space would be developable pursuant to local zoning. However, none of the Unimproved Open Space that is subject to a conservation easement now or in the future may be used to satisfy the open space requirements for the Project or for any density bonus that may be available under the General Plan.

ii. Improvable Open Space.

All of the Open Space in the Project which is not subject to a Conservation Easement or that may later be donated and/or improved as parks or passive common areas owned and controlled by Developer or Association or City where applicable, shall be referred to as "Improvable Open Space" and together with the Unimproved Open Space referred to herein as "Open Space". Developer may, at its discretion, convert a portion of Improvable Open Space into Unimproved Open Space.

All Improvable Open Space shall be designated on the Plan. That portion of the Improvable Open Space which is required for a neighborhood park, if any, shall be designated as a separate parcel to be created in metes and bounds and to be improved and donated to the City with a Record of Survey consistent with Section 10 below.

Because of the possibility that the actual location and boundaries of the Improvable Open Space may change as development progresses in the Project, the Improvable Open Space shall not be designated as a separate parcel to be created in metes and bounds when the Development Property is first divided with Record(s) of Survey, but instead each area of Improvable Open Space shall be indicated in the Record(s) of Survey as overlapping one or more of the Planning Areas so created. The Improvable Open Space is anticipated to be retained in part by the Association as common area open space. The intent of this provision is so that Developer will have the maximum amount of flexibility to determine the final location and boundaries of the Improvable Open Space and Planning Areas, while still allowing the City to have ample review over the final location and boundaries of the Improvable Open Space to ensure general compatibility with the Plan and compliance with the City's minimum Open Space requirements.

iii. Use of Improvable Open Space to satisfy subdivision requirements.

In order that any and all open space requirements can be met in any part of the Project for which zoning approval is sought, and so that neighborhood park requirements will also be met, the City agrees that when developing an individual Planning Area or a portion thereof, the Developer may draw from or receive credit for a portion of the Improvable Open Space set aside in the Plan for any part of the Project in order to meet a part or all of any open space requirements attendant thereto. In this manner, the Improvable Open Space bank may be drawn on or referred to by a Developer or Secondary Assignment to meet any open space requirements in an individual Planning Area as approved in writing by Developer. Developer agrees that no particular acreage of Improvable Open Space may be utilized to satisfy the open space requirements of more than one subdivision plat, and that Developer shall certify the same with the filing of each subdivision plat which requires open space for approval. Furthermore, Developer anticipates that when combined with the open space in a given developable area of the Plan the Improvable Open Space is in excess of that required to meet the City's requirements for the Project as a whole, and Developer reserves the right to adjust the boundaries of the Improvable Open Space as set forth in paragraph 8.N.ii. above, provided the overall density for the Project as set forth in the Plan is not exceeded and the percentage of open space shown on the Plan is not reduced below 15% of the Development Property. Developer recognizes that the terms of this subsection do not relieve it from its obligation to comply with state and local subdivision and platting requirements as outlined in this Agreement. Developer when filing a subdivision plat for approval shall be required to report on the status of the "Open Space Bank" as set forth in paragraph 12.A.v.

The Parties acknowledge that at the outset, the approved Plan for the Project reflects areas of Open Space. In keeping with the intent of the Planned Community, the Open Space has been aggregated in the Plan into Improvable Open Space, in large part, outside of the Planning Areas in order to provide a cohesive Open Space plan.

P. Public Parks and Trails Operation and Maintenance.

Developer reserves the right, but not the obligation to maintain City parks, Unimproved Open Space and paved surfaces of regional trails within the Project pursuant to entering into a License and Maintenance Agreement with the City. In the event Developer or its successors and assigns does not maintain the City park(s) pursuant to the License and Maintenance Agreement to the standards acceptable to the City, City may, upon ninety (90) days written notice, take over maintenance and the Parties will work together to create and agree upon a "License and Maintenance" agreement for the City to provide such services. At any time that the City is maintaining City park properties within the Project, Developer, and following Developer the Association, reserves the right to enter upon the same for maintenance and repair if, in the Developer or Associations sole discretion, the City's maintenance proves to be insufficient. The License and Maintenance Agreement would be negotiated and executed between the City and Developer or, if applicable, Association, if such an instance arises.

Q. Streetlights and Signage.

Developer may elect to use decorative streetlights and street signage within the Project, including flags and banners, as long as such are approved by the City and are in compliance with all applicable City ordinances regarding lighting and signs, within dedicated public rights-of-way, provided all traffic control devices and signs are in conformance with the requirements of the Manual on Uniform Traffic Control Devices and City standards. If alternate poles or other components are approved by the City other than those previously approved by the City for other properties or projects, then Developer agrees to enter a separate agreement governing maintenance, stockpiling of replacements, and other issues relative to the City's ongoing management of street light components. Ultimately, the Developer desires to develop road and lighting plans that will reduce light pollution and the Developer may elect monument style lighting over large down lights.

R. Pools.

Developer agrees that it will work closely with the Washington County Water Conservancy District, third-party consultants and the City with respect to water planning and waters use formulas throughout the Project in an effort to meet or exceed the standards set by the District for conservancy. The implementation of a pool for the sole benefit of a single residential unit within the Project shall be subject to and planned as a part of the water conservancy planning contemplated by this section.

S. Aggregate and Lava Processing.

City acknowledges that Developer may develop or permit development of an aggregate processing plant and sell the products of such operation within and outside the Project, subject to obtaining a conditional use permit and complying with other requirements for such operation as set forth in City ordinances and other applicable law. Notwithstanding any of the foregoing, it is not Developer's intent to own or operate any long-term commercial aggregate and lava processing facilities. Accordingly, all aggregate and lava processing activities shall be limited to processing the lava and aggregate that is excavated

in the normal course of developing and constructing the Project and all such processing shall cease once the Project has been fully developed and constructed. Developer intends to first use the processed lava and basalt within the project and only export and/or sell left over materials that it is not able to utilize within the Project.

T. Cooperation in Obtaining Available Funding.

Developer intends to explore all available sources of financing for the development of the Project and completion of the improvements required, including private and public sources, wherever available. City agrees to use its best efforts, consistent with the City's best interests, to assist the Developer, and sponsoring Developer's requests when appropriate, in obtaining and using any state, regional or federal funds, including but not limited to grants, funds for nature trails, tax increment financing, or other monies that may be available or become available for the acquisition, construction, or maintenance of public facilities within the Project. Furthermore, without being bound to the creation or implementation of the same, the parties agree to discuss the possibility of utilizing one or more Special Assessment Areas (SAAs) or other similar public financing to finance public improvements within the Project, to the extent authorized by applicable state law. Notwithstanding the foregoing, this paragraph does not require the City to participate in any tax increment financing.

U. Regulatory Matters.

City and Developer shall cooperate in all regulatory matters, which affect both parties. Other requirements of law and processes typical to the development process are not waived by this Agreement, but all such processes shall proceed consistent with this Agreement.

8. SATISFACTION OF DEVELOPER'S NEIGHBORHOOD PARK OBLIGATIONS.

If the Plan approved by the City requires a Neighborhood Park, Developer and the City agree that, provided Developer satisfies the obligations set forth in this Agreement, then Developer will have fully satisfied all of Developer's obligations and be in compliance with applicable City requirements.

9. RESERVED.

10. PARTIES' OBLIGATIONS.

The parties shall do the following:

A. Developer

The Developer shall meet the following requirements in the times and manner set forth herein below.

i. Commitment of Developer.

The obligations of Developer described by this Agreement and the Plan are intended by the parties to be comprehensive of all obligations required of Developer by the City. However, Developer acknowledges that additional Off-Site Improvements may be required based on final engineering

of public infrastructure serving the Project; in that event, Developer agrees to participate in the construction of such additional Off-Site Improvements in percentages agreed to by the parties but generally representing the Project's share of the impacts requiring said improvements.

ii. Construction of Off-Site Improvements.

a) Off-Site Road and Traffic Improvements.

(1) Developer Contributions.

Developer shall be responsible to pay its prorated share of the estimated costs for all Off-Site traffic and road improvements as set forth in the Traffic Impact Study incorporated herein, as supplemented, updated or amended. Developer agrees that its contributions to the improvements contemplated in the Traffic Impact Study shall be made in advance of any new impacts projected to be caused by development of the Project, and as the same are anticipated to require such improvements. City may require Developer to pay the required percentage to the City according to the events or deadlines set forth in the Traffic Impact Study, as amended and consistent with the terms of this Agreement. If City builds any off-site improvement before impacts from the Project occur, Developer shall pay its required percentage calculated on a prorata basis based upon the impact reasonably attributable to the Project.

b) Sewer Improvements.

Developer agrees to install such sewer lines and systems as are necessary to serve the Development Area.

c) Power.

Developer agrees to install such power lines and systems as are necessary to serve the Development Area.

d) Water.

Developer agrees to install such water lines and systems as are necessary to serve the Development Area.

iii. Construction of On-site Improvements.

The On-site Improvements servicing each Planning Area, as set forth in the Street and Utility Plan, shall be completed, or security for the completion of the same shall be posted by Developer, or Secondary Developer as a condition of approval for any subdivision final plat within a Project requiring the On-site Improvements or portions thereof.

iv. Deadlines and Requirements Dependent on Approved Studies for Particular Infrastructure.

The deadlines, requirements, and cost share percentages set forth for each of the required infrastructure improvements described in the foregoing sections are dependent on the approved studies for the infrastructure described. Where appropriate, the current approved study is referenced above. Updates to any approved study which are not required as a result of Developer-desired changes to the Plan, but simply to update with respect to the actual progress of development of the Project, shall be automatically applied to update the requirements of this Agreement with respect to the infrastructure to which the study relates. Should any approved study need to be amended, supplemented, or replaced because of Developer-desired changes to the Plan, then upon the approval of said amendment, supplement, or replacement by the City, the provisions of the foregoing paragraphs describing the Developer's responsibilities shall be deemed modified to incorporate and be consistent with the approved study as amended, supplemented, or replaced.

v. Monitoring and Reporting Density and Open Space as Development Progresses.

With the filing of each subdivision plat in the Project for approval with the City, Developer shall submit with the same a report on density which: (a) identifies the number of units and the density of units per acre proposed for the subdivision for which the plat is filed, (b) identifies the total number of units already platted and approved for development in the Project, and (c) identifies the maximum number of units that may be platted in the remainder of the Project if the current subdivision plat is approved as submitted. A preliminary calculation of each anticipated Planning Area's Density is attached hereto as Exhibit ___.

Developer shall also submit with the same a report on open space which: (d) identifies by map or description the Planned open space (and total acreage of the same) in the "open space bank" proposed to be utilized to meet open space requirements for the subdivision for which the plat is filed; (e) identifies by map or description the Planned open space (and total acreage of the same) in the "open space bank" already utilized to meet open space requirements for plats previously approved; and (f) identifies any remaining Planned open space (and total acreage of the same) in the "open space bank" which may be used to satisfy open space requirements in future subdivision plats in the Planned Development. The intent of this requirement is to allow the efficient review by the City of the overall density and open space usage of the Project as development of the same progresses, and further to assist the parties to ensure that later-platted parcels have sufficient density available to ensure marketability and viability of each Planning Area, and the development of the Project throughout consistent with the Plan as approved, and as may be modified by this Agreement.

B. City

The City shall do the following:

i. Residential Density of the Project.

The City acknowledges that the Plan, as the same may be amended and adjusted pursuant to this Agreement, is in substantial conformance to the City's General Plan. The Parties agree that the overall conceptual maximum residential unit count of the Project **1201 and** shall be considered an entitlement number and shall not be subject to any zoning ordinances including, but not limited to, hillside development regulations, setback and open space requirements; with the sole exception that the density calculation shall exclude any areas with steep slopes (over 40% grade) or other unbuildable land such as streambeds. Densities in each individual Planning Area shall be as set forth in the Plan; however, Developer shall have the right to shift units from one Planning Area to another, thus modifying the relative densities in the affected Planning Areas, without being required to get City approval or to amend the Plan, provided that the overall maximum density for the entire Project is not exceeded. The development of the Project to less than the full maximum residential unit density permitted shall not release Developer from any obligations to the City as set forth herein, unless as a result of a General Plan amendment which is not requested by Developer, or unless the reduction in total units results in a corresponding reduction in public facilities and/or improvements supported by the appropriate engineering/planning studies as approved by the City.

ii. Commercial Space.

The provisions and limitations on residential unit density are separate and distinct from those governing commercial space. Commercial Space shall be developed in accordance with all applicable ordinances.

iii. Utility Easements for Off-Site Sewer Extension.

If a sewer easement becomes necessary to complete the extension of gravity flow sewer lines, the City shall acquire such easements. However, City shall also use its best efforts to obtain said right-of-way by other means if necessary.

iv. Nightly Rentals.

City acknowledges that in recent years there has been a surge in the market providing nightly rental accommodations in planned communities which include access to swimming pools and other amenities. City will not disapprove a zone request from Developer simply because it includes nightly rentals and amenities associated therewith and will recognize the Developer's right of nightly rentals under the purposes and objectives of the General Plan. Developer agrees that any overnight rental program will be managed by a solitary on-site property manager.

11. AGREEMENT TO RUN WITH THE LAND.

This Agreement shall be recorded in the Office of the Washington County Recorder, shall be deemed to run with the Property, shall encumber the same, and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property.

12. 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 also the responsibilities arising hereunder. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

13. NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.

This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties; except as expressly provided herein.

14. INTEGRATION.

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

15. NOTICES.

Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for whom it is intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as communications under this Agreement shall be deemed to have been given and received and shall be effective three (3) days after deposit in the U.S. Mail to the recipient's address as set forth herein:

City:	Developer:
Ivins City Attn: City Manager/City Attorney 55 North Main Street Ivins, Utah 84738	Enlaw, LLC Attn: Patrick Manning 1500 Black Desert Drive Ivins, UT 84738
Copy to:	Copy to:

Any party may change its address by giving written notice to the other party in accordance with the provision of this section.

16. LAW AND USAGE.

Any dispute regarding this agreement shall be heard and settled under the laws of the State of Utah. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both genders, and the term "person" shall include an individual, partnership (general or limited), corporation, trust, or other entity or association, or any combination thereof. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement shall be constructed as both covenants and conditions in the same manner as though the words importing such covenants and conditions were used in each separate provision hereof.

17. COURT COSTS.

In the event of any litigation between the parties arising out or related to this Agreement, the prevailing party shall be entitled to an award of reasonable court costs, including reasonable attorney fees.

18. EXPENSES.

The Developer and the City shall each pay their own costs and expenses incurred in preparation and execution of and performance under this Agreement, except as otherwise expressly provided herein.

19. WAIVER.

Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

20. EFFECTIVE DATE.

This Agreement shall be effective as of the date filed for public record in the office of the Recorder for Washington County, Utah.

(Signatures Begin on Following Page)

IN WITNESS WHEREOF, the parties hereunder have executed this Agreement on the date first written above.

DEVELOPER	CITY
ENLAW, LLC, *a Delaware limited liability company* By: RS18 Entrada Manager LLC, a Utah limited liability company, its Manager	_____ Chris Hart, Mayor Attest:
_____ By: Paul Bringhurst, Manager of RS18 Entrada Manager LLC	_____ Kari Jimenez, City Recorder

STATE OF UTAH,)
: ss.
County of Washington.)

On the _____ day of _____, 2021, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____, and that he/she executed the foregoing Black Desert Development Agreement in behalf of said company, being authorized and empowered to do so, and that the company executed the same freely and voluntarily for the uses and purposes stated therein.

_____
Notary Public

STATE OF UTAH,)
: ss.
County of Washington.)

On the _____ day of _____, 2021, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____, and that he/she executed the foregoing Black Desert Development Agreement in behalf of said company, being authorized and empowered to do so, and that the company executed the same freely and voluntarily for the uses and purposes stated therein.

_____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 4, TOWNSHIP 42 SOUTH, RANGE 16 WEST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 01°17'15" WEST 1329.40 FEET; THENCE NORTH 88°27'56" WEST 197.75 FEET; THENCE SOUTH 28°17'29" EAST 206.34 FEET; THENCE SOUTH 11°24’38" EAST 137.29 FEET; THENCE SOUTH 48°56'39" EAST 44.36 FEET; THENCE SOUTH 87°54T4" EAST 35.96 FEET; THENCE SOUTH 82°30’25” EAST 127.57 FEET; THENCE SOUTH 06o23’42" WEST 84.40 FEET; THENCE NORTH 72°08T0” WEST 60.27 FEET; THENCE SOUTH 27°54'55" WEST 70.65 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE TURNING TO THE LEFT THROUGH A CENTRAL ANGLE OF 28°46'20", HAVING A RADIUS OF 300.00 FEET (RADIUS POINT BEARS SOUTH 19°13’30" WEST), AND WHOSE CHORD BEARS NORTH 85°09’40" WEST 149.07 FEET; THENCE ALONG THE ARC OF SAID CURVE 150.65 FEET TO THE BEGINNING OF A REVERSE CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH A CENTRAL ANGLE OF 43°02'57", HAVING A RADIUS OF 25.00 FEET (RADIUS POINT BEARS NORTH 09°32’50" WEST), AND WHOSE CHORD BEARS NORTH 78°0F21M WEST 18.35 FEET; THENCE ALONG THE ARC OF SAID CURVE 18.78 FEET TO THE BEGINNING OF A REVERSE CURVE, SAID CURVE TURNING TO THE LEFT THROUGH A CENTRAL ANGLE OF 142°21'08", HAVING A RADIUS OF 50.00 FEET (RADIUS POINT BEARS SOUTH 33°30'07" WEST), AND WHOSE CHORD BEARS SOUTH 52°19’33" WEST 94.65 FEET; THENCE ALONG THE ARC OF SAID CURVE 124.23 FEET; THENCE NORTH 78°51'01" WEST 174.68 FEET; THENCE SOUTH 55°30'38" WEST 81.08 FEET; THENCE NORTH 36°04'49" WEST 91.49 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE TURNING TO THE LEFT THROUGH A CENTRAL ANGLE OF 14°28'05", HAVING A RADIUS OF 2045.30 FEET (RADIUS POINT BEARS SOUTH 77°11'59" WEST), AND WHOSE CHORD BEARS NORTH 20°02'03" WEST 515.09 FEET; THENCE ALONG THE ARC OF SAID CURVE 516.46 FEET; THENCE NORTH 88°27'56" WEST 2087.65 FEET; THENCE NORTH 88°56'23" WEST 1329.94 FEET; THENCE NORTH 00°29'06" EAST 2658.70 FEET; THENCE SOUTH 88°47'01" EAST 2678.31 FEET; THENCE NORTH 00°40'48" EAST 368.80 FEET; THENCE SOUTH 43°53'13" EAST 1331.91 FEET TO THE BEGINNING OF A CURVE,

SAID CURVE TURNING TO THE RIGHT THROUGH A CENTRAL ANGLE OF 48°11'23", HAVING A RADIUS OF 100.00 FEET (RADIUS POINT BEARS SOUTH 46°06’47" WEST), AND WHOSE CHORD BEARS SOUTH 19°47'31" EAST 81.65 FEET; THENCE ALONG THE ARC OF SAID CURVE 84.11 FEET TO THE BEGINNING OF A REVERSE CURVE, SAID CURVE TURNING TO THE LEFT THROUGH A CENTRAL ANGLE OF 99°56T3", HAVING A RADIUS OF 110.00 FEET (RADIUS POINT BEARS SOUTH 85°41’50" EAST), AND WHOSE CHORD BEARS SOUTH 45°39'56" EAST 168.45 FEET; THENCE ALONG THE ARC OF SAID CURVE 191.86 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH A CENTRAL ANGLE OF 43°10'19", HAVING A RADIUS OF 100.00 FEET (RADIUS POINT BEARS SOUTH 03°55'23" EAST), AND WHOSE CHORD BEARS SOUTH 72°20T4" EAST 73.58 FEET; THENCE ALONG THE ARC OF SAID CURVE 75.35 FEET; THENCE SOUTH 50°30T8"

EAST 695.11 FEET; THENCE SOUTH 43°12'29" WEST 169.49 FEET; THENCE NORTH 89°06'55” WEST 133.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 246.838 ACRES, MORE OR LESS

EXHIBIT B
PLAT

EXHIBIT C
SCHEMATIC PLANS

EXHIBIT D
CONTROL MAP