WHEN RECORDED, MAIL TO:

KARI D. JIMENEZ
IVINS CITY
85 NORTH MAIN
IVINS, UT 84738

APN: I-PL

DEVELOPMENT AGREEMENT
FOR THE RETREAT AT SNOW CANYON PROJECT
IVINS CITY, WASHINGTON COUNTY, UTAH

This Development Agreement ("Agreement") is entered into as of this _____ day of _____, 2024, by and between **UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**, a subdivision of the State of Utah ("SITLA"), the owner of certain real property located in Ivins City, Washington County, Utah; **EWD, LLC**, a Utah limited liability company ("Developer"), the developer of such property, on which they propose to develop a project known as The Retreat at Snow Canyon (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. SITLA is the owner of approximately 113 acres of real property located at approximately 400 South and Cordero Drive 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").

B. Developer is the authorized developer of the Property pursuant to a "Development Agreement, Payment Agreement, and Ground Lease" with SITLA dated February 5, 2018, as amended, in which it is Developer's right and obligation to obtain all development approvals from the City which are required for the development and sale of the Property.

C. Developer proposes the development of a certain commercial and residential development known as The Retreat at Snow Canyon, consisting of 194 single family residential lots on approximately 73.6 acres in the western portion of the Project (the "West Residential"), and 393 resort units on approximately 39.6 acres in the eastern portion of the Project (the "East Resort"), as more fully reflected on Exhibit "B" attached hereto and incorporated herein.

D. The Project shall be developed in multiple phases, including seven (7) planned phases in the West Residential area, and four (4) planned phases in the East Resort area.

E. Developer acknowledges the potential shortage of culinary and/or secondary water in the

City and understands that building permits will be issued only upon water availability as determined by the Washington County Water Conservancy District.

F. 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 and construction standards as set forth in the City's zoning ordinance, as well as the standards and specifications set forth and/or incorporated herein and any development approvals issued by the City applicable to the Property or any part thereof, which are incorporated herein, including but not limited to the conditional use permit issued on October 19, 2023 applicable to the East Resort.

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

H. 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 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 developing and enforcing of architectural and landscaping design guidelines for development of individual lots and parcels in the Project; developing and enforcing rules and regulations for the continuing operation of the various subdivisions within the Planned Community; and collecting regular and special assessments and fines and penalties from the owners in the Project, to finance said responsibilities. 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 other "sub-associations" may also be created with respect to the distinct 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 (including private streets and driveways if the same are approved in any Phase). 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, except where the City is responsible for such costs.

B. 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. A 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.

C. Developer. "Developer" means and refers to EWD, LLC, a Utah limited liability company. This definition extends to successors and assigns of the same, provided such successors and assigns acquire all of the rights to the development of the Project which are currently held by Developer, or for a particular parcel of the Property to be developed by such successor or assign, which successor or assign may be chosen by Developer in its sole discretion and pursuant to Section 12, below.

D. Open Space. "Open Space" means and refers to those areas of Open Space indicated generally upon the Plan and within subdivision phases. The Open Space may in some areas remain unimproved and in other areas may be improved with improvements such as natural vegetation, landscaping, park improvements, outdoor recreational facilities, utility infrastructure, and other improvements not inconsistent or incompatible with the purposes and permitted and conditional uses in the City's zoning ordinances.

E. 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 Property, as a condition of approval and permitting of the Project or distinct sub-parts thereof, as set forth in this Agreement.

F. 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, trails, or other improvements which are required to be developed within the boundaries of the Property, but which may be outside the boundaries of a Phase for which development approvals are currently being sought, as a condition of approval and permitting of such Phase, as set forth in this Agreement.

G. Plan. "Plan" means and refers to the Preliminary Plans for the Property approved by the City. The Plan is on file with the City, is incorporated herein with this reference,

and vested with this Agreement and will not require extension or renewed approval during the term of this Agreement. The Plan consists of eighty-two (82) total pages including the following:

i. Preliminary Plans for The Retreat at Snow Canyon – West Residential (Phases 1-4), prepared by Bush & Gudgell, Inc., dated 9/14/2023, consisting of 22 total pages, as presented to, and approved by, the Ivins City Council at its October 5, 2023 city council meeting.
ii. Preliminary Plans for The Retreat at Snow Canyon – West Residential (Phases 5-7), prepared by Bush & Gudgell, Inc., dated 12/12/2023, consisting of 24 total pages, as presented to, and approved by, the Ivins City Council at its December 21, 2023 city council meeting.
iii. Preliminary Plans for The Retreat at Snow Canyon – East Resort, prepared by Bush & Gudgell, Inc., dated 10/12/2023, consisting of 36 total pages, as presented to, and approved by, the Ivins City Council at its October 19, 2023 city council meeting.

H. Project. "Project" means and refers to the various Phases of the development project known as "The Retreat at Snow Canyon" anticipated to be developed upon the 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.C. herein below.

I. Phases. "Phase" or "Phases" means and refers to the various development phases depicted in the Plan attached hereto as *Exhibit "B,"* as may be adjusted from time to time consistent with this Agreement. Phases will not necessarily be developed in numerical order and may be developed in the time and manner determined by Developer, subject to relevant City ordinances and development approvals.

J. Property. "Property" means and refers to the parcels of real property located in Ivins, Washington County, State of Utah, which are subject to this Agreement and which are more particularly described with the legal descriptions set forth in *Exhibit "A"* hereto.

3. **Affected Property**.

A. Boundary Description. The legal description of the Property is as follows:

*See **Exhibit** "A" attached hereto and incorporated with this reference.*

No additional property may be added to this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City. The City acknowledges that the Property is currently zoned as depicted in the Plan.

4. **Vested Rights and Reserved Legislative Powers**. With the recording for public record of this Agreement, Developer's right to develop the Project as described herein is hereby vested, subject to the provisions hereof requiring additional development approvals and allowing for modification of specific requirements as development of the Project progresses 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. 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 Phases 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.

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, and as consistent with applicable Utah law, except as may be specifically set forth otherwise herein. Regardless of any other law or language to the contrary, Developer shall abide by Chapter 19 of the City's zoning ordinance.

6. **Compliance with Project Design Standards**. Developer anticipates the creation of architectural and landscape design guidelines for development and construction of lots and parcels in the Phases, and said standards may be more restrictive than those set forth by the City. Developer will develop the pending subdivision in compliance with all project design standards.

7. **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.

8. **General Obligations.** The Parties shall do the following:

A. Road Dedications; Street and Utility Plan. City and Developer shall cooperate in the development of street and utility plans to service the Project. It is anticipated that all road dedications shall occur through the recording of final subdivision plats, and all street and utility improvements shall be developed in conjunction with each

subdivision approved in the Project. Developer shall coordinate with City on all such plans through Developer's engineer. The street and utility plans prepared for each subdivision shall contain construction standards at a level sufficient to ensure consistent quality throughout the development phases of the Development Property.

B. Rights Vested in Agreement and Plan. City acknowledges that Developer has made and will make substantial investments in reliance on the Plan, subject to future subdivision plat approvals. Thus, subject to the requirements and the subsequent approvals set forth herein, Developer shall have vested rights to develop the Property under this Agreement and the Plan notwithstanding any subsequent amendments to City's zoning regulations or General Plan.

C. 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.

D. Improvement Costs. Developer will bear the cost of all development and improvement necessitated by development of the Project, and City will bear the cost of any City-requested upsizing or additional capacities or additional improvements, consistent with City policy, including improvements specifically related to public buildings to be constructed, unless otherwise specifically agreed to be borne by Developer.

E. Public Improvements, Extensions and Upsizing. Certain public improvements and utility extensions or upsizing which shall be designated in the Plan shall be installed on a joint and cooperative basis by City and 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 any such work, and ensure that any such improvements contemplated in the Plan 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 road, sewer, water, and other improvements between and among City, Developer, and third parties (if any). As of the date of this Agreement, the parties anticipate that Developer shall build a roundabout at the intersection of 400 South and Hamblin Parkway, and Developer may, at the timely request and direction of the City, build roundabouts at the intersections of 400 South and Puerto Drive, and Hamblin Parkway and Red Mountain Drive. Any roundabout improvements required in the Project shall be constructed by Developer without any contribution from the City, except as follows. The City and Developer agree that for any roundabout improvements which are required, then such improvements, shall be subject to City

contributions for upsizing, equal to the difference in cost between completing regular intersection improvement and the greater cost of roundabout improvements. Developer shall only be required to construct a roundabout at either or both of 400 South and Puerto Drive, or at Hamblin Parkway and Red Mountain Drive, provided the requirement is communicated to Developer in writing before Developer submits to the City for review and permit issuance a construction drawing for a typical intersection at the same location. The roundabout at the 400 South and Hamblin Parkway intersection is not shown on the approved Preliminary Plan but nonetheless included pursuant to this Agreement.

The Open Space generally bounded by Hamlin Parkway on the east, the west boundary of Tuacahn Wash on the west, and Gallo Way on the north, plus the area of the wash extending north from Gallo Way to the property line, is anticipated to be dedicated to the City by Developer. Developer anticipates completing certain improvements to the Open Space area, including the pickleball facility addressed in Section 10.A.viii. below, which shall also be dedicated to the City with the Open Space. City and Developer agree that the value of the land included in the pickleball facility, plus the expense to Developer for making the improvements to the Open Space to be dedicated which improvements exceed, in type, cost, or quality, the improvements required by City ordinances (hereafter the "Additional Improvements"), may exceed the total amount of park impact fees to be paid in the Project. Therefore, in return for Developer's improvement to and dedication of the pickleball facility, and any Additional Improvements agreed to be constructed upon the dedicated Open Space, the City shall, at Developer's option allow Developer to claim a credit against park impact fees which otherwise would be charged to Developer in the Project in an amount equal to the value of the land included in the pickleball facility, plus the expense to Developer for making the improvements to the pickleball facility, plus the expense to Developer of any Additional Improvements upon the Open Space. Notwithstanding the foregoing, to claim any impact fee credit for any dedication or facility, any required improvements must be constructed, accepted by, and dedicated with the associated land to the City prior to Developer receiving the credit. If qualifying improvements are not yet completed, accepted by, and dedicated to the City, Developer shall pay the impact fee as would normally be required for any approvals. In that case, upon completion and dedication to the City of the pickleball facility any Additional Improvements, the City may elect the form of compensation to the Developer for constructing and dedicating qualifying land and improvements, including but not limited to paying cash, or granting credits against impact fees or other fees otherwise due to the City.

For the improvements and dedications described above, and any additional upsizing of public improvements or utilities required, City shall participate in the cost of such upsizing consistent with City policy regarding upsizing. City may, at the time that Developer is installing and/or constructing public improvements, elect the form of compensation to the Developer for upsizing, including but not limited to paying cash, or granting credits against impact fees or other fees otherwise due to the City.

F. Impact Fee Credits. Where Developer designs and constructs system improvements

as such phrase is defined in the Utah Impact Fee Act, Developer may upon application receive reimbursement of or credit for impact fees and other fees as may be normally assessed by the City for said system improvements. 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 system improvements, may be set forth in a separate agreement between the parties. Notwithstanding the foregoing, to claim any impact fee credit, the improvements giving rise to the credit must be constructed and accepted by the City prior to Developer receiving the credit. If an improvement for which a credit is anticipated is not yet completed and accepted by the City, Developer shall pay the impact fee as would normally be required for any approvals.

G. City Parks and Trails. Developer and City agree that Developer will dedicate or otherwise convey to the City public trails in satisfaction of any requirement to provide the same to the City, and as designed in the Plan. Developer shall be responsible for the initial construction of any trail system elements to be dedicated to the City. The City will support the interconnection of the public trail system located on the Project to the trail systems being developed on adjacent properties.

H. 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 order to provide a cohesive Open Space and to preserve certain natural features benefiting the Project and the public at large. Unless otherwise agreed between City and Developer herein, Developer anticipates that the Open Space preserved in the Project will be dedicated to the Association for operation and maintenance. The City, Developer, and/or Association may elect to enter additional agreements for the maintenance of Open Space. Developer will reasonably coordinate with the developer of the Black Desert Resort to explore means of preserving undisturbed Open Space, particularly areas of undisturbed lava rock, that are adjacent to similar undisturbed areas on the Black Desert Resort property, with the objective of encouraging continuity of conservation efforts between the two projects.

I. Road Circulation and Traffic Impacts. Except as may be set forth more specifically in this Agreement, Developer agrees generally that all public roadways which are interior to the Property shall be dedicated and improved no later than the development of adjacent real property, or real property to be serviced by such roadways. Roadways adjacent to unimproved open space shall be dedicated and improved in a time and manner ensuring continuity of access throughout the Property. With respect to Red Mountain Drive where it runs along the southern border of the Project, as well as the Hamblin Parkway/Red Mountain Drive roundabout, Developer shall only be responsible for constructing the half-width roadway, and the costs of such construction, required to meet City road standards for the portion of the roadway which is within the Property, and to ensure the safe passage of motor vehicles. Developer shall use best efforts to coordinate the construction of Red Mountain Drive in conjunction with the City of Santa Clara.

J. Completion of Hamblin Parkway and Coordination with Black Desert Resort. Developer and the City acknowledge that the off-site completion of Hamblin Parkway is critical both to the development and viability of the Project, and to the City's objectives for encouraging traffic from the Project to flow away from existing residential neighborhoods in the City. Therefore, Developer and the City will make best efforts to work together with the developer of the adjacent Black Desert Resort in order to coordinate on the dedication and improvement of Hamblin Parkway where required to complete its connection from Snow Canyon Parkway to the Project. Such cooperation may include working with said developer to coordinate off-site dedication of the Hamblin Parkway right of way; coordination between Developer and the Black Desert Resort developer to share costs of such off-site improvements as are required to complete the connection as set forth in Section 10(A)(ii)(a) below; and so on. The City will assist Developer by reasonably using its influence to encourage cooperation of the Black Desert Resort developer with such efforts.

K. Street Lights and Signage. Developer may elect to use decorative street lights 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 meet the City's "night sky" requirements and the Developer may elect monument style lighting over large down lights.

L. Setbacks and Separation Between Dwellings in the Residential Multifamily Zone. Developer and City agree that there shall be a minimum of ten (10) feet of separation between detached single family dwellings in the Residential Multifamily Zone. A zero lot line sideyard is permissible provided the minimum separation between dwellings is maintained. A minimum of five foot (5') front yard and five foot (5') rear yard setbacks shall also be required. The foregoing is consistent with the Plan previously approved by the City.

M. 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, reinvestment funds, or other monies that may be available or become available for the acquisition, construction, maintenance or preservation of the lands and facilities

within the Project. In the event that the opportunity for funds to compensate for right-of-way dedication may become available through the Council of Governments ("COG") or other sources, the City will reasonably cooperate with Developer to secure such funding, subject to the requirement that Developer donate right of way to a width of 51'. The City shall work to pursue funds through the COG as funds become available for the remaining 60'. Furthermore, without being bound to the creation or implementation of the same, the parties agree to discuss the possibility of utilizing one or more Public Improvement Districts (PIDs), or other similar public financing to finance public improvements within the Project, to the extent authorized by applicable state law.

N. 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.

O. Resort Short-term Rentals. City acknowledges that Developer has been granted a Resort Commercial Zone approval and conditional use permit allowing for short-term rental of resort hotel units within the resort portion of the Property, subject to all conditions applicable to such approvals.

9. **Approved Uses.** The uses approved by the City within the Property, and for which no further zone change or conditional use permit is required, are shown on *Exhibit "B"*.

10. **Parties' Specific 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. *Construction of Off-site Improvements.* The Off-site Improvements required to service a Phase or a portion of a Phase, represented by a final plat for which approval is sought, as such improvements are set forth in the Plan or required by City ordinance, shall be completed, or security for the completion of the same shall be posted by Developer, as a condition of approval for the subdivision final plat for which approval is sought.

a. Sewer, Power, Water Improvements. The City has not identified any off-site sewer, power or water improvement obligations necessary to serve the Project, it being understood that the City does not provide power and that Developer will need to work with the third-party power provider to obtain all necessary input and approvals from that provider with regard to power.

b. Hamblin Parkway Improvements. Developer shall construct the off-site portion of Hamblin Parkway that connects the east side of the Project through the property to the east to the west boundary of the Black Desert North Village Subdivision as shown on the Black Desert North Village Final Plat recorded as

Document No. 20230009194 on April 4, 2023. Developer shall construct this off-site portion of Hamblin Parkway in the same manner and to the same specifications as the on-site portion as described in Section 10(A)(ii)(a) below with the paved portion on the south side of Hamblin Parkway. Notwithstanding the foregoing, Developer shall have no obligation to construct any portion of Hamblin Parkway shown on the Black Desert North Village Final Plat or excavate or grade any off-site portion, it being understood that the Black Desert project is responsible to excavate and grade the off-site portion of Hamblin Parkway.

c. Trail Connection at Intersection of Hamblin Parkway and Red Hills Drive. Developer shall connect the trail at the intersection of Hamblin Parkway and Red Hills Drive to the City's existing trail on Cordero Drive.

ii. *Construction of On-site Improvements.* The On-site Improvements required to service a Phase or a portion of a Phase, represented by a final plat for which approval is sought, as such improvements are set forth in the Plan or required by City ordinance, shall be completed, or security for the completion of the same shall be posted by Developer, as a condition of approval for the subdivision final plat for which approval is sought.

a. Hamblin Parkway Improvements. Developer agrees to dedicate the entire on-site width of the Hamblin Parkway right-of-way with appropriate subdivision plat or plats, which shall be a width of 111 feet so that Hamblin Parkway may ultimately serve as a major collector road. Developer further agrees to construct all improvements to Hamblin Parkway to a width of 92 feet (including pavement to a width of 45 feet to handle the anticipated traffic associated with the resort use), constituting approximately half of the total dedicated right of way width, along the east side of Hamblin Parkway, which will address the improvement required by the City's transportation master plan approximate a residential collector or minor collector road until the City constructs the remaining width. Developer shall improve the remaining western half width of the Hamblin Parkway right-of-way which will be landscaped with a minimum of a gravel layer to a depth of 2 inches, and will include a trail built to City standards, including bollards, to serve as additional open space until such time as the City elects to widen and complete improvements to the remaining half of the dedication, at the City's sole cost and discretion.

b. Ivins Sewer Main Line Easement Extension of Term. Until plats are recorded providing for a permanent easement, Developer agrees to cooperate with the City on an extension to the term of the City's main sewer easement that currently runs through the project as required to ensure that the existing sewer main line easement will remain in place to service the Project and the City.

c. Wash Armoring. Any wash area adjacent to development activity must have

the armoring completed consistent with plans approved by the City as a condition to final acceptance of the improvements for that development activity. All wash armoring improvements that aren't otherwise completed will be included in the estimates and improvement bonding for phases adjacent to the wash.

d. 400 South Reconstruction. At the time Developer constructs its portion of 400 South, Developer shall provide the City with a cost-estimate to reconstruct the remaining portion of 400 South to specifications recommended by a licensed geotechnical engineer. The City may, at the City's discretion, elect to have Developer perform the recommended reconstruction and reimburse Developer for such reconstruction or may hire its own contractor to complete the reconstruction.

iii. *Limitations and Allowances Related to Mass Grading*. Developer acknowledges that its conditional use permit approval limits mass grading of the entire Property. Developer agrees that it shall make all reasonable efforts to contain required grading to each individual Phase of the Project being developed at any given time. However, the City acknowledges that in order to mitigate construction traffic and impacts to City streets, and to allow the completion of construction of required improvements on site, Developer will be permitted to (a) perform cut and fill operations within the Project with the primary objective of achieving balanced grading on site, consistent with grading plans approved by the City; and (b) extend grading work outside the boundaries of a Phase as reasonably required to facilitate development of the Phase, including but not limited to taking appropriate slope and erosion control measures as work progresses. The City and Developer agree to communicate in good faith with respect to any questions or concerns that may arise with respect to any particular aspect of grading work as development proceeds on the property. Developer acknowledges its responsibilities to satisfy restoration bonding requirements of City ordinances, and to restore disturbed areas outside of a Phase by reseeding with native material. In addition, Developer shall, to the extent possible, stockpile topsoil removed during the grading process and, upon completing grading activities on areas that should be revegetated, replace the topsoil as the top layer of material to aid in revegetation.

a. Wash areas. Notwithstanding any other language herein to the contrary, other than actions to armor the wash areas and build approved trails and pickleball facilities, the wash areas are to remain undisturbed as much as possible, including the areas between the wash and the development.

b. Sensitive Lands areas. Notwithstanding any other language herein to the contrary, the area shown as open space between Phases 5 and 6 of the West Residential Area shall remain natural pursuant to the City's sensitive lands regulations.

iv. *Limitations on Building Height*. Developer agrees that construction of single family residences on all lots zoned RE-37.0 in the West Residential area shall be limited to single-story flat roof construction, not including any walk-out or other basements. Developer also agrees that buildings having three stories in the East Resort portion of the Project shall be prohibited from having rooftop decks. Developer will ensure that appropriate covenants are included in the recorded Declaration to enforce these limitations.

v. *Resort Management*. Developer, through the recording of appropriate covenants in the Declaration, and to the extent permitted by applicable law, will ensure that all short-term rentals in the East Resort area are required to be managed by a single resort management/short-term rental booking company, which shall be responsible for managing all such units for the owners thereof, and for other matters such as the collection of applicable fees and taxes related to such units.

vi. *Screening of Trash Bins in East Resort*. Developer shall ensure that all garbage dumpsters in the East Resort shall be screened from view, and all trash bins in any part of the Project shall not be left on the street for more than 24 hours after pickup days. Appropriate covenants included in the Declaration to ensure maintenance of the same.

vii. *No Street Parking of Recreational Vehicles in East Resort*. Developer shall ensure that the Declaration provides that no on-street parking of RVs, campers, motorhomes, trailers, or boats will be allowed in the Project, save for temporary loading or unloading.

viii. *Improvement and Dedication of Pickleball Courts*. Developer agrees that it shall improve and dedicate to the City a pickleball facility in the West Residential area. The dedication shall occur no later than the date on which the final certificate(s) of occupancy are issued for the Project, and in conjunction with the surrounding Open Space. All improvements to the pickleball courts, including lighting, shall be completed prior to dedication and shall be subject to inspection and acceptance by the City.

ix. *Compliance with Applicable Development Conditions.* Developer acknowledges certain conditions which apply to development of the Project as a result of the zoning and conditional use approvals granted by the City and agrees to comply with the same.

B. City: The City agrees to the following:

i. *Residential Density of the Project.* The City acknowledges that the Plan, as the same may be amended and adjusted pursuant to City ordinances, is in substantial conformance to the City's General Plan. The Parties agree that Developer is currently entitled to a maximum total of 587 dwelling units upon the Property, which includes 194 single family residential units in the West

Residential area of the Project, and 393 resort residential units in the East Resort area of the Project, which is an average of 5.2 dwelling units per acre for the entire Project (hereafter the "Maximum Base Density"). The Maximum Base Density shall be considered an entitlement number and shall not be subject to reduction under any future zoning ordinance or General Plan amendments. Final densities in each individual Phase or portion thereof shall be as depicted on an approved plat map; however, Developer shall have the right to (a) propose and obtain approval of final subdivision plats which will result in fewer than the approved number of units in any given Phase, and (b) shift units from one Phase to another within the West Residential area and the East Resort area, but not between them, without City approval or overall Plan amendment, provided that (a) the Maximum Total Density (plus approved bonus density) is not exceeded for the entire Property, (b) the amount of total square footage being planned and/or built does not increase for the entire Property, and (c) the amount of total open space does not decrease for the entire Property. Developer may elect to develop fewer units than the maximum in any given Phase, at its discretion. 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 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. *Stream Alteration Permit*. The City will not oppose and will provide reasonable support for Developer's stream alteration permit for the 400 South and Gallo Way crossing of the Tuacahn Wash, and any other such permits required to carry out the development of the Plan as approved by the City.

iii. *Utility Easements for Off-site Utility Extensions*. If a utility easement becomes necessary to complete the extension of utilities off-site to service the Project, the City shall acquire such easements, and to the extent that the same are project improvements as defined in the Impact Fee Act, Developer shall be responsible to reimburse the City for the cost of the same.

iv. *Sales Trailer*. The City will permit Developer to temporarily locate a sales trailer in the Project, until such time as model complexes in the Project are fully operational. Developer's initial permit shall be for an initial period of one (1) year from the date of placement of the trailer, with an option to extend for an additional (1) year at Developer's discretion. Developer shall have the right to temporarily connect the trailer to necessary utility services, subject to payment for services provided. If the trailer is located in any area designated Open Space, Developer will be required to restore the location of the trailer to its natural condition following removal of the trailer.

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 sale of the Property or portions thereof 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 who 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:
Ivins City
Attn: City Manager
85 Main St.
Ivins, UT 84738

Developer:
EWD, LLC
Attn: Jerry Miyahara
2 W St. George Blvd., Ste. 33
St. George, UT 84770

With a copy to:
Snow Jensen & Reece, PC
Attn: Matthew J. Ence
912 West 1600 South, Ste. B200
St. George, UT 84770

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 reasonably 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 when approved by the City Council and signed by all parties hereto.

(signature page to follow)

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

DEVELOPER
EWD, LLC,
a Utah limited liability company

_____
By:
Its:

IVINS CITY

_____
Chris Hart, Mayor

Attest:

_____
Kari D. Jimenez, City Recorder

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

On the _____ day of _____, 2024, 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 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

PROPERTY OWNER ACKNOWLEDGMENT:

UTAH SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

_____
By:
Its:

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

On the _____ day of _____, 2024, 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 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"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

BEGINNING AT THE QUARTER CORNER COMMON TO SECTION 4 AND SECTION 5, T42S, R16W, SLBAM, SAID POINT BEING THE SOUTHEASTERLY CORNER OF A PARCEL OF LAND DESCRIBED IN DOCUMENT NO. 20170042032 (PARCEL 2) FILED IN THE OFFICE OF THE WASHINCTON COUNTY RECORDER, RUNNING THENCE ALONG HE BOUNDARY OF SAID PARCEL THE FOLLOWING FOUR (4) COURSES: N23"41'43"E, 108.21 FEET; THENCE N66"18'17"W, 146.18 FEET TO THE POINT OF CURVE OF A 430.00 FOOT RADIUS CURVE TO THE LEFT; THENCE WESTERLY 386.38 FEET ALONC THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 51"29'02"; THENCE S0"47'02"E, 145.51 FEET TO A POINT ON THE EAST— WEST CENTER SECTION LINE, SAID POINT ALSO BEING THE CORNER OF IVINS CITY PROPERTY DESCRIBED IN DOCUMENT ENTRY #00660072 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S89"52'35"W, 124.56 FEET ALONG THE CENTER SECTION LINE AND NORTH BOUNDARY OF SAID IVINS CITY PROPERTY TO A POINT ON THE EAST BOUNDARY OF PADRE CANYON ESTATES PHASE 7; THENCE RUNNING ALONG SAID BOUNDARY THE FOLLOWING TWO (2) COURSES: N18"42'31"W, 51.47 FEET TO A POINT ON A 530.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS N31"47'41"W; THENCE SOUTHWESTERLY 113.37 FEET ALONG THE ARC OF SAID CURVE THROUCH A CENTRAL ANCLE OF 12"15'19" TO A POINT ON THE EAST—WEST CENTER SECTION LINE, SAID POINT ALSO BEING THE NORTHEAST CORNER OF RED ROCK CANYON PHASE 1; THENCE S89"52'35"W, 552.06 FEET ALONG THE CENTER SECTION LINE AND NORTH BOUNDARY OF RED ROCK CANYON PHASE 1 TO THE SOUTHEAST CORNER OF PADRE CANYON ESTATES PHASE 5; RUNNING THENCE ALONC› THE BOUNDARY OF PADRE CANYON ESTATES PHASE 5 THE FOLLOWING FIVE (5) COURSES: N0"06'46"W, 30.00 FEET TO THE POINT OF CURVE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT, RADIUS POINT BEARS N0"06'46"W; THENCE NORTHWESTERLY 35.19 FEET ALONC THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 80"38'58" TO THE POINT OF CURVE OF A 280.00 FOOT RADIUS REVERSE CURVE; THENCE NORTHWESTERLY 79.97 FEET ALONG THE ARC OF SAID CURVE THROUCH A CENTRAL ANGLE OF 16"21'51"; THENCE N0"56'43"E, 1197.66 FEET; THENCE S89"56'54"E, 0.42 FEET TO THE SOUTHWEST CORNER OF PADRE CANYON ESTATES, UNIT 1 — PHASE 3 AMENDED; THENCE S89"53'12"E, 1294.52 FEET ALONC THE SOUTH BOUNDARY OF PADRE CANYON ESTATES, UNIT 1 — PHASE 3 AMENDED AND THE SOUTH BOUNDARY OF PADRE CANYON ESTATES, UNIT 1 — PHASE 2 TO AN ANGLE POINT ON THE SOUTH LINE OF PADRE CANYON ESTATES, UNIT 1 — PHASE 2; THENCE S88"47'30"E, 1325.69 FEET ALONG THE SOUTH BOUNDARY OF PADRE CANYON ESTATES, UNIT 1 — PHASE 2 AND THE SOUTH BOUNDARY OF PADRE CANYON ESTATES, UNIT 1 — PHASE 1 TO THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, T42S, R16W, SLBAM; THENCE S0"23'27"W, 1324.65 FEET ALONG THE 1/16TH LINE (EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4) TO A POINT ON THE EAST—WEST CENTER SECTION LINE (1/16TH CORNER); THENCE S0"34'34"W, 1334.55 FEET ALONO THE 1/16TH LINE (EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4) OF SECTION 4 TO THE SOUTHEAST CORNER OF

SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4; THENCE N88"56'28"W, 1221.21 FEET ALONG THE 1/16TH LINE (SOUTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4)TO THE SOUTHEASTERLY CORNER OF PADRE CANYON ESTATES PHASE 8; RUNNING THENCE ALONC THE BOUNDARY OF PADRE CANYON ESTATES PHASE 8 THE FOLLOWING SEVEN (7) COURSES: N28"37'41"E, 258.42 FEET; THENCE N22"34'56"E, 396.25 FEET; THENCE N37"39'02"E, 154.46 FEET; THENCE N58"03'34"W, 303.56 FEET; THENCE S86"39'45"W, 113.45 FEET; THENCE N74"41'42"W, 85.43 FEET; THENCE N78"48'59"W, 14.33 FEET TO A POINT ON THE SECTION LINE, SAID POINT ALSO BEING ON THE BOUNDARY OF IVINS CITY PROPERTY DESCRIBED IN DOCUMENT ENTRY #0660072 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0"46'07"E, 109.44 FEET ALONC THE SECTION LINE AND EAST LINE OF SAID IVINS CITY PROPERTY; THENCE CONTINUING ALONG THE BOUNDARY OF IVINS CITY PROPERTY THE FOLLOWING TWO (2) COURSES: S61"19'18"W, 52.09 FEET; THENCE N54"05'48"W, 90.55 FEET TO THE SOUTHEASTERLY CORNER OF A REMNANT PARCEL OF LAND DESCRIBED IN DOCUMENT NO. 20170042032 (PARCEL 2) FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONC THE BOUNDARY OF SAID REMNANT PARCEL THE FOLLOWING THREE COURSES: N39"15'43"E, 84.54 FEET; THENCE N2"04'50"E, 96.38 FEET; THENCE N23"41'47"E, 165.80 FEET TO THE POINT OF BEGINNING.

CONTAINING 113.117 ACRES

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Project Development Types and Phasing

(See following page)