

STATE OF UTAH



OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE OF ANNEXATION

I, Deidre M. Henderson, Lieutenant Governor of the State of Utah, hereby certify that there has been filed in my office a notice of annexation known as the COLLEGE DOWNS ANNEXATION, located in HEBER CITY, dated DECEMBER 20, 2023, complying with Section §10-2-425, Utah Code Annotated, 1953, as amended.

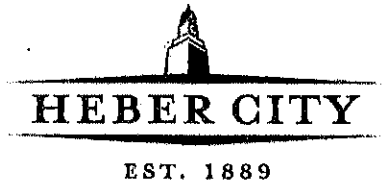
Now, therefore, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the notice of annexation, referred to above, on file with the Office of the Lieutenant Governor pertaining to the COLLEGE DOWNS ANNEXATION, located in WASATCH COUNTY, State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 22nd day of January, 2024 at Salt Lake City, Utah.



A handwritten signature in black ink that reads "Deidre M. Henderson".

DEIDRE M. HENDERSON
Lieutenant Governor



Heber City Corporation
75 North Main Street
Heber City, Utah 84032

*******NOTICE OF IMPENDING BOUNDARY ADJUSTMENT*******

December 20, 2023

Lt. Governor's Office
Utah State Capitol Complex
P.O. Box 142325
Salt Lake City, Utah 84114-2325

Emailed to: annexations@utah.gov

RE: College Downs Annexation

To Lt. Governor Henderson:

During the Heber City Council Meeting held November 7, 2023, the Heber City Council adopted Ordinance 2023-32, approving an annexation entitled the College Downs Annexation, amending the common boundaries as designated within the City's Annexation Policy Plan. The annexation parcel consists of 20.35 acres located at approximately 3100 North Highway 40, Wasatch County, Utah.

Attached you will find a copy of the Ordinance of Annexation, which includes the boundary description of the annexation, and a copy of the annexation map. The above-referenced annexation meets the requirements of annexation.

If approved, please send the Certificate of Annexation to:

Heber City
c/o Trina Cooke
City Recorder
75 North Main Street
Heber City, UT 84032

If you have any questions, please feel free to call me at 435-657-7886.

Sincerely,

Trina N. Cooke
City Recorder

ORDINANCE NO. 2023-32

AN ORDINANCE APPROVING THE COLLEGE DOWNS ANNEXATION LOCATED AT APPROXIMATELY 2800 NORTH HIGHWAY 40.

BE IT ORDAINED by the City Council of Heber City, Utah, the properties described in Exhibit A, as illustrated in Exhibit B, are hereby annexed into the City of Heber City, Utah, and the properties contained therein shall initially have the zoning designation of North Village Overlay Zone (NVOZ).

This Ordinance shall take effect immediately upon passage, but not prior to the execution of the Master Development Agreements illustrated in Exhibit C.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this 7th day of November 2023.

	AYE	NAY	ABSENT	ABSTAIN
Rachel Kahler	<u>X</u>	_____	_____	_____
Michael Johnston	<u>X</u>	_____	_____	_____
Ryan Stack	_____	<u>X</u>	_____	_____
Scott Phillips	<u>X</u>	_____	_____	_____
Yvonne Barney	_____	<u>X</u>	_____	_____

APPROVED:

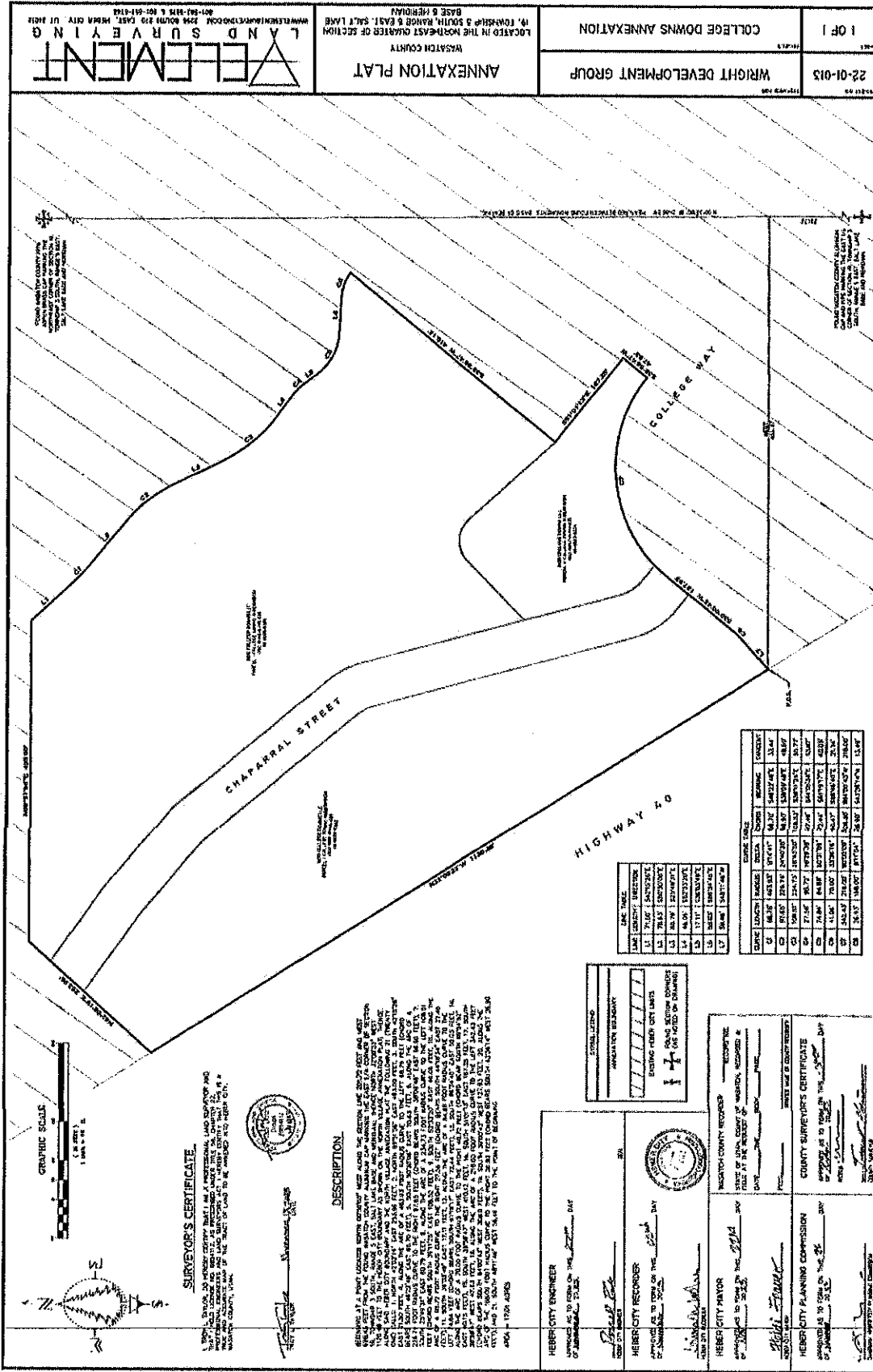
Heidi Franco
Mayor Heidi Franco



ATTEST:

Janice M. [Signature] Date: 11/7/2023
RECORDER

Exhibit B: Annexation Plat



WHEN RECORDED, RETURN TO:

Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032

Tax Parcel Nos.: 00-0020-8333, 00-0020-8335 and 00-0020-8334

(Space above for Recorder's use only.)

**DEVELOPMENT AGREEMENT
FOR THE
COLLEGE DOWNS MIXED USE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT FOR THE COLLEGE DOWNS MIXED USE DEVELOPMENT (this "Agreement") is made and entered into as of the 8 day of December, 2023, by and between HEBER CITY, a political subdivision of the State of Utah (the "City"), and WDG COLLEGE DOWNS LLC, a Utah limited liability company ("WDG"). Each of WDG and the City are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. WDG is the owner of approximately 17 acres (including Chaparral Street) of undeveloped real property located between University Ave and College Way on the east side of Hwy 40 (Parcel Nos. 00-0020-8333, 00-0020-8335 and 00-0020-8334) in Wasatch County, State of Utah (the "Property"). A legal description of the Property is attached hereto as **Exhibit A**.

B. On Nov 7, 2023, the City approved and adopted a Conceptual Site Plan for the Project (the "Site Plan"), subject to the Parties entering into this Agreement and the agreeing to annexation of the Property into the City.

C. The Site Plan for the Property provides for a mixed-use development, including recreational and open space uses. All such uses shall be consistent with the permitted uses in the North Village Overlay Zone ("NVOZ").

D. This Agreement and the Site Plan meets the intent of, and is guided by, the Envision 2050 Heber General Plan.

E. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of WDG and its successors in interest, including but not limited to, those developers, sub-developers and builders who will develop the Property as a mixed-use project in

1.2.8 **Building Permit** means a permit issued by the City to allow construction, erection or structural alteration of any building, structure, private or public infrastructure, On-Site Infrastructure on any portion of the Project, or to construct any Off-Site Infrastructure.

1.2.9 **CC&Rs** means one or more declarations of conditions, covenants and restrictions regarding certain aspects of design and construction on the Property recorded or to be recorded with regard to the Property or any part thereof, as amended from time to time.

1.2.10 **Capital Facilities Plan** means a plan adopted or to be adopted by the City in the future to substantiate the collection of Impact Fees as required by State law.

1.2.11 **City** means the City of Heber, a political subdivision of the State of Utah.

1.2.12 **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage to review certain aspects of the development of the Project.

1.2.13 **City Updated North Village Street Master Plan** shall mean the City's Street Master Plan and Street Capital Facilities Plan.

1.2.14 **City Updated North Village Stormwater Master Plan** shall have the meaning provided in Paragraph 12.3.

1.2.15 **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City that will be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and that may, in accordance with the provisions of this Agreement, be applicable to the Development Application.

1.2.16 **City's Vested Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City related to zoning, subdivisions, development, public improvements and other similar or related matters that are in effect as of the Effective Date.

1.2.17 **Council** means the elected City Council of the City.

1.2.18 **Default** shall have the meaning provided in Paragraph 14.

1.2.19 **Design Guidelines** means the design guidelines referenced in the North Village Over Lay Zone.

1.2.30 **Homeowners' Association(s)** means one or more associations formed pursuant to Utah law to perform the functions of an association of property owners.

1.2.31 **Impact Fees** means those fees, assessments, exactions or payments of money imposed by the City as a condition on development activity as specified in Utah Code Ann. §§ 11-36a-101, *et seq.* (2023), as amended.

1.2.32 **Infrastructure Plan** means the conceptual infrastructure plan, including culinary water, secondary water, storm water, sanitary sewer and private roads, as amended from time to time.

1.2.33 **Intended Uses** means the use of all or portions of the Project for open spaces, parks, trails and other uses permitted in the Zoning Ordinance, Design Guidelines and as shown on the Site Plan.

1.2.34 **Modification Application** means an application to amend this Agreement (but not including those changes which may be made by Administrative Action).

1.2.35 **Mortgage** means (1) any mortgage or deed of trust or other instrument or transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security, or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

1.2.36 **Mortgagee** means any holder of a lender's beneficial or security interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

1.2.37 **Non-City Agency** means a governmental or quasi-governmental entity, other than those of the City, which has jurisdiction over the approval of an aspect of the Project.

1.2.38 **North Fields** means that certain real property located generally west of the Property and generally depicted on **Exhibit C** attached hereto.

1.2.39 **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another Party.

1.2.40 **Off-Site Infrastructure** means the off-site public or private infrastructure, such as roads and utilities, specified in the Infrastructure Plan that is necessary for development of the Property but is not located on the portion of the Property that is subject to a Development Application.

thereof, including but not limited to, Developers, Sub-developers and builders.

1.2.51 **Site Plan** means the Site Plan attached as **Exhibit B**.

1.2.52 **Sub-developer** means any Person that obtains title to a Parcel from a Developer for development.

1.2.53 **Subdivision** means the division of any portion of the Project into a subdivision pursuant to State Law and/or the Zoning Ordinance.

1.2.54 **System Improvement** means those elements of infrastructure that fall within the definition of System Improvements pursuant to Utah Code Ann. § 11-36a-102(21). System Improvements shall be defined as set out in the North Village Capital Facilities Plans and Master Plans.

1.2.55 **Zone** means the City's North Village Overlay District Zone.

1.2.56 **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that is in effect as of the Effective Date.

2. **Development of the Project.** Development of the Project shall be in accordance with this Agreement, the City's Vested Laws and the City's Future Laws as expressly set forth in this Agreement. The Parties acknowledge and agree that if there is a conflict with this Agreement and the City's Vested Laws or the City's Future Laws, then this Agreement shall supersede and take precedence.

3. **Development of the Property in Compliance with the Site Plan.**

3.1 **Project Density.** Property Owners shall be entitled to and are vested with the right to develop and construct up to 107 residential ERUs and up to 20 commercial ERUs on the Property consistent with the Intended Uses specified in the Zoning Ordinance and generally identified on the Site Plan (collectively, the "**Density Entitlements**"). The Density Entitlements include the 5 residential ERUs of the Low Income Housing as detailed in Section 3.6 of this Agreement.

3.2 **Intended Uses by Parcel and Densities.** Intended Uses and Densities currently contemplated for each Parcel are shown on the Site Plan for the Property, which plan has been prepared in compliance with the requirements of the Heber City ordinances set forth in Chapter 17.20 Plans of the City's Vested Laws. The street configurations, building types and locations, and general layout shall comply with Site Plan.

Vested Laws. WDG may not pay a fee in lieu to fulfill the requirements of the Low Income Housing unless specifically agreed to by the City.

3.6.1 Allocation of Low Income Housing. At least one half of the required affordable housing (ERUs) shall be sold to parties that shall be required to reside in the units as their primary residence, with a specific restriction on any units that are sold that prevent such units from being rented. ERUs constructed as Low Income Housing in the Project shall be deed restricted and preserved in perpetuity for those income qualified at 60% or less of the Average Medium Income for Wasatch County, Utah.

3.6.2 Rights of First Offer. Heber City, or its designee, shall have the first right to purchase any all affordable dwelling units that are offered for sale on an individual basis (a.k.a. AMI deed restricted properties, or affordable deed restricted units) ("City ROFR"). Such City ROFR shall not apply to the sale of the entire Project by WDG or its then current owner. If Heber City does not exercise or execute on its City ROFR, then WDG, and its successors, shall grant or cause the applicable Developers and/or Sub-developers to grant employees of the following entities, in descending order of priority, a right to purchase Low Income Housing constructed, operated and offered for sale on an individual basis as affordable housing and available within the Project and that are offered for sale on an individual basis to income qualifying households otherwise meeting the requirements of this Agreement: the City, the Wasatch County School District (the "District") and Wasatch County (the "County"). If employees of the City, the District, and the County do not exercise their respective first rights, the applicable Low Income Housing Units may be sold, as the case may be, to members of the general public meeting the income qualification requirements, employed in Wasatch County and living or desiring to live in Wasatch County.

3.6.3 Deed Restrictions Protecting the Affordability and Sustainability of the Affordable Homes.

a. Prior to transfer of ownership from Developer/ Owner of any Affordable Housing Units/ Homes, Developer/ Owner shall negotiate and enter into with the City a **Deed Restrictions Covenant** (which shall be recorded with the Wasatch County Recorder) that shall serve as a Covenant Running With the Land to protect the affordability and sustainability of the Affordable Units/homes. Some of the terms of such a Covenant should include, but shall not be limited to the following:

1. The Covenant is to provide and articulate terms, conditions, and restrictions. The Covenant shall be enforceable by

5. The Unit Owner shall send Notice to the City of such Unit Owner's intent to sell the unit (the date of such Unit Owner's Notice to the City shall be the "Offer Date") and shall not Sell any interest in such Unit without written consent of the City.

3.6.4 **Off-site Low Income Housing.** The Developer and City may enter into a separate agreement to allow some or all of the affordable housing units to be constructed off site on property owned by the City, third parties or other entities.

3.6.5 **Timing.** At least 50% of the required Low Income Housing units shall be constructed no later than the construction of the first 30% of the Market Rate units. The full Low Income Housing requirement shall be completed no later than construction of the first 60% of the Market Rate units.

3.7. **Non-Residential Development Timing.** Notwithstanding anything herein to the contrary, the City shall not issue a residential building permit for the Project unless and until the City has issued a commercial building permit for the Project. All other commercial areas shown in the Master Plan for the development shall be rough graded and provided with access to adequate utilities to serve the land uses no later than the construction of 60% of the residential units within the development.

4. **Zoning and Vested Rights.**

4.1 **Compliance with City Requirements and Standards.** Developer and Owners expressly acknowledge that nothing in this Agreement shall be deemed to relieve Developer or any Continuing or Successor Owner from its obligations to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and site plans for the Project, which are in place at the time of a complete and approved application, including the payment of unpaid fees, the approval of subdivision plats and site plans, the approval of building permits and construction permits, and compliance with all applicable ordinances, resolutions, policies and procedures of the City except as otherwise provided in this Agreement. Specifically, Developer and Owner acknowledge and agree that the Project must adhere to the City Updated North Village Storm Water and the North Village Street Master Plans.

4.2 **Current Zoning.** Concurrently with its execution of this Agreement, the City has annexed the Project to the City and zoned the Property under the North Village Overlay District Zone. The North Village Overlay District Zone (Section 18.21.010 and Section 18.21.060 of the Heber City Code) was approved by the Council on March 16, 2021.

Space and/or Trails. If trails are established solely for the internal use by Homeowners' Association, no public easement shall be granted by WDG or any other Property Owner. Construction and dedication of the Highway 40 trail shall occur within the first phase of development.

6.3 Maintenance of Open Space/or Trails. Except as otherwise specifically provided in this Agreement, upon acceptance by the City of Trails and after formal possession, the City shall be responsible for maintaining the Public Trail after final inspection and acceptance of the applicable improvements included therein, if any. If the Trails are dedicated to an entity other than the City, the dedication shall provide for the maintenance of the applicable Trails. Unless approved by, and dedicated to the City, any associated landscaping with such Trails shall be maintained by the respective property owners association.

6.4 Tax Benefits. The City acknowledges that Property Owners may seek to qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring Open Space and/or Trails to the City or to a charitable organization. Property Owners shall have the sole responsibility to claim and qualify for any tax benefits sought by Property Owners by reason of the foregoing. The City shall reasonably cooperate with Property Owners to the maximum extent allowable under law to allow Property Owners to take advantage of any such tax benefits.

6.5 North Fields Preservation. WDG, for itself and with respect to each subsequent Owner of the Property, agrees that upon issuance of a building permit for a Development Unit, the Owner of such Development Unit shall pay to the City a fee equal to \$2,500 per ERU or partial ERU attributable to such Development Unit (the "North Fields Preservation Fee"). The City shall utilize funds collected pursuant to the North Fields Preservation Fee solely for the purpose of preserving open space in the North Fields, including purchase of development rights. The City agrees that the North Fields Preservation Fee shall not be charged for Development Units constructed and operated as Low Income Housing Units.

7. Public Improvements.

7.1 Utilities and On-Site Infrastructure. WDG shall prepare an Infrastructure Plan (a/k/a Civil Drawings). The Parties acknowledge that there will be a Capital Facilities Plan for the Public Infrastructure approved and adopted by the City. The Property Owners shall have the responsibility and obligation, to construct and fund, or cause to be constructed and installed, in phases, the On-Site and Off-Site Infrastructure according to the Capital Facilities Plan that is necessary to support the development proposed within a specific Development Application. If any Property Owners elect to construct any On-Site Infrastructure or Off-Site Infrastructure required by the Capital Facilities Plan as a condition of approval of a Development Application, the Property Owner shall pay the cost thereof, subject to

not included as System Improvements in the approved Capital Facilities Plan.

7.3. Variations between Infrastructure Plan, Capital Facilities Plan and any City's Future Capital Facilities Plan. The Parties acknowledge that the City may adopt a new or amended Capital Facilities Plan. Additionally, the City may adopt new or amended Impact Fee ordinances as permitted by State Law for the collection of Impact Fees to pay for the construction of parts or all of the Backbone Improvements. The new Capital Facilities Plan shall in no way change any land uses or permitted uses of the Project; limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement and relevant sections of the Zoning Ordinance are satisfied. The Capital Facilities Plan and any future Capital Facilities Plan may differ from the Infrastructure Plan. As a part of the approval of a Development Application, the City may require Property Owners to build portions of the Backbone Improvements as shown on the Capital Facilities Plan (after it is adopted) instead of as shown on the Infrastructure Plan. Notwithstanding the above, nothing herein obligates the City to pay for the minimum backbone infrastructure needed for the Project.

7.5 No Additional Off-Site Infrastructure Requirements. Notwithstanding anything to the contrary in the City's Vested Laws, the City shall not, directly or indirectly, charge Developers or Sub-developers, or any of their respective affiliates or successors, any development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for Off-Site Infrastructure not contemplated in the Capital Facilities Plan, or subsequent updates to said Plan. However, any and all such development fees, impact fees, water hookup fees, or any similar fees, charges, assessments or exactions for On-Site Infrastructure, shall be borne by Developers and Sub-developers, or any of their respective affiliates or successors, or residents, regardless of whether they are off-site or on-site, pursuant to the Capital Facilities Plan. If Developer or Sub-developer is required to build Off-Site Infrastructure, and subject to the aforementioned 10 year limited duration, in the event pioneering agreements are used, the City would collect a pro-rata share from future, benefitting developers.

7.6. Modifications of Infrastructure Locations and the Boundaries of the Development Areas. The City acknowledges that the exact locations of On and Off-Site Infrastructure and the boundaries of the Parcels are conceptual in nature and that additional surveying, engineering and similar studies are needed to finalize lot locations, road and utility alignments as well as road and utility sizing. Therefore, Parcel boundaries, road and utility alignments and, subject to the requirements of this Agreement, infrastructure sizing may be further modified and revised upon the City's approval of subsequent Development Applications in accordance with subsequent subarea infrastructure Site Plans that will be prepared

9. **CC&Rs.** As more fully set forth in the CC&Rs, Property Owners shall create and establish one or more Property Owners' Associations, which shall be responsible for the implementation and enforcement of the CC&Rs and the Design Guidelines, including but not limited to architectural reviews, water efficiency, wildfire education, open space, and private street and storm water system maintenance. The CC&R's shall contain a blanket provision that prohibits the nightly rental of any residential unit located on the Property and indicate that the nightly rental prohibition was a condition of development approval and may not be amended without the permission of the City. Recordation of the CC&Rs and creation of such Property Owners' Associations shall be required at the time of Final Plat review and approval. The City shall not be responsible for the implementation and/or enforcement of any such CC&Rs and Design Guidelines.

10. **Fees & Bonding.**

10.1 **General Requirement of Payment of Fees.** The City acknowledges its fees are subject to applicable State law. The City's impact fee requirements will be set forth in the City's approved Capital Facilities Plan for the Project area to be developed subsequent to this Agreement and incorporated herein.

10.2 **Bonding.** Property Owners, Developers or Sub-developers, as applicable, shall provide performance or warranty bonds, per the Heber City Code, for any on-site or off-site, publicly dedicated infrastructure or similar improvements for the Project (the "Security"), including, without limitation, roads, curb and gutter, storm drains, sewer, water, street lighting, signs, sidewalks, landscaping within public rights of way, public open space, public parks and trails.

11. **Construction Standards and Requirements.**

11.1 **Building Permits.** No buildings or other structures that require permits, shall be constructed within the Project without the Developer or Sub-developer first obtaining building permits in accordance with the City's Vested Laws. Developers and Sub-developers may apply for and obtain a grading permit following Preliminary Site Plan approval if the Developers or Sub-developers, as applicable, have submitted and received approval of a site-grading plan and SWPPP and subject to a Land Disturbance Permit issued pursuant to Section 12 below.

11.2 **City and Other Governmental Agency Permits.** Before commencement of construction or development of any buildings, structures or other work or improvements upon any portion of the Project, a Developer or Sub-developer shall, at their expense, secure, or cause to be secured, any and all permits which may be required by the City under the City's Vested Laws or any other governmental entity having jurisdiction over the work. The City shall reasonably cooperate with Developers Sub-developers in seeking to secure such permits from other governmental entities.

Project that it provides from time to time to other residents and properties within the City including, but not limited to, development services and inspections, road and streetlight maintenance on public streets, police, and other emergency services. Such services shall be provided to the Project at the same levels of service, and on the same terms and rates as provided to other residents and properties in the City, unless such services are provided by other entities, or, because of the unique topography, location or other special or unique circumstances in the area covered by this Agreement, the cost to provide such services is higher than the like property rate throughout the City, and the City is able to demonstrate by empirical evidence, that such costs are a result of substantive additional or increased costs of municipal services, or financial burden to the City, then such additional costs, including but not limited to those required for additional special fire or police services, may be passed on to the Property Owners by way of special municipal service zonal fees, or some other equivalent of such fees. The City may charge such increased rate fees to Property Owners with respect to the Project, Phase, or sections of a Phase proportionate to their share of the increased cost.

14. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** Any notice of default (“**Default Notice**”) shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

14.2. **Cure.** Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the “**Cure Period**”). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City’s sole discretion, withhold permits or approvals during any Cure Period.

14.3. **Developer’s Exclusive Remedy.** Developer’s sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City’s obligations under this Agreement. IN NO EVENT SHALL CITY BE LIABLE TO WDG, ITS SUCCESSORS OR ASSIGNS, OR ANY DEVELOPER, PROPERTY OWNER OR OTHER PARTIES UNDER THIS AGREEMENT, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice.

15.1.2 **Electronic Delivery.** Its actual receipt if delivered electronically by email, provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice.

15.1.3 **Mail Delivery.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail.

15.1.4 **Change of Notice Address.** Any Party may change its address for Notice under this Agreement by giving written Notice to the other Party in accordance with the provisions of this Section.

16. **Administrative Amendments.** 16.1 **Allowable Administrative Applications:** The following modifications to this Agreement may be considered and approved by the Administrator.

16.1.1 **Infrastructure.** Modification of the location and/or sizing of the infrastructure for the Project that does not materially change the functionality of the infrastructure.

16.1.2 **Design Guidelines.** Modifications of the Design Guidelines.

16.1.3 **Development Unit Allocations.** Any allocation of Development Unit densities to be made by WDG or its successors.

16.1.4 **Minor Amendment.** Any other modifications deemed to be minor modifications by the Administrator.

16.2 **Application to Administrator.** Applications for Administrative Amendments shall be filed with the Administrator. 16.2.1 **Referral by Administrator.** If the Administrator determines for any reason that it would be inappropriate for the Administrator to determine any Administrative Amendment, the Administrator may require the Administrative Amendment to be processed as a Modification Application.

16.2.2 **Administrator's Review of Administrative Amendment.** The Administrator shall consider and decide upon the Administrative Amendment within a reasonable time not to exceed forty-five (45) days from the date of submission of a complete application for an Administrative Amendment. Applicant must provide all documents in their completed form and pay any required fee in accordance with State law.

17.2.3 **Identification of Non-City Agencies.** Identify any Non-City agencies potentially having jurisdiction over the Modification Application.

17.2.4 **Map.** Provide a map of any affected property and all property within three hundred feet (300') showing the present or Intended Use and density of all such properties.

17.2.5 **Fee.** Modification Applications shall be accompanied by a fee in an amount reasonably estimated by the City to cover the costs of processing the Modification Application.

17.3. **Mutual Cooperation in Processing Modification Applications.** Both the City and Applicants shall cooperate reasonably in promptly and fairly processing Modification Applications.

17.4 **Planning Commission Review of Modification Applications.**

17.4.1 **Review.** All aspects of a Modification Application required by law to be reviewed by the Planning Commission shall be considered by the Planning Commission as soon as reasonably possible in accordance with the City's Vested Laws in light of the nature and/or complexity of the Modification Application. The City shall not be required to begin its review of any application unless and until the Applicant has submitted a complete application.

17.4.2 **Recommendation.** The Planning Commission's vote on the Modification Application shall be only a recommendation.

17.5 **Council Review of Modification Application.** After the Planning Commission, if required by law, has made or been deemed to have made its recommendation of the Modification Application, the Council shall consider the Modification Application.

17.6 **Council's Objections to Modification Applications.** If the Council objects to the Modification Application, the Council shall provide a written determination advising the Applicant of the reasons for denial, including specifying the reasons the City believes that the Modification Application is not consistent with the intent of this Agreement and/or the City's Vested Laws (or, only to the extent permissible under this Agreement, the City's Future Laws).

17.7 **Mediation of Council's Objections to Modification Applications.** If the Council and Property Owners are unable to resolve a dispute regarding a Modification Application, the Parties shall attempt within seven (7) days to appoint a mutually acceptable expert in land planning or such other discipline as may be appropriate. If the Parties are unable to agree on a single acceptable mediator, each

The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for or duty to any third parties, including but not limited to JSSD or NVSSD, concerning any improvements to the Property unless the City has accepted the dedication of such improvements at which time all rights and responsibilities for the dedicated public improvement shall be the City's.

22. **Assignability.**

22.1 **Transfer to Developers and Sub-developers.** Notwithstanding anything to the contrary in this Agreement, WDG or its successor may sell any portion of the Property to one or more parties (each a “Developer” or “Sub-developer”) at any time from and after the Effective Date. Each such transferred portion of the Property (each, a “Development Property”) shall be developed by the Developer and/or Sub-developer in accordance with and subject to the terms hereof, including, without limitation, the following:

22.1.1 Developer or Sub-developer shall assume in writing for the benefit of the City and Property Owners all of the obligations and liabilities of Property Owners hereunder with respect to the Development Property;

22.1.2 Developer and Sub-developer shall be afforded the rights of Property Owners granted hereunder in respect of the applicable Development Property only, including, without limitation, any rights of Property Owners in and the impact fee credits and/or reimbursements pertaining to such Development Property; provided, however, that unless WDG otherwise agrees in writing, Developer and/or Sub-developer shall not, in each case without the prior written consent of WDG, which may be granted or withheld in WDG's sole discretion:

(ii) submit any design guidelines to the City in respect to the Development Property and/or propose any amendments, modifications or other alterations to the Design Guidelines or any other design guidelines previously submitted by WDG Owners to the City in respect of the Development Property;

(iii) process any Final Plats, site plans or Development Applications for the Development Property and/or propose any amendments, modifications or other alterations of any approved Final Plats, site plans, and/or Development Applications procured by WDG for the Development Property; or

(iv) propose or oppose any amendments, modifications or other alterations to this Agreement.

such default or noncompliance. If such default or noncompliance cannot with diligence be cured or remedied within either such 90 -day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such 90 -day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

25. **Termination.**

25.1 This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

- (i) Expiration of the Term of this Agreement, unless extended as provided in Section 4.3;
- (ii) Completion of the Project in accordance with the Development Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Development Entitlements and this Agreement;
- (iii) Except for the payment of applicable fees and assessments, as for any specific residential dwelling or other structure within the Project, this Agreement shall be terminated for such dwelling or other structure upon the issuance by City of a certificate of occupancy therefore;
- (iv) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside, withdraw, or abrogate City's approval of this Agreement,
- (v) The effective date of a party's election to terminate the Agreement as specifically provided in this Agreement, or
- (vi) in the event that Developer or the project are in default, or where material, contractual and developmental obligations are not met, or any deadlines and conditions of this Agreement, and relevant State and Federal Laws not fulfilled or are violated, after appropriate default notices and cure provisions of this Agreement.

25.2 **Notice of Termination.** City shall, upon written request made by Developer or Developer's successor(s) or assign(s) or any Owner to City's Planning Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Developer or Developer's successor(s) or assign(s) or any Owner's request record a notice of termination that the Agreement has been terminated. The

29. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

31. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

32. **Time is of the Essence.** Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

33. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and WDG each shall designate and appoint a representative to act as a liaison between the City and its various departments and WDG. The initial representative for the City shall be City Manager, or his designee and the initial representatives for WDG shall be Spencer Wright. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

34. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against either Party based on which Party drafted any particular portion of this Agreement.

35. **Applicable Law.** This Agreement is entered into in the City in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

36. **Recordation and Running with the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder. Copies of the City's Vested Laws, **Exhibit D**, shall not be recorded. A secure copy of **Exhibit D** shall be filed with the City Recorder and each Party shall also have an identical copy. The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the

EXHIBIT A
TO DEVELOPMENT AGREEMENT FOR COLLEGE DOWNS MIXED USE
RESIDENTIAL DEVELOPMENT

BEGINNING AT A POINT LOCATED NORTH 00°30'00" WEST ALONG THE SECTION LINE 201.72 FEET AND WEST 696.45 FEET FROM THE FOUND WASATCH COUNTY ALUMINUM CAP MARKING THE EAST 1/4 CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 32°00'23" WEST 1120.48 FEET TO THE HEBER CITY BOUNDARY AS SHOWN ON THE NORTH VILLAGE ANNEXATION PLAT; THENCE ALONG SAID HEBER CITY BOUNDARY AND THE NORTH VILLAGE ANNEXATION PLAT THE FOLLOWING 21 (TWENTY ONE) CALLS: 1. NORTH 42°02'19" EAST 253.96 FEET, 2. NORTH 89°51'56" EAST 493.00 FEET, 3. SOUTH 42°15'26" EAST 71.50 FEET, 4. ALONG THE ARC OF A 453.93 FOOT RADIUS CURVE TO THE LEFT 66.76 FEET (CHORD BEARS SOUTH 46°22'46" EAST 66.70 FEET), 5. SOUTH 50°30'06" EAST 70.63 FEET, 6. ALONG THE ARC OF A 226.74 FOOT RADIUS CURVE TO THE RIGHT 97.65 FEET (CHORD BEARS SOUTH 38°09'48" EAST 96.90 FEET), 7. SOUTH 25°49'31" EAST 80.79 FEET, 8. ALONG THE ARC OF A 234.73 FOOT RADIUS CURVE TO THE LEFT 109.51 FEET (CHORD BEARS SOUTH 39°11'25" EAST 108.52 FEET), 9. SOUTH 52°33'20" EAST 48.06 FEET, 10. ALONG THE ARC OF A 95.72 FOOT RADIUS CURVE TO THE RIGHT 27.56 FEET (CHORD BEARS SOUTH 44°18'34" EAST 27.46 FEET), 11. SOUTH 36°03'49" EAST 17.11 FEET, 12. ALONG THE ARC OF A 84.88 FOOT RADIUS CURVE TO THE LEFT 74.84 FEET (CHORD BEARS SOUTH 61°19'17" EAST 72.44 FEET), 13. SOUTH 86°34'45" EAST 55.03 FEET, 14. ALONG THE ARC OF A 70.00 FOOT RADIUS CURVE TO THE RIGHT 40.72 FEET (CHORD BEAR SOUTH 69°54'52" EAST 40.15 FEET), 15. SOUTH 38°58'47" WEST 410.12 FEET, 16. SOUTH 51°01'13" EAST 167.25 FEET, 17. SOUTH 38°58'47" WEST 47.63 FEET, 18. ALONG THE ARC OF A 218.00 FOOT RADIUS CURVE TO THE LEFT 342.43 FEET (CHORD BEARS SOUTH 84°00'43" WEST 308.0 FEET), 19. SOUTH 39°00'43" WEST 127.93 FEET, 20. ALONG THE ARC OF THE 168.00 FOOT RADIUS CURVE TO THE RIGHT 26.93 FEET (CHORD BEARS SOUTH 43°36'14" WEST 26.90 FEET), AND 21. SOUTH 48°11'46" WEST 56.46 FEET TO THE POINT OF BEGINNING.

AREA = 17.01 ACRES

EXHIBIT C
TO DEVELOPMENT AGREEMENT FOR COLLEGE DOWNS MIXED USE RESIDENTIAL
DEVELOPMENT
North Fields

