



## DEVELOPMENT A

FOR

## ASH CREEK CROSSING

(A Planned Mixed Use Development)

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 11th day of November, 2007 by and between D&C Holdings, LLC, a Utah limited liability company; N & S Glauser Family Investments, LLC, a Utah limited liability company; Prince Viejo Valley, LLC, a Utah limited liability company; Wild Sage, LLC, a Utah limited liability company; South Field Properties, LLC, a Utah limited liability company; and their successors and assigns (collectively "Developer") and Toquerville City, a Utah municipal corporation ("City") (all together, the "Parties").

**RECITALS**

A. WHEREAS, Developer is the owner of approximately 1558 acres of land located near the Western edge of the City's current municipal boundaries and described more fully in *Exhibit "A"*, attached hereto and incorporated herein by this reference ("Subject Property").

B. WHEREAS, Developer has planned and designed the Subject Property into a phased master-planned community which includes residential, commercial and community related development currently proposed as the Ash Creek Crossing Project ("ACC Project"). The general layout and design of the ACC Project is depicted in the "Conceptual Master Plan" dated October 2006 and prepared by Pratt Precision Engineering attached hereto as *Exhibit "B"*, and incorporated herein by this reference.

C. WHEREAS, the Toquerville City Council after conducting a public hearing and receiving a recommendation from the Toquerville City Planning Commission, approved an amendment to its General Plan allowing residential and commercial densities within the Subject Property to be up to 2 equivalent residential units ("ERU's") per acre.

D. WHEREAS, in May, 2007, Developer made a zone change request to the City whereby it sought to rezone the entire Subject Property from its current Multi Use 20 (one unit per 20 acres) ("MU-20") zoning designation to Residential 1-20 (one unit per 20,000.00 square feet – approx.  $\frac{1}{2}$  acre) ("R-1-20") zoning. In connection with the underlying zone change request, Developer also requested a Planned Unit Development Overlay Zone designation for the Subject Property (collectively "Zone Change Requests").

E. WHEREAS, on June 20, 2007, the Toquerville City Planning Commission held a public hearing and afterward voted to recommend approval of the Zone Change Requests with certain findings and conditions set forth in *Exhibit "C"* which is attached hereto and incorporated herein, and forwarded the Zone Change Requests to the City Council for its consideration.

D. WHEREAS, on July 11, 2007, the Toquerville City Council unanimously

approved Developer's Zone Change Requests for the ACC Project subject to certain findings and conditions set forth in *Exhibit D*, attached hereto and incorporated herein, which included the creation and approval of this Development Agreement ("Zone Change Approvals").

E. WHEREAS, City finds the Zone Change Approvals and the Conceptual Master Plan: (i) do not conflict with any applicable policy of the Toquerville General Plan; (ii) meet the spirit and intent of Chapter 16 of the City's Land Management Code (Planned Unit Development Overlay); (iii) will allow integrated planning and design of the Subject Property and, on the whole, create better development than would be possible under conventional zoning regulations; (iv) meet applicable use limitations and other requirements of the R-1-20 zone with which the Planned Development Overlay Zone will be combined; and (v) meet the density limitations of the R-1-20 zone.

F. WHEREAS, City believes, based upon Developer's representations, that Developer has (i) sufficient control over the Subject Property to ensure development will occur as approved; (ii) the financial capability to carry out the ACC Project; and (iii) the capability to complete performance of its "Developer's Initial Obligations" as set forth in Paragraph 11 herein below.

G. WHEREAS, Developer has expended considerable time and money in developing the ACC Project to its current status and will continue to expend considerable time and money to complete its development based upon the Zone Change Approvals given by City.

H. WHEREAS, City likewise has expended considerable time and money in reviewing the ACC Project and assuming Developer elects to proceed with the Project, will continue to do so to ensure compliance with City's Land Management Code for the benefit of persons who ultimately will live, work and utilize the ACC Project as well as citizens of Toquerville generally.

I. WHEREAS, each of the Parties are willing to enter into this Agreement in order to implement the purposes and conditions of both the Zone Change Approvals and the Conceptual Master Plan for the ACC Project and to more fully set forth the covenants and commitments of each Party, while giving effect to applicable state law and City's Land Management Code.

J. WHEREAS, acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, and after all required public notice and hearings, City, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Use, Development, and Management Act, (ii) City's General Plan, and (iii) City's Land Management Code. As a result of such determination the City (i) has elected to regulate the ACC Project in a manner resulting in negotiation, consideration, and approval of this Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing promises, conditions, covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.

2. **Definitions.** Any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by Toquerville Land Management Code, ("City's Land Use Ordinance") in effect on the date this Agreement is executed, or, if different, by this Agreement. Certain such terms and phrases are referenced below; others are defined where they appear in the text of this Agreement.

a. "ACC Project" and "Project" mean the Ash Creek Crossing Project described more fully in Paragraph 3, below and further described or depicted on the attached "Exhibit A" and "Exhibit B".

b. "After-Acquired Property" means any property acquired by Developer after the execution of this Agreement that is adjacent to the ACC Project.

c. "Ash Creek SSD" means the Ash Creek Special Service District, a body politic created for the purpose of providing sewer and waste water removal and treatment to the Hurricane Valley Basin Area, which includes the ACC Project.

d. "Base Density" means the maximum number of ERU's set forth in Paragraph 7(b), below, which is allowed within the ACC Project as calculated pursuant to Chapter 16 of the City's Land Use Ordinance and as approved by City when granting the Zone Change Approvals and the approval of the Conceptual Master Plan for the ACC Project.

e. "By-Pass Road" means that portion of the road depicted in the Conceptual Master Plan and as may further be defined by the City's Transportation Plan and UDOT's Eastern Hurricane Study both of which are currently pending completion and approval by the governmental entities which have commissioned them.

f. "City" means the City of Toquerville, a Utah municipal corporation and political subdivision of the State of Utah.

g. "City Standards and Specification for Public Improvements" means those design and construction guidelines, standards and specifications contained in City's Land Use Ordinances.

h. "City's Land Use Ordinance" means Toquerville City Land Management Code as adopted June 18, 2003, as amended.

- i. "Commercial Uses" or "Commercial Structure" means any commercial building, structure or use that complies with the limitations and types of use set forth in the Neighborhood Commercial Zoning Districts of the City (currently Chapter 6, Section 6.5 of City's Land Use Ordinance) and this Agreement.
- j. "Conceptual Master Plan" means the conceptual site plan map attached hereto as *Exhibit "B"* dated October 2006 and prepared by Pratt Precision Engineering.
- k. "CC&Rs" means Covenants, Conditions and Restrictions and specifically the Master Declaration of Covenants, Conditions and Restrictions recorded against the ACC Project as a whole ("Master Declaration") and the Declaration of Covenants, Conditions and Restrictions that may be recorded against an individual Development Parcel.
- l. "Density Transfer" means the ability of Developer to transfer densities from one Development Parcel to other Development Parcels within the ACC Project subject to the conditions set forth in Paragraphs 7(f) and 7(g) of this Agreement.
- m. "Design Standards" means the design standards or guidelines (architectural and other wise, including landscaping standards) adopted by Developer and as approved by City.
- n. "Developer" means collectively RD & CT Holdings, LLC, N & S Glauser Family Investments, LLC, Prince Viejo Valley LLC, Wild Sage, LLC and South Fields Properties, LLC, their successors and assigns.
- o. "Developer's Initial Obligations" means those duties and obligations set forth in Paragraph 11, below.
- p. "Development Activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.
- q. "Development Parcel" means an area within the ACC Project that shall hold the potential of being developed, in part or in whole by Developer, or its successors and assigns, into one or more separate residential or commercial subdivision phases. Development Parcel includes "super pads", subdivision phases, or multiple lots within a subdivision phase as generally shown on the Conceptual Master Plan attached hereto as *Exhibit "B"* or as may be designated in future revisions of the Conceptual Master Plan.
- r. "Development Guidelines" means the Master Declaration and the Design Standards and separate plans that will be adopted by Developer, including the Culinary and Raw Water Plans, the Sewer and Storm Water Management Plans, for the purpose of providing continuity throughout the ACC Project.

s. "Electrical Power Supplier" means Rocky Mountain Power, a division of PacifiCorp, or any other electrical power supplier who may provide electrical power service to the area of Toquerville where the ACC Project is located in the future.

t. "ERU" means equivalent residential unit. An equivalent residential unit means a dwelling unit as defined by City's Land Use Ordinance.

u. "Final Plat" means a final plat of a residential or commercial subdivision to be constructed as a phase with in a Development Parcel which, after approval by City's governing body, is to be recorded in the Official Records in Office of the Recorder of Washington County, State of Utah.

v. "Land Use Application" means any application for development within the ACC Project submitted to City by Developer or any Sub-Developer subsequent to the execution of this Agreement.

w. "Modification Application" means the application and process prescribed for modifying this Agreement, the Zone Change Approvals and/or the Conceptual Master Plan set forth in Paragraph 6, below.

x. "Multi-Family Uses" means all residential uses other than single family detached housing, including without limitation: apartments, duplexes, garden homes, condominiums, timeshares, and town homes and other forms of multi-family land uses.

y. "Ordinance" means the Toquerville City Municipal Ordinances, including City's Land Use Ordinance

z. "Planning Commission" means the Toquerville City Planning Commission.

aa. "Project Improvements" means site improvements and facilities that are planned and designed to provide service for the ACC Project development resulting from a Development Activity; and necessary for the use and convenience of the occupants or users of development resulting from a development activity. "Project Improvements" does not mean System Improvements.

bb. "Proportionate Share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

cc. "Roads Master Plan" means the plan which will be the ultimate result of the Roads Master Plan Study commissioned by the Toquerville City Council and being conducted by Sunrise Engineering, the City's current engineer.

dd. "Sub-Developer" means any person, entity, group or association responsible to construct and/or prepare a Development Parcel, or any part thereof, for the

construction or pre-construction of structures.

ee. "Subject Property" means the approximate 1558 +/- acres of the property included within the ACC Project particularly described in *Exhibit "A"* and depicted in *"Exhibit B"* attached hereto.

ff. "System improvements" means existing public facilities that are designed to provide services to service areas within the community at large; and future public facilities identified in a capital facilities plan that are intended to provide services to service areas within the community at large. "System improvements" does not mean project improvements.

gg. "Water Storage Site" means that area within the ACC Project that will be identified prior to the approval of the first Final Plat which will be constructed and dedicated to the City pursuant to Paragraph 10.a.i.1. below for the purpose of receiving, holding, storing and transmitting culinary and raw water to the ACC Project.

hh. "Water Distribution System" means the system of water transmission lines within the ACC Project to be designed, constructed by the Developer and dedicated to the City for the purpose of distributing both culinary and raw water to ERU's and Commercial Uses in the ACC Project.

ii. "Zone Change Approvals" means the City's approval of Developer's Zone Change Requests (Application # 2007-05) for the Subject Property July 11, 2007, which was subject to certain findings and conditions set forth in *Exhibit "D"*.

jj. "Zone Change Requests" means those zone change requests made by the Developer to the City in May, 2007 wherein the Developer requested that the City, by ordinance, amend its current zoning designations for the entire Subject Property from its current Multi Use 20 (one unit per 20 acres) ("MU-20") zoning designation to Residential 1-20 (one unit per 20,000.00 square feet - approx. ½ acre) ("R-1-20") zoning. In connection with the underlying zone change request, Developer also requested a Planned Unit Development Overlay Zone designation for the Subject Property which allowed for certain uses and density clustering as set forth in the Conceptual Master Plan.

3. Summary of ACC Project. The ACC Project is a phased master-planned community which includes residential, commercial and community related development consisting of approximately 1558 +/- acres located near the western edge of the City's municipal boundaries. The ACC Project consists of a number of Development Parcels as depicted in the Conceptual Master Plan. It is anticipated that the said Development parcels will be further split up into Sub-Development Parcels. Developer will act as a master developer of the ACC Project. As such, Developer will oversee and/or coordinate the design and construction of the By-Pass Road and all major "on-site" and "off-site" infrastructure and amenities for the ACC Project. Developer anticipates either constructing individual portions of Development Parcels itself or conveying the same to Sub-Developers in a phased manner. Sub-Developers shall be bound by and shall cause its employees and agents to act in accordance with the terms of this Agreement.

Developer intends to adopt a detailed set of Development Guidelines which will govern the ACC Project, a copy of which shall be reviewed and approved by the City. Such Development Guidelines shall be consistent with the provisions of this Agreement and the City's Land Use Ordinance.

4. Findings and Authority

a. Compliance and Benefits to City. The City finds that (i) the Zone Change Approvals, the Conceptual Master Plan and this Agreement are consistent with the Toquerville City General Plan, as amended, the City's PDO Ordinance and all other applicable ordinances, rules, regulations and policies of City; and (ii) the development of the ACC Project pursuant to this Agreement, the Zone Change Approvals and the Conceptual Master Plan will result in significant planning and economic benefits to and will further the health, safety and general welfare of City and its residents by, among other things: (A) requiring development of the ACC Project in a manner consistent with the applicable rules, regulations and policies of City; (B) providing for the dedication of infrastructure improvements to be completed in several phases as set forth herein; (C) increasing sales and/or property tax and other revenues to City derived from businesses and residences to be constructed in the ACC Project; (D) creating jobs from new businesses to be located within the ACC Project, and (E) the dedication and construction of part, if not all of the By-Pass Road and other public amenities.

b. Reliance by the Parties. City acknowledges that Developer is relying on the execution and continuing validity of this Agreement, the conditions set forth in this Agreement, the Zone Change Approvals and the Conceptual Master Plan. Developer has expended substantial funds in the development of the ACC Project and, with reliance upon this Agreement, will continue to expend additional funds. Developer acknowledges that City is relying on the execution and continuing validity of this Agreement and Developer's faithful performance of its obligations under this Agreement, the conditions set forth in the Zone Change Approval's and the Conceptual Master Plan in continuing to perform the obligations of City hereunder.

c. Purpose: Authorization to Develop. The Parties desire that City have reasonable certainty concerning the manner in which the ACC Project will be developed and that Developer and its successors and assigns will have reasonable certainty in proceeding with development of the ACC Project. Through this Agreement, Developer and its successors and assigns agree to comply with the terms of the Zone Change Approvals, the Conceptual Master Plan and this Agreement, and in exchange, City authorizes Developer and its successors and assigns to develop the ACC Project as set forth in the Zone Change Approvals, the Conceptual Master Plan and this Agreement, subject only to future modification as set forth in Paragraph 6, below.

5. Applicable Laws and Regulations. The Parties acknowledge that the Subject Property is located solely within the municipal boundaries of City. Except as provided in Subparagraph 5(a), the Parties agree that all development and improvements of any sort, on or off-site, relating to the ACC Project shall therefore comply with City's Land Use Ordinances,

Design Guidelines, regulations, requirements, and procedures established by and for City and this Agreement. City acknowledges that in certain instances, such as the construction of the By-Pass Road, coordination of design and other building standards may be necessary with other public and quasi-public entities.

a. Binding Effect of Zone Change Approvals. The Zone Change Approvals and the approved Conceptual Master Plan shall not be affected by any subsequent inconsistent or contrary ordinance, resolution, rule or regulation enacted by City that prohibits or regulates the Base Density, land uses, site improvements, rights of way, infrastructure, open space, school sites, church sites and parks shown on the Conceptual Master Plan.

b. Land Use Applications. Except as provided in Subparagraph 5(a), any Land Use Application made subsequent to the execution of this Agreement shall conform to applicable provisions of the of City's Land Use Ordinance in effect when a complete application is submitted.

c. Building Permits. Any person or entity applying for a building permit within the ACC Project shall be subject to the building, electrical, mechanical, plumbing, fire codes and other City ordinances relating to the construction of any structure in effect when a person or entity files with City a complete application for such building permit.

d. Later Enacted State or Federal Law. The rights and obligations of the Parties under this Agreement shall be subject to later enacted State and Federal laws and regulations, to the extent applicable to the ACC Project and controlling over the City's Ordinances.

e. Moratorium. The rights of Developer under this Agreement and the PDO Zone Approval shall only be subject to a subsequent moratorium or ordinance enacted by City to respond to a bona fide threat to the public health and safety or which involves facts and circumstances beyond the control of City and which threat represents a "compelling and countervailing public interest" as such term is used in the Utah Municipal Land Use Development and Management Act and the case law construing such term. City acknowledges that, as of the date of this Agreement, to its best knowledge, information and belief, it is not aware of any existing facts under which such a moratorium or ordinance might be enacted.

6. Process for Modifying the Zone Change Approvals and Conceptual Master Plan.

a. Intent. City acknowledges that the Zone Change Approvals and the Conceptual Master Plan are a generalized depiction of the proposed development of the ACC Project with specific land uses permitted as shown on the Conceptual Master Plan. This Agreement contemplates that Developer may modify the Conceptual Master Plan so long as the total base density allowed, land uses permitted and exactions depicted and described in the Conceptual Master Plan, are not changed or increased. Subject to this limitation, and as provided in this Paragraph and other related provisions throughout this

Agreement, Developer is specifically entitled to, and City hereby grants to Developer, the right to change and/or adjust the exact location of various development uses and densities under the provisions of this Agreement between or among Development Parcels and their phasing within the Conceptual Master Plan, or its amendments approved pursuant to this Paragraph. The purpose of this provision is to allow Developer the opportunity to change the configuration of uses shown on the Conceptual Master Plan to reflect future changes in economic factors, development, ownership or other relevant matters so long as such changes do not require the uncompensated relocation of public improvements which have been constructed or which materially and adversely impact other public improvements depicted and planned on the Conceptual Master Plan, as reasonably determined by City. Any proposed modification of the Conceptual Master Plan which increases the total base density allowed or adds other land uses or property not depicted or described in the Conceptual Master Plan shall be accomplished only as provided in this Section 6 of the Agreement and other related sections of City's Land Use Ordinance, as amended.

b. Submittal of Modification Application. If Developer or its successors and assigns, desire to modify the Conceptual Master Plan as described in Paragraph 6(a), above, Developer shall submit a Conceptual Master Plan modification application together with any required fee to City, in the form and amount prescribed by the City ("Modification Application"). Any Modification Application which, after the review of the City's staff, are deemed to be within the scope of modifications permitted by Subparagraph 6(a), as reasonably determined by City, may be modified by Developer by providing City with a modified Conceptual Master Plan containing the revision date and supplemental summary referencing the revision date. Said supplemental summary shall briefly detail the changes made to the modified Conceptual Master Plan. Said modifications shall be deemed complete upon receipt by City of a modified Conceptual Master Plan and the supplemental summary.

c. City Acceptance of Modification Application. City shall have thirty (30) calendar days after submittal of a Modification Application to inform Developer whether City considers the Modification Application to be complete. If City does not notify Developer in writing of any additional information required to complete said application, the Modification Application shall thereafter be deemed complete. If City determines the Modification Application is not complete as submitted, City shall notify Developer in writing within said thirty (30) days specifying in detail any incomplete or missing information. If City does not notify Developer in writing within the thirty (30) days after submittal of the additional information requested, the Modification Application shall be deemed complete. If City determines that the required additional information for the Modification Application is not complete, as submitted it shall notify Developer in writing within thirty (30) days after submittal of the additional information requested the Modification Application the information required.

d. City Review. The City shall have sixty (60) calendar days to review the changes proposed in the Modification Application after said application is accepted as complete or deemed complete. If City does not object within sixty (60) days, the final completed Modification Application shall be deemed accepted by City and shall

constitute a modification of the Zone Change Approvals and the Conceptual Master Plan, provided that any such modification conforms to applicable law set forth in Paragraph 5 of this Agreement. If any applicable law requires further public hearing or procedure to be followed, the Parties agree to follow said procedures as expeditiously as possible.

e. City's Objections. If City objects, disagrees, or disapproves of the changes contemplated by the Modification Application, City shall specify in writing with reasonable detail the reasons City believes that the proposal is not consistent with City's General Plan or other policies, plans and ordinances of general applicability allowed by this Agreement and the vested rights conveyed by this Agreement, including the right of Developer to modify the Conceptual Master Plan as described in paragraph 6(a) above.

f. Mediation. The City and Developer shall meet within fifteen (15) calendar days ("Mediation Deadline") of after receiving an objection asserted by City pursuant to the preceding Subparagraphs, to mediate and resolve all outstanding issues.

g. Arbitration. If City and Developer are unable to resolve the issues via mediation pursuant to the preceding Subparagraphs, by the Mediation Deadline, the Parties shall attempt within seven (7) days to appoint a mutually acceptable land use planning expert to arbitrate the terms of the Modification Application. The party requesting the arbitration shall pay the fees to initiate the arbitration. If the Parties are unable to agree on a single acceptable arbitrator they shall each, within seven (7) additional days, appoint their own individual land use planning expert. These two land use planning experts shall, between them, choose the single arbitrator within the next seven (7) calendar days. The chosen arbitrator shall within fifteen (15) days, review the positions of the Parties regarding the Modification Application and issue a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, after consideration of such objections, the arbitrator's decision shall be final and binding upon both Parties and shall constitute an approved modification of the Zone Change Approvals and the Conceptual Master Plan. As part of the arbitrator's decision, the arbitrator shall determine the payment of the arbitrator's costs based on to the success or failure of each party's position in the arbitration.

7. General Conditions of the Zone Change Approvals. As part of the Zone Change Approvals, the following general development conditions and guidelines for the ACC Project shall apply:

a. Maximum Development Area. The entire ACC Project and the corresponding PDO zone shall be limited to the Subject Property described in *Exhibit "A"*, unless changed by a future amendment to the Zone Change Approvals and Conceptual Master Plan as provided in Paragraph 6, above and the City's Land Use Ordinance, as amended.

b. Permitted Residential Density. The maximum number of residential units with the ACC Project shall be not more than three thousand one hundred and sixteen

(3116) ERUs. The ERU limitation may only be increased by amending the Zone Change Approvals and the Conceptual Master Plan wherein the City approves the inclusion of After-Acquired Property into the ACC Project. Notwithstanding the preceding sentences of this Paragraph, the maximum number of ERUs shall be decreased by two ERUs for each acre developed into Commercial Uses. There shall be no diminution in the maximum number of ERU's for property dedicated to the City or other entities for public amenities (such as school sites, church sites, parks, trails and rights of ways) and open space areas.

c. Commercial Density. The ACC Project may include up to thirty five percent (35%) of the Project's total acreage to be utilized for Commercial Uses. Likewise, the ACC Project shall have no less than 60 acres designated and zoned for Commercial Use. Any zoning of areas designated on the Conceptual Master Plan as "Park", "Open Space", "School" or "Church" may not be utilized to purposes of calculating the 60 acre minimum set forth in the preceding sentence. Commercial Uses must be located in the areas designated on the Conceptual Master Plan as "commercial" and in such other areas as approved by the City. Any location of Commercial Uses outside of the areas designated on the Conceptual Master Plan shall be considered material modifications to said document and the Zone Change Approvals and shall require the submittal and approval of a Modification Application pursuant to Paragraph 6, above. The maximum Commercial Use percentage set forth in this Paragraph shall not apply to golf courses or other public recreational amenities regardless of whether fees are charged for use.

d. Phasing. City acknowledges that Developer intends either to develop individual Development Parcels itself or convey Development Parcels to various Sub-Developers for development. Accordingly, City may receive multiple land use applications for the ACC Project at any given time. The timing and phasing of the development and construction of improvements on individual Development Parcels shall be determined by Developer and/or Sub-Developers in their sole discretion. Developer, and its successor and assigns, agree to coordinate with City for the provision of services and facilities that will be needed because of any development and/or construction or commercial uses generated within the ACC Project. The Parties acknowledge that said coordination shall include the development phase sequencing that provides for the logical extension of all required infrastructure and the provision of all reasonable municipal/utility related services including, but not limited to, adequate fire protection and necessary rights of way for ingress and egress. To comply with Developer's Initial Obligations , Developer agrees to submit a Final Site Plan or Final Plat for at least one commercial development or residential subdivision within one year from the date this Agreement is recorded.

e. Restrictive Covenants. Several Sub-Developers and contractors, in addition to Developer may be designing and constructing improvements upon different Development Parcels at the same time. Developer recognizes the importance of ensuring continuity in the ACC Project as it develops. Therefore prior to approval of any Final Plat or Commercial Site Plan within the ACC Project, Developer shall adopt and record

CC&R's and Development Guidelines that will guide development and construction over the entire area of the ACC Project. Developer agrees to have the City review and approve the CC&R's to ensure consistency between the City's Ordinances and the use/design provisions of the CC&R's and that purpose only. City may not withhold approval of said CC&R's for reasons other than non-compliance with existing City Ordinances. Notwithstanding the City's right to review and approve the CC&R's, the City shall not have any obligations to enforce the covenants contained therein.

f. Phase Densities. The Parties acknowledge that each Development Parcel, or portion thereof, submitted to City for subdivision approval may have densities greater than its pro rata portion of the Base Density specified in the Zone Change Approvals and the Conceptual Master Plan so long as the cumulative number of approved ERUs do not exceed the maximum number of ERUs allowed for the entire ACC Project. .

g. Density Transfers. Developer's transfer of density units from one Development Parcel to others within the ACC Project shall be approved by City provided that (i) the Ordinances and General Plan regarding compatibility between parcels and minimum requirements are satisfied; (ii) in the event the Development Parcel from which density units are transferred is not owned by the owner of the Development Parcel(s) to which the density units are transferred, the owner of the Development Parcel from which units are transferred consents in writing to such transfer (which written consent may be a general consent to such transfers and is not required to be specific to any particular transfer) and (iii) infrastructure is sufficient and available to meet the demands created by such transfer as reasonably determined by City. Density transfers shall be initiated by notice to City from Developer or Sub-Developer which describes the Development Parcel, or portion thereof, from which density units are to be transferred, describes the Development Parcel, or portion thereof, to which density units are to be received and summarizes the impact of such transfer on infrastructure improvements. A density transfer shall be considered approved and complete when a subdivision application submitted by Developer and/or its successor and assigns, including the extension or expansion of required infrastructure improvements, is approved by City.

h. Requirements for Land Use Approval Applications for the Residential Development of Development Parcels. Each residential development application submitted by a Developer or Sub-Developer relating to a Development Parcel within the ACC Project, shall, in addition to those items required by City's Land Use Ordinances, include a statement of (i) the Base Density within the entire ACC Project as of the date of the application; (ii) the number of ERUs and densities sought under the particular land use application for that particular Development Parcel and (iii) the balance of the unallocated Base Density. The City shall not approve any Land Use Approval Application for residential development where the proposed development will create a situation where the Base Density is exceeded.

i. Requirements for Land Use Approval Applications for Commercial Use on Development Parcels. Each application for the development of a Commercial Use of a Development Parcel submitted by Developer or a Sub-Developer shall include, in

addition to those items required by City's Ordinance, a statement of (i) the total number of acres Commercial Uses allowed under the Zone Change Approvals and this Agreement; (ii) the cumulative total number of acres Commercial Uses previously approved for all of the Development Parcels within the ACC Project as of the date the application was submitted to City; (iii) the number of acres of Commercial Use that is sought under that land use application and (iv) the balance of Commercial Use square footage remaining allowable to overall ACC Project. The City shall not approve any Land Use Approval Application for the development of Commercial Uses where the proposed development will create a situation where the maximum percentage of Commercial Uses within the ACC Project pursuant to this Paragraph is exceeded.

j. Approval of Land Use Applications Other Than PDO Preliminary Site Plan Modifications. Any decision by City which is adverse to the Developer, its successors or assigns, regarding a development application, subdivision plat or amendment, certificate of compliance, conditional use, variance, building permit or any other approval required from City, other than a Conceptual Master Plan Modification Application, may be appealed as provided in City's Land Use Ordinance.

8. General Rights and Responsibilities of Developer

a. Conditions of Zone Change Approvals and Impact Fees. With respect to the ACC Project, Developer and its successors and assigns, accepts and agrees to pay all plan review, impact, connection, building and other fees currently assessed by City, or as later amended unless deferred or otherwise waived by City in consideration of the infrastructure and amenity funding provided by Developer to the benefit of City and the ACC Project. City agrees that its current fee schedule and all future revisions thereto will be applied uniformly within ACC Project, as applicable.

b. Vested Rights Granted by the Zone Change Approvals. To the fullest extent permissible under the law, it is the intent of City and Developer that the execution of this Agreement grants and vests in Developer, and its successors and assigns, all rights, consistent with the Zone Change Approvals, the Conceptual Master Plan, City's Land Use Ordinance, to develop the ACC Project according to the Conceptual Master Plan under applicable law as provided in Paragraph 5 of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are both contractual and provided under the common law concept of vested rights. It is expressly understood by City that Developer and Owners may assign all or portions of its rights under this Agreement and the Zone Change Approvals provided such assignees agree to be bound by the terms of this Agreement as provided in Paragraph 13, below.

c. Dedication of Infrastructure Improvements. Except for the By-Pass Road, the Open Space and the Park Site (as may be designated on the Conceptual Master Plan with these words or similar language), or unless otherwise specifically provided herein, Developer and Developer's successors and assigns shall dedicate all project and system improvements in the ACC Project to the City at such time as those improvements are accepted as complete by City. Said dedication shall reserve for the benefit of Developer

and Developer's successors and assigns, all capacity in said infrastructure improvements that is necessary for the ACC Project; provided, however, that the City may manage such improvements to achieve operating efficiencies as the City may determine. This Subparagraph shall not apply to any upsizing of infrastructure improvements required, and paid for, by the City. If the City requires and pays for any upsizing of infrastructure all additional capacity in excess of that required for the ACC Project shall be dedicated and reserved for the benefit of the City. Timing of the Dedication of the By-Pass Road, the Water Storage Site, arterial rights of way, open space and the park site shall be designated elsewhere in this Agreement. The Parties agree that upon completion of construction (as determined by the City's Engineer) and dedication of any infrastructure to the City, the City will conditionally accept said dedications subject to the warranty periods prescribed the City's Land Use Ordinances and Design Standards.

d. Mitigation of the Effects of Construction. Prior to the commencement of any construction or Development Activity within the ACC Project, Developer and all Sub-Developer, their successors and assigns, shall develop a "Construction Mitigation Plan" which shall be approved by the City. The Construction Mitigation Plan shall include procedure and requirements to be adhered to by the Developer while conducting any Development Activity within the ACC Project. Said Construction Mitigation Plan shall provide for the temporary construction of alternative construction routes and for the mitigation and/or elimination of fugitive dust, debris, smells, odors and noise. The standards and requirements set forth in the Construction Mitigation Plan shall comply with all local, state and federal environmental regulations and statutes. The Construction Mitigation Plan shall provide that all construction traffic shall be conducted only on the By-Pass Road or alternate routes other than existing City streets. Developer shall comply with all hours of construction restrictions prescribed by the City's Standards and Specifications for Public Improvements and ordinances and resolutions.

9. General Rights and Responsibilities of City

a. Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of the City to enact ordinances, standards or rules regulating development. Any ordinance, plan, or regulations which operates to reduce the Base Density, increase exactions or dedications or modify the uses approved in the Zone Change Approvals, the Conceptual Master Plan or this Agreement shall be deemed to be waived by the City insofar as it relates to the ACC Project.

b. Project and System Improvements – Cost Sharing. Developer shall bear the entire cost of constructing Project Improvements needed to service the ACC Project. Developer shall also bear the initial cost of constructing System Improvements required as a result of the ACC Project but shall be entitled to be reimbursed for the cost of such System Improvements except for Developer's proportionate share of the System Improvement costs. System Improvements may include, but are not limited to, the following regardless of whether such improvements are located within the ACC Project or off-site: easements and rights-of-way, street construction, curb and gutter and curb cuts, sidewalks, street signs, water distribution facilities, water storage facilities, fire

hydrants, storm drainage facilities, street signalization and telecommunications equipment and conduit, street lighting, electrical utilities, flood control facilities, bridges, parks, survey monuments, water rights, landscaping and revegetation.

c. Agreements for Reimbursement of System Improvements. Prior to constructing any System Improvement required for the ACC Project as authorized by the City's approval of a Final Plat, final commercial site plan, or other permit, Developer and the City shall execute an agreement whereby Developer shall be reimbursed over time, credited, or paid upfront for the cost of constructing such System Improvements less Developer's proportionate share of the cost thereof as determined by the City's Engineer. Developer shall furnish an estimate of the cost of constructing such improvements prepared by an engineer registered to practice in the State of Utah and approved by City. The reimbursement agreement shall assure that neither Developer nor City bears more than their respective proportionate share of the cost of System Improvements. Each agreement shall be negotiated on a case by case basis at the time said improvements are constructed.

d. Compliance with City Requirements and Standards. Except as provided in Subparagraph 5(a) of this Agreement, Developer acknowledges it shall comply with all applicable ordinances, resolutions, policies and procedures and constructions guidelines of City necessary for approval of subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc. for the ACC Project in effect at the time the land use approval is sought. Said compliance includes the payment of uniform application and approval fees.

e. Power of Eminent Domain. City agrees that in the event Developer needs to obtain easements or rights of way for the purpose of constructing infrastructure improvements for the ACC Project and is otherwise unable to negotiate a reasonably acceptable contract for such easements or rights of way, City, upon the request of Developer, may exercise its power of eminent domain to obtain such easements or rights of way, the cost of which shall be borne by Developer. Developer shall reimburse City for all reasonable expenses incurred in taking the requested action, including reasonable attorney's fees and costs. The decision whether or not to exercise the power of eminent domain is within the sole discretion of the City, which discretion and the use the City will not unreasonably withhold.

f. Cooperation of City. City may cooperate with Developer in connection with financing of the ACC Project including, without limitation, consideration of the issuance of bonds or creation of a special improvement district. The decision whether or not to create special improvement districts or bond for public improvements within the ACC Project is completely within the discretion of the City.

10. Specific Rights And Responsibilities

a. Water

i. Developer's Obligations

1. Water Storage Site. Developer shall design, fund, and construct "Water Storage Site(s)" which is anticipated, but subject to change, to include water storage tanks for culinary and raw water. The general location and elevation of the Water Storage Site(s) shall be approved by the City. The Water Storage Site(s) shall have sufficient capacity to serve the ACC Project, at a minimum, as reasonably determined by City. Developer shall dedicate the Water Storage Site(s) to the City as part of Developer's Initial Obligations.

2. Water Distribution System. Developer shall design, fund, and construct an adequate "Water Distribution System" of water transmission lines for the collection and distribution of both culinary and raw water to the Water Storage Site(s) and then to each ERU or commercial structure within the ACC Project.

3. Easements and Rights of Way. As part of the preparation, installation, operation and maintenance of the Water Storage Site and the Water Distribution System, Developer shall grant to City such easements, rights of way, rights of entry, or other servitudes as may be necessary for City to introduce raw or culinary water throughout the ACC Project.

ii. City Obligations.

1. Operation and Management of Water Storage Site and Water Distribution System. City shall operate and maintain the Water Storage Site and Water Distribution System and shall provide all Development Parcels and amenities within the ACC Project with culinary water service and raw water service as long as the City has water available to it to be purchased from the Washington County Water Conservancy District at a reasonable price.

2. Obtainment of Easements and Rights of Way for Water Distribution System. If needed and pursuant to Subparagraph 9(f) City may obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of the Water Distribution System's collection and transmission lines.

b. Sanitary Sewer Service and Facilities

i. The ACC Project is located within the service boundaries of the Ash Creek SSD. Developer will work with Ash Creek SSD to extend its sewer and waste water collection system to service the ACC Project in compliance with all regulations and specifications of Ash Creek SSD. All administrative and

regulatory authority in approving and maintaining sanitary sewer services and facilities within the Ash Creek SSD shall be vested in Ash Creek SSD, and/or its successors and assigns.

c. Transportation and Roads

i. Developer Obligations. Developer shall provide the following transportation infrastructure and take the following traffic mitigation measures:

1. General Road Improvements. With the exception of the By-Pass Road which is discussed in Subparagraph 10.c.i.3. below, Developer shall design, construct or improve and dedicate all access roads to the ACC Project. Likewise, Developer shall design, construct and dedicate all other roads (including collector or arterial roads) within the ACC Project. All road system improvements within the ACC Project shall be constructed according to City specifications and standards in phases according to a schedule determined by Developer and approved by City, unless otherwise modified or amended. All road system improvements shall be of the general size and location as identified in the Roads Master Plan and Capital Facilities Plans that the City is in the process of adopting. Prior to the construction of any road system improvements or road intersection improvements within the ACC Project, City shall review and approve or reject with suggested changes, all plans, drawings and specification with respect to the alignment and construction of such road and intersection improvements.

2. Dedication of Roads. Following Developer's completion of the construction of any road improvements, Developer shall dedicate such improvements to City. Notwithstanding the foregoing, in the event Developer, or its successors and assigns desire to utilize private roads in any portion of the ACC Project, Developer may seek approval from City, which approval may be granted on a case by case basis only if Developer's request complies with the City's Land Use Ordinance and the City's Standards and Specifications for Public Improvements. The width and construction standards for such private streets shall be determined by applicable provisions of City's Land Use Ordinance. Developer shall be required to design, construct or improve/widen and dedicate those roads that: a) access , b) are located within, or c) create a need for their existence and size as a result of the approval of a Final Plat or Final Site Plan at the time said Plat or Plan is recorded.

3. By-Pass Road. As part of its Initial Obligations, Developer shall dedicate the By-Pass Road in the general location and in the width as determined by the mutual consent of the Developer and the City's Engineer. The parties further agree to construct the By-Pass Road in compliance with all of the City's Standards and Specifications for Public

Improvements in general location depicted in the Conceptual Master Plan or the revised Conceptual Master Plan (showing a slightly Eastern location and an alternative Southern connection to SR-17) which is attached hereto, marked "Exhibit E", and is incorporated herein by this reference. All construction of the By-Pass Road shall be subject to the approval of the City or any other governmental entity with jurisdiction. Developer shall be initially required as part of its Initial Obligations to design and construct the By-Pass Road only to the width as may be required for safe and efficient travel to and from the ACC Project as shall be determined by a reputable licensed traffic engineering firm chosen by Developer and acceptable to City. Developer agrees that as Development Activity occurs within the ACC Project, which, in the discretion of the City's Engineer, precipitates the need to widen or further improve the By-Pass Road, and to construct a bridge for access across Ash Creek, that it will do so at its own expense and cost. Developer may elect to proceed first with development which in the estimation of the City Engineer only requires the connection of the By-Pass Road on its northern end, alleviating any requirement to construct the bridge as part of any Initial Obligations. .

ii. City Obligations.

1. Street Design. The street design cross sections, as contained in the City Standards and Specification for Public Improvements, as amended from time to time, (except those regarding private streets as set forth in Subparagraph 10(c)(i)(2), above), shall be the governing specifications and standards for the street design of all parkway, arterial and collector streets within the ACC Project except for the By-Pass Road.

2. Acceptance of Dedication and Maintenance of Streets & Roads. City shall accept via dedication and maintain all arterial, parkway and collector streets and roads in the ACC Project, so long as such streets are constructed to City specifications and standards and are dedicated without liens or encumbrances. Upon acceptance of the dedication and the expiration of any warranty period prescribed by the City's Land Use Ordinances, the City shall maintain the access roads, By-Pass Roads and roads located within the ACC Project at a level equal to, or higher than, that which other roads within the City are maintained.

d. Police and Fire Protection

i. Developer's Obligation. Upon the recording of the Final Plat or Final Site Plan which approves the construction of a building lot for the 500<sup>th</sup> ERU (if residential) or the 40<sup>th</sup> acre of Commercial Use (if commercial), Developer shall dedicate a site or sites, as may be acceptable to City, totaling no more than 3 acres for police and fire protection facility.

ii. City Obligations. City shall provide to all residential uses and Commercial Uses in the ACC Project, police and fire protection services. This obligation shall not be enforceable by or against any third-party claiming to be a beneficiary as provided in Paragraph 23 of this Agreement. This obligation may be delegated or assigned.

e. Parks, Trails, Open Space, School & Church Areas/Sites

i. Developer's Obligations. In order to reserve open space areas and improve park and recreational amenities in the ACC Project, Developer, and its successors and assigns, agrees as follows:

1. Trails System. Developer shall design, fund and assist City in constructing the system of trails and trail heads throughout the ACC Project. Said trails shall be designed for purposes of walking, hiking, and/or biking activities, and may include both improved and unimproved trails. To accomplish this purpose Developer will, with the input and advice from the City, develop a parks, trails and open master plan for the ACC Project ("Parks, Trails and Open Space Master Plan"). Developer shall prepare and receive approval from the City of the Parks, Trails and Open Space Master Plan by no later than the time they, or their successors or assigns apply for approval of the 3<sup>rd</sup> Final Plat or Final Site Plan (or combination of both) with the ACC Project. Developer shall dedicate any parks, trails or open space that lie within or adjacent to, a Development Parcel at the time of approval and recording of any Final Plat or Final Site Plan for said Parcel as may be indicated on said Parks, Trails and Open Space Master Plan, unless the City at the time of platting some or all of a Development Parcel approves certain master planned trails to remain in private ownership.

2. Parks. As part of Developer's Initial Obligations, Developer shall dedicate to the City the area designated upon the Conceptual Master Plan "park" ("Regional Park"). For purposes of this Agreement, the Parties acknowledge and agree that the Regional Park shall be no less than 8 acres in size. Furthermore Developer agrees to construct and dedicate neighborhood parks at the time a Final Plat for a Development Parcel, or phase or portion thereof, is recorded which, as determined by City and in a location approved by Developer, is needed for the area. The Parties agree that the standard ratio shall be a One Half (.5) acre park for every 241 ERUs ("Parks Standard"). Unless the Developer dedicates land and/or constructs Regional Park of a size of no less than eight (8) acres within the ACC Project and said park is identified as a capital project on the City's Parks and Recreation Capital Facilities Plan, developer shall not be entitled to impact fee credits pursuant to Paragraph 9.d., above, for the dedication of small neighborhood parks. Developer

recognizes that its Initial Obligation to Dedicate the Regional Park in addition to its obligations to comply with the Parks Standard. Developer agrees to dedicate the Regional Park to the City as the need arises (as determined by the City).

3. Open Space. At the time a Developer obtains approval and seeks to record a Final Plat for any Development Parcel or phase or portion thereof, that is contiguous with an area depicted in the Conceptual Master Plan as "Open Space", Developer shall also dedicate said open space to the City. Nothing in this provision shall restrict Developer from dedicating any open space area depicted in the Conceptual Master Plan to the City prior to the recording of Final Plat for property contiguous thereto.

4. Church Sites. At the time and in the manner so determined by the Developer, the Developer shall convey and or transfer any property so designated in the Conceptual Master Plan to a religious denomination or denominations of its choosing.

5. School Sites. Developer shall work closely with the City and the Washington County School District to determine, plan necessary sites for elementary, intermediate and high school buildings (if necessary) within the ACC Project.

ii. City Obligations

1. Level of Service. After construction and dedication of any trails, parks or open space, contemplated in the Master Conceptual Plan, this Agreement or otherwise, the City shall provide to the public and maintenance to said amenities at a level generally provided to other areas of City. City may, under the Utah Special Service District Act, create one or more recreation districts in the ACC Project and in other areas of City to provide funding for recreational amenities.

f. Electrical Power

i. Developer Obligations. The ACC Project and other areas of the City currently do not receive electrical power service from the City rather it receives said service from a Electrical Power Provider.. Developer will work with a Electrical Power Provider to design, and assist with construction, if necessary, of an electrical power transmission system to service the ACC Project in compliance with all regulations and specifications of the Public Utilities Service Commission and the Electrical Power Provider. It is anticipated that said electrical power transmission system will included the construction of a power substation in a location to be determined at a later date within the ACC Project.

ii. City Obligations.

1. Obtainment of Easements and Rights of Way for Electrical Power Transmission System. If needed and pursuant to Subparagraph 9(f) City may obtain the appropriate easements, rights of way, rights of entry, or other servitudes as may be necessary for the construction, placement and maintenance of any transmission lines or other components of an electrical power transmission system constructed by Developer and Rocky Mountain Power to service the ACC Project.

g. Miscellaneous Utilities.

i. Developer's Obligations. Developer shall be responsible for the provision of miscellaneous utility infrastructure to the perimeter of, and within, the ACC Project, including (but not necessarily limited to) the following:

1. Runoff and storm drainage consistent with City's storm water master plan to be prepared by City and commented upon by Developer;

2. Design and engineering for natural gas to be provided to the ACC Project by a natural gas provider;

3. Installation of telephone and cable television transmission systems to the ACC Project to be provided by the various service providers; and

4. Conduit and pull boxes to accommodate a future fiber optic telecommunications network to be installed to the ACC Project.

5. Developer shall provide, and or dedicate to City or reserve to itself, as applicable, all easements, rights of way, right of entry, or other servitudes as may be necessary for the installation and maintenance of the miscellaneous utilities infrastructure within the ACC Project.

ii. City's Obligations. Subject to the location of existing or planned miscellaneous utility infrastructure, City agrees to dedicate easements and infrastructure on property owned by City as may be necessary to connect, link, construct or accommodate such utility improvements in the ACC Project, provided that City shall have the authority to determine the route for such improvements.

11. Initial Obligations. Developer agrees to perform the following obligations set forth below (collectively "Initial Obligations") within one year of the recording of this Agreement. Developer may request, and the City shall not unreasonably deny, an extension of the one year requirement of this paragraph if the reason for the request is based upon an event

outside of the control of the Developer and its successors and assigns.

- a. Locate, complete design and dedicate the property to the City for the By-Pass Road.
- b. Locate and dedicate to the City the Water Storage Site(s) as set forth in Paragraph 10.a.i.1. above.
- c. Commence (but not complete) construction of the By-Pass Road, consistent with Paragraph 10.c.i.3. above.
- d. Obtain the approval of a Final Plat for at least one Development Parcel, or portion thereof.

12. Term. The purpose of this Agreement is to ensure development of the ACC Project as provided in Paragraph 4(d) of this Agreement. Accordingly, the term of this Agreement shall (i) commence on the date this Agreement has been recorded in the Official Records of Washington County and (ii) shall expire when all public and private infrastructure improvements in the ACC Project have been constructed and accepted as complete by City and certificates of occupancy have been issued for all buildings and/or ERUs in the ACC Project. This Agreement may also terminate in the event of default and the City has followed the procedure prescribed in Paragraph 14.a, below, regarding termination.

13. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such sale or transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

14. Default. Failure by a party to perform any of the Party's obligations under this Agreement within a ninety (90) day period (the "Cure Period") after written notice thereof from the other party shall constitute a default ("Default") by such failing party under this Agreement; *provided, however,* that if the failure cannot reasonably be cured within ninety (90) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long

as the failing party commences its efforts to cure within the initial ninety (90) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

a. Termination. If City elects to consider terminating this Agreement due to a Default by Developer, then City shall give to Developer written notice of City's intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City's legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City's legislative body determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated. City may thereafter pursue any and all remedies at law or equity.

b. No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages against City for breach of this Agreement but shall only be entitled to specific performance as may be determined by the court.

c. Breach by City; Equitable Relief. In the event of a breach by the City of this Agreement, as a result of, among other things, an attempt by the City to limit or restrict Developer's vested rights as set forth herein, Developer shall have the right to seek equitable relief, including emergency injunctive relief as may be warranted, from a court of competent jurisdiction consistent with this Agreement.

15. Annexation of Remainder Parcels. The parties acknowledge that small parcel(s) currently owned by Developer which comprise part of the Subject Property, in the far southern portion of the same, is located outside of City boundaries, in unincorporated Washington County ("Remainder Parcel(s)"). It is the intent of Parties that the Remainder Parcel(s) be subject to this Agreement. Developer intends to petition for annexation of the same into the City. City agrees that in the event such annexation petition or petitions are filed by Developer, and provided that all requirements for annexation set forth in applicable law are met, that this Agreement shall automatically apply to said Remainder Parcel(s) upon finalization of the annexation. The Parties further agree that the addition of any parcel other than the Remainder Parcels to the Subject Property (and thus the entitlements and obligations of this Agreement) will require an amendment to this Agreement as set forth in Paragraph 6, above. Developer acknowledges that at that the time of executing this Agreement, the City has not adopted an annexation policy plan as prescribed by Utah Code Ann § 10-2-401.5 and thus cannot approve annexations, but that the City intends to comply with all statutory law regarding annexation in the near future, thus making Developer's desire for future annexation a possibility.

16. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

17. Notice and Filings. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served in writing and delivered personally, sent by certified United States Mail, postage prepaid, or by a national express overnight delivery service, freight prepaid, if to:

City: TOQUERVILLE CITY  
c/o City Manager or Clerk  
212 Toquer Boulevard  
PO Box 27  
Toquerville, Utah 84774

With a copy to: BINGHAM & SNOW, LLP  
c/o Heath Snow, Esq.  
230 North 1680 East, Suite D-1  
St. George, Utah 84780

Developer: Robert Douglas Westbrook  
205 East Tabernacle, Suite 1  
St. George, Utah 84770

With a copy to: SNOW, JENSEN & REECE, PC  
c/o Matt Ence, Esq.  
Tonaquint Business Park, Building B  
912 West 1600 South, Suite 200  
St. George, Utah 84770

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication given by personal delivery or overnight delivery shall be effective upon receipt and if given by mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

19. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the

provisions hereof.

20. Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

21. Time is of the Essence; Force Majeure. Except as otherwise provided in this Paragraph, time is of the essence for this Agreement. If either party is delayed or hindered in or prevented from the performance of any act required hereunder by reason or inability to procure materials, acts of God, failure of power, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the party delayed in performing work or doing acts required under this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

22. Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, except as provided in Paragraph 13 of this Agreement.

23. No Partnership or Third Party Benefits. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and City. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

24. Entire Agreement. This Agreement, together with its exhibits, the Zone Change Approvals and the Conceptual Master Plan, shall constitute the entire agreement between the Parties pertaining to the subject matter hereof. All other prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

25. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the request of Developer in connection with the Property.

26. Good-Standing: Authority. The Parties warrant and represent as follows:

a. Developer hereby represents and warrants to City: (i) Developers collectively are registered business entities in good standing with the State of Utah; (ii) the individual(s) executing this Agreement on behalf of Developer are duly authorized and empowered to bind Developer; and (iii) this Agreement is valid, binding, and enforceable against Developer in accordance with its terms.

b. City hereby represents and warrants to Developer that: (i) City is a Utah municipal corporation; (ii) City has power and authority pursuant to enabling legislation,

the Utah Land Use and Development Management Act (U.C.A. § 10-9a-101 *et seq*), and City's Land Use Ordinances to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement on behalf of City are duly authorized and empowered to bind City; and (iv) this Agreement is valid, binding, and enforceable against City in accordance with its terms.

27. Severability. If any provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, and the Agreement shall otherwise remain in full force and effect.

28. State and Federal Law; Invalidity. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes mandated by state or federal laws or regulations applicable to the Annexed Property. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void.

29. Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of Utah.

30. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

31. Recordation. No later than 10 days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, at Developer's expense, in the Official Records of Washington County, Utah.

32. No Waiver of Governmental Immunity. Nothing in this Agreement is intended to, or shall be deemed, a waiver of City's governmental immunity.

33. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any activity connected with the Project; the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project; or which arises out of claims for personal injury, including health, and claims for property damage. The obligations of Developer under this paragraph shall not be applicable to any claim arising by reason of the negligence or intentional tort actions of the City. The City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than 30 days after the

assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

34. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after ninety (90) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such ninety (90) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

35. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

36. Annual Review. City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 14 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

37. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the Toquerville City Council taken with the same formality as the vote approving this Agreement.

(Remainder of Page Intentionally Left Blank)

DATED effective the first date set forth above.

**CITY:**

TOQUERVILLE CITY  
a Utah municipal corporation

Attest:

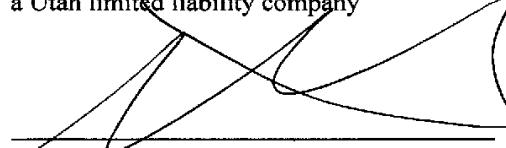


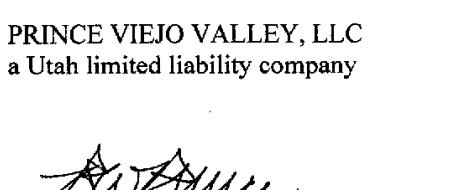
  
Kenneth Powell, Mayor

  
Carol Pogue, Recorder

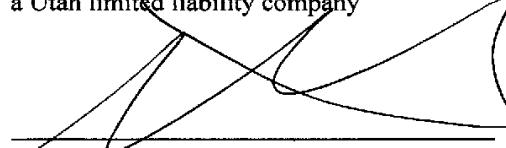
**DEVELOPER:**

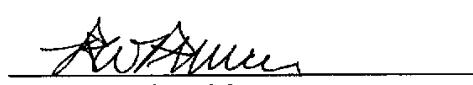
  
D & C HOLDINGS, LLC  
a Utah limited liability company

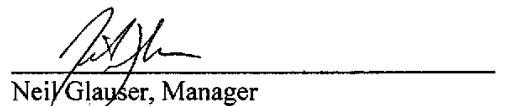
  
Robert Douglas Westbrook, Manager

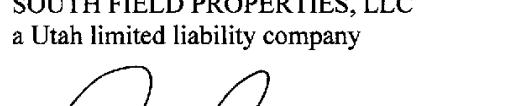
  
PRINCE VIEJO VALLEY, LLC  
a Utah limited liability company

  
Robert W. Prince, Manager

  
N & S GLAUSER FAMILY INVESTMENTS,  
LLC, a Utah limited liability company

  
WILD SAGE, LLC  
a Utah limited liability company

  
Neil Glauser, Manager

  
SOUTH FIELD PROPERTIES, LLC  
a Utah limited liability company

  
James N. Ence, Manager

  
Kenneth Graff, Manager

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

Kenneth Powell and Carol Pogue, being first duly sworn, deposes and says that they are the Mayor and City Recorder of Toquerville City, a Utah municipal corporation; that they have read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that they signed the said document for its intended purpose under the authority given by the Toquerville City Council.

DON C. TAIT  
NOTARY PUBLIC  
My Commission Expires: 2/13/10  
STATE OF UTAH

DON C. TAIT  
NOTARY PUBLIC  
Address: 350 W. OLD CHURCH - TOQUERVILLE Utah 84737  
My Commission Expires: 2/13/10

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

Robert Douglas Westbrook, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that he is the Manager of D & C Holdings, LLC, and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company.

Donna Radunich  
NOTARY PUBLIC  
Address: 912 West 1600 South, Ste 200, St George UT 84770  
My Commission Expires: 11/20/2010

Notary Public  
DONNA RADUNICH  
134 N 200 E Suite 302  
St George, Utah 84770  
My Commission Expires  
November 20, 2010  
STATE OF UTAH

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

Robert W. Prince, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that he is the Manager of Prince Viejo Valley, LLC, and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company.

Donna Radunich  
NOTARY PUBLIC  
Address: 912 West 1600 South, Ste 200, St George UT 84770  
My Commission Expires: 11/20/2010

Notary Public  
DONNA RADUNICH  
134 N 200 E Suite 302  
St George, Utah 84770  
My Commission Expires  
November 20, 2010  
STATE OF UTAH

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

Neil Glauser, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that he is the Manager of N & S Glauser Family Investments, LLC, and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company.

*Donna Radunich*  
\_\_\_\_\_  
NOTARY PUBLIC  
Address: 912 West 1600 South, STE 200, St George  
My Commission Expires: 11/20/2010 MT 84770



Notary Public  
DONNA RADUNICH  
134 N 200 E Suite 302  
St George, Utah 84770  
My Commission Expires  
November 20, 2010  
STATE OF UTAH

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

Kenneth Graff, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that he is the Manager of Wild Sage, LLC, and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company..

*Donna Radunich*  
\_\_\_\_\_  
NOTARY PUBLIC  
Address: 912 West 1600 South, STE 200, St George  
My Commission Expires: 11/20/2010 MT 84770



Notary Public  
DONNA RADUNICH  
134 N 200 E Suite 302  
St George, Utah 84770  
My Commission Expires  
November 20, 2010  
STATE OF UTAH

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

James N. Ence, being first duly sworn, deposes and says that he has read the foregoing Development Agreement for Ash Creek Crossing and knows the contents thereof; and that he is the Manager of South Field Properties, LLC, and, having proper authority given him by said company, that he signed the said document for its intended purpose and on behalf of said company.

*Donna Radunich*  
\_\_\_\_\_  
NOTARY PUBLIC  
Address: 912 West 1600 South, STE 200, St George  
My Commission Expires: 11/20/2010 MT 84770



Notary Public  
DONNA RADUNICH  
134 N 200 E Suite 302  
St George, Utah 84770  
My Commission Expires  
November 20, 2010  
STATE OF UTAH

**EXHIBIT A**

Legal Description of Annexed Property

# ALPHA ENGINEERING COMPANY

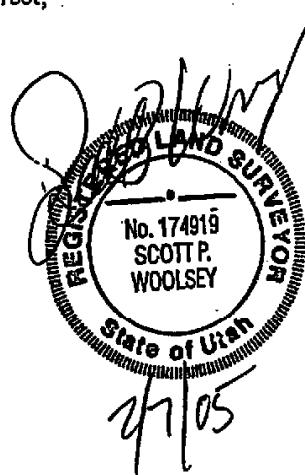
148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553

**LEGAL DESCRIPTION FOR  
WINDING RIVER ASSOCIATES  
ASH HILLS 390 ACRE PARCEL  
(February 7, 2005)**

Beginning at the Southeast Corner of Section 3, Township 41 South, Range 13 West, Salt Lake Base and Meridian; Thence North 88°57'33" West, along the Section line a distance of 990.00 feet; Thence North 88°57'33" West, along the Section line a distance of 1,664.31 feet to the South ¼ corner of Section 3; Thence North 00°31'01" West, along the Center Section line a distance of 1,181.26 feet, Thence North 89°09'02" West, a distance of 2,667.86 feet to a point on the West line of said Section 3, Thence North 01°14'12" West, along said West line, a distance of 154.91 feet to the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 3, Thence North 01°14'41" West, along the Section line, a distance of 1,328.21 feet, to the West ¼ Corner of said Section 3; Thence North 00°56'55" West, along the Section line a distance of 1,329.87 feet, to the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 3; Thence South 89°19'19" East, along the 1/16<sup>th</sup> Section line, a distance of 2,696.45 feet, to the Northwest Corner of the Southwest 1/4 of the Northeast 1/4 of said Section 3; Thence South 89°26'54" East, along the 1/16<sup>th</sup> Section line a distance of 1,342.55 feet, to the Northeast Corner of the Southwest 1/4 of the Northeast 1/4 of said Section 3; Thence South 00°17'07" East, along the 1/16<sup>th</sup> Section line, a distance of 1,331.92 feet, to the Southeast Corner of the Southwest 1/4 of the Northeast 1/4 of said Section 3; Thence South 00°16'39" East, along the 1/16<sup>th</sup> Section line, a distance of 51.83 feet; Thence South 51°00'50" East, a distance of 1,852.69 feet; Thence South 31°34'49" East, a distance of 122.00 feet; Thence South 62°32'31" East, a distance of 137.68 feet; Thence South 89°57'58" East, a distance of 319.00 feet; Thence North 02°57'54" West, a distance of 471.00 feet; Thence North 15°26'56" West, a distance of 338.00 feet; Thence North 01°02'04" East, a distance of 84.00 feet; Thence North 80°02'11" East, a distance of 263.90 feet; Thence South 19°02'04" West, a distance of 207.00 feet; Thence South 12°57'56" East, a distance of 749.37 feet; Thence North 89°57'58" West, a distance of 43.38 feet; Thence South 35°41'59" East, a distance of 803.12 feet; Thence South 69°33'01" West, a distance of 637.00 feet; Thence South 48°53'01" West, a distance of 210.00 feet; Thence South 70°34'01" West, a distance of 243.00 feet; Thence South 26°06'59" East, a distance of 180.00 feet, to a point on the South line of Section 2, Township 42 South, Range 13 West, Salt Lake Base and Meridian; Thence South 80°13'01" West, along the Section line a distance of 378.00 feet, to the Point of Beginning:

TAX Serial No. T-100-A

Containing: 390 acres, more or less.





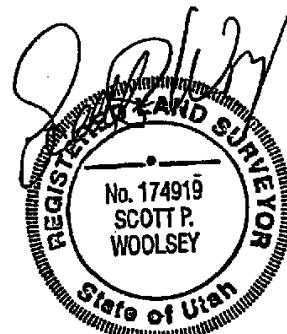
# ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553

LEGAL DESCRIPTION FOR  
WINDING RIVER ASSOCIATES  
ASH HILLS 450 ACRE PARCEL  
(February 7, 2005)  
(First Option Parcel)

Beginning at the Northwest Corner of Section 10, Township 41 South, Range 13 West, Salt Lake Base and Meridian;  
 Thence North 01°14'28" West, along the Section line, a distance of 1,172.92 feet;  
 Thence South 89°09'02" East, a distance of 2,667.86 feet to the Center Section line;  
 Thence South 00°31'01" East, along said Center Section line, a distance of 1,181.26 feet to the South  $\frac{1}{4}$  corner of Section 3;  
 Thence South 88°57'33" East, along the north line of section 10, a distance of 1,664.31 feet;  
 Thence South 00°11'20" East, a distance of 2,515.09 feet;  
 Thence North 88°50'38" West, a distance of 1,657.75 feet, to a point on the Center Section line of said Section 10;  
 Thence South 00°20'24" East, along the Center Section line, a distance of 1,483.17 feet, to the Southeast Corner of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , of said Section 10;  
 Thence North 88°39'44" West, along the 1/16<sup>th</sup> Section line, a distance of 1,318.97 feet, to the Southwest Corner of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 10;  
 Thence South 00°26'19" East, along the 1/16<sup>th</sup> Section line, a distance of 1,326.08 feet, to the Southeast corner of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , of said Section 10;  
 Thence North 88°22'47" West, along the Section line, a distance of 1,324.74 feet, to the Southwest Corner of said Section 10;  
 Thence North 00°20'43" West, along the Section line, a distance of 2,168.27 feet, to the East  $\frac{1}{4}$  Corner of Section 9, Township 41 South, Range 13 West, SLB&M;  
 Thence North 00°28'17" West, along the Section line, a distance of 470.71 feet, to the West  $\frac{1}{4}$  Corner of said Section 10;  
 Thence North 00°34'45" West, along the Section line, a distance of 2,662.11 feet, to the Point of Beginning: TAX Serial No. T 104-A-1

Containing: 450.00 acres, more or less.

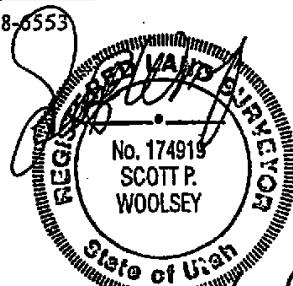


2/1/05



# ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553



**LEGAL DESCRIPTION FOR  
WINDING RIVER ASSOCIATES  
ASH HILLS 718 ACRE PARCEL  
(January 26, 2005)  
(Second Option Parcel)**

Beginning at the East  $\frac{1}{4}$  Corner of Section 10, Township 41 South, Range 13 West, Salt Lake Base and Meridian;

Thence North 00°11'15" West, along the Section line, a distance of 450.28 feet;

Thence North 89°52'43" East, a distance of 1,152.37 feet;

Thence South 15°25'20" East, a distance of 8.93 feet;

Thence South 26°10'01" East, a distance of 125.48 feet;

Thence South 45°51'49" East, a distance of 152.20 feet;

Thence South 00°00'48" East, a distance of 35.54 feet;

Thence North 66°44'07" East, a distance of 4.03 feet;

Thence South 00°07'15" East, along the 1/16<sup>th</sup> Section line, a distance of 2,845.22 feet, to the Southeast corner of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian;

Thence South 00°10'11" East, along the 1/16<sup>th</sup> Section line, a distance of 2,540.05 feet, to the Southeast Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 14, Township 41 South, Range 13 West, Salt Lake Base and Meridian;

Thence South 00°06'26" East, along the 1/16<sup>th</sup> Section line, a distance of 1,315.36 feet, to the Southeast Corner of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 14;

Thence North 89°19'45" West, along the 1/16<sup>th</sup> Section line, a distance of 1,318.27 feet, to the Southwest corner of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 14;

Thence South 89°53'14" West, along the 1/16<sup>th</sup> Section line, a distance of 1,937.34 feet;

Thence South 00°47'08" East, a distance of 1,321.53 feet, to a point on the North line of Section 22, Township 41 south, Range 13 West, Salt Lake Base and Meridian;

Thence North 89°49'43" East, along the Section line, a distance of 641.07 feet, to the Northeast Corner of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 22;

Thence South 00°02'27" East, along the 1/16<sup>th</sup> Section line, a distance of 821.57 feet;

Thence South 89°59'06" West, a distance of 2,613.78 feet;

Thence North 00°03'36" West, a distance of 820.50 feet, to a point on the North line of said Section 22;

Thence North 00°48'00" West, along the 1/16<sup>th</sup> Section line, a distance of 1,320.49 feet, to the Northwest Corner of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , of said Section 15;

Thence South 89°58'57" East, along the 1/16<sup>th</sup> Section line, a distance of 1,327.52 feet, to the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , of said Section 15;

Thence North 00°59'21" West, along the Center Section line a distance of 3,897.11 feet, to the North  $\frac{1}{4}$  Corner of said Section 15;

Thence North 00°20'24" West, along the Center Section line, a distance of 2,811.01 feet;

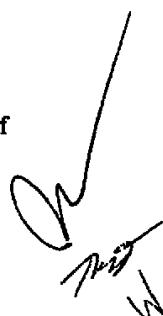
Thence South 88°50'38" East, a distance of 1,657.75 feet;

Thence South 00°11'20" East, a distance of 155.33 feet, to a point on the Center Section line of said Section 10;

Thence South 88°50'36" East, along the Center Section line, a distance of 990.00 feet, to the Point of Beginning:

TAX Serial No. T-182-A

Containing: 718.00 acres, more or less.


  
Scott P. Woolsey

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:



**PRATT PRECISION ENGINEERING P.C.**

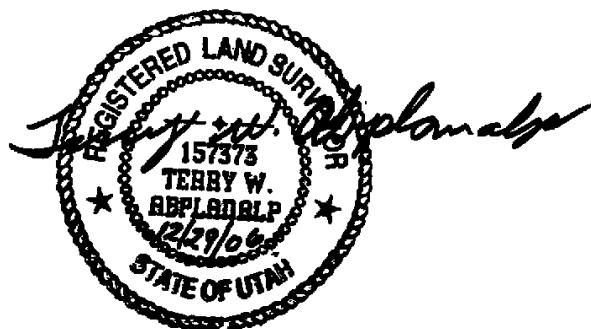
51 N. 1000 W. STE. #2 HURRICANE, UT 84737 TEL: (435)635-4789 FAX: (435)635-5900

LEGAL DESCRIPTION

Explanation: A legal description of a strip of land 15 feet in width, to be deeded to Clinton and Lola Perkins. The 15 foot strip would adjoin the Perkins property along the southerly and westerly boundary of said property, and is more particularly described as follows:

Beginning at the Southeast corner of the Clinton and Lola Perkins property, said point being North 00° 07' 24" West 1318.79 feet along the section line and North 89° 52' 36" East 606.00 feet along a line perpendicular to said section line from the Southwest corner of Section 2, Township 41 South, Range 13 West of the Salt Lake Base and Meridian and running thence South 00° 00' 31" East 15.00 feet; thence South 89° 59' 29" West 322.66 feet; thence North 62° 35' 06" West 145.49 feet; thence North 31° 37' 24" West 123.59 feet; thence North 51° 04' 24" West 719.83 feet; thence North 38° 55' 36" East 15.00 feet; thence South 51° 04' 24" East 722.40 feet; thence South 31° 37' 24" East 122.00 feet; thence South 62° 35' 06" East 137.68 feet; thence North 89° 59' 29" East 319.00 feet to the point of beginning. Contains 0.450 acres.

TAX Serial No. T-100-A



LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:



**BUSH & GUDGELL, INC.**  
Engineers • Planners • Surveyors  
205 East Tabernacle  
St. George, Utah 84770  
(435) 673-2337 (ph.)  
(435) 673-3161 (fax)

**Legal Description located in:**  
**Section 11, Township 41 South, Range 13 West SLB&M**  
**Prepared for Mike Ruesch**

The intent of this Legal description is to solve an encroachment issue with the home on that parcel described in instrument #863147. Based on Documents collected from Washington County Recorders Office State of Utah, Namely instrument #'s, 863147, 797833, 396201, 232474, 20070015999, and field data collection this parcel along with the original parcel (863147) the home encroaching to the South will now have a 10.00 foot Setback from the farthest Southeast corner of the home to this new parcel line.

Beginning at a point N 0°00'41" E along the West Section Line of Section 11, Township 41 South, Range 13 West SLB&M, 411.34 feet from the West Quarter of said Section, and running thence N 0°00'41" E along said Section line 38.94 feet to the Southwest Corner of a Parcel more particularly described in Instrument #863147 on file and on Record at Washington County Recorders Office, State of Utah; thence S 89°55'19" E along said parcel 240.48 feet to the West Right-of-way of Mesa View Blvd said point also being the Southeast Corner of said parcel; Thence S 80°52'40" W leaving said Right-of-way 243.56 feet to the point of beginning. Contains 0.11 acres, 4,682 Sq Ft more or less.

TAX Serial No. T-144-B-1-A

RRH 5/14/07

(Page 5 of 5)

**EXHIBIT B**

Conceptual Site Plan

**EXHIBIT C**

Recommendation of Toquerville City Planning Commission  
June 20, 2007

*File Copy*

CC Mtg Minutes – 11-08-07 (Arts Council, Cont.)

We greatly appreciate Hurricane's \$2,000 donation and all other donations from the Valley. We are offering classes in LaVerkin and hope to expand to all local Cities, including the visual and performing arts. A community choir is being formed locally and will meet next week at the Intermediate School; Feb. 7<sup>th</sup>, our local Mayors will perform at a gala arts event at this school.

We feel one of the impacts for Toquerville is to bring arts to children and plans for beautifying City areas. We're asking for donations to help with displays and operations; possible use of buildings for classes, performances and bookkeeping help, or other volunteers. We hope to encourage participation and awareness for diverse cultures, arts and theatre. We are aware of tourism staying in communities where arts are promoted; there will be a database for artists, wares for purchasing, and we're looking for grants. Russ Wrinkle (Arts Rep. for Toq.) – I agree with tourism vacation draw and support this Valley Council.

**Item B. Consent Agenda for review and approval; (a) Minutes for Oct. 11<sup>th</sup> and City Expenses for October, '07. MOTION to approve by Daren Cottam; seconded by Randy Scott; all in favor? Yes; Paul Heideman – explanation for two expenses: (1) for SID Payment? Answer: Anderson Junction SID administration; and (2) encroachment fee payment? Answer" Is reimbursement of deposits. Lynn O. – Approval of Consent Agenda is approved unanimously.**

We also wish to congratulate those who participated in our election and appreciate all who voted; the results will not be complete until all absentees and provisional votes are counted.

**Item C. Unfinished Business; Review and possible approval for Ashcreek Crossing (ACC) Development Agreement, Draft #7, for 1,550+ acres in south-westerly portion of Toq. City. ATT. Snow – I took notes at last meeting and they are incorporated in this Draft. Annette K. – My concern is still with parks, trails and "open space" not being tied in until the 3<sup>rd</sup> Phase. Lynn O. – It doesn't take away from them dealing with this in the 1<sup>st</sup> and 2<sup>nd</sup> Phases. Annette K. – The Agreement doesn't specify and we could add language that it should be on Conceptual level of each Phase. City will work with Developer for trails, open space, etc. to set limits and boundaries in writing; I think after the 3<sup>rd</sup> Phase, is too long a wait; we could get "locked out" as City deals with new buyers coming in; how do we hold individuals to this at 3<sup>rd</sup> Phase? ATT. Snow – We have a Park & Recreation Master Plan (MP) - this property is being prepared; City can revise this to show more detail for guidance to Development Agreement; we do have "open space" MP with "trigger points" agreed at 3<sup>rd</sup> Plat or Commercial Site Plan with more detailed concept for parks, trails and open space.**

Lynn O. – As the Developer comes to Planning Commission and Staff, we will deal with their plans and the City requirements or secondary agreements. ATT. Snow – This Agreement states in probably 15 places that the Developer will comply with all City Ordinances and design guidelines. Annette K. – What if we change those Plans? ATT. Snow – They are still bound by all City Ordinances.

**Lorin Lowe – (Public) – We have sent a family letter to the City, stating items that effect us, and also our concerns over this ACC Development; our property is north of their area on the west side of the City. I also want to assure the Council that this is not meant to slow the process or antagonize. There was a question at last CC Mtg from a Council Member about whether anyone had spoken to the Lowe's about access across their property to the north; the answer is no, there has been no direct conversation. There was a lot of discussion in the Agreement about access across our property to get into theirs; there's been nothing said or assumed. We have spoken to the City several times about the overall Bypass Road; it also says they should begin construction in one year and we weren't thinking in those time periods. We need to be sure people understand that access is determined before agreements are signed. Another point in the Agreement is the specific section about "eminent domain", saying if the need arises, Developer may ask City to exercise this power – almost appears to intimidate property owners. The Bypass Rd requirements may be a little unclear and implies to build "on their own property"; we don't ask or assume to build on another property and the Agreement doesn't state that.**

Lynn Olds – If Developer is required to build the Bypass on their property, they've indicated that they'll take care of it. I would make the point that a builder doesn't decide to do two miles of road, then sit on it for 20 years just to keep from building through to either end, just wouldn't happen.

**Item C. Unfinished Business, ACC Dev. Agreement (Cont.)**

Lorin L. – If the City meant to have this understood in the Agreement as a requirement to build the Bypass on other than their property, it's not in the Agreement. Lynn O. – In one part of the Agreement, it states they will start the road in one year. ATT. Snow – It also states to build in general location depicted on the Conceptual MP. Lorin L. – It implied to be on both sides, full length and across our property, yet has not spoken to us about it. You're signing this without this conversation. ATT. Snow – It also states construction could start on other locations that may not be north or south, depending on where they go. Lorin L. – I believe there's an assumption the road will come across the northern end; we can work with them, as neighbors, but there's been no conversation and they don't have access. ATT. Snow – They have other existing roads that access out to the property, other than Bypass Rd. Lorin L. – Last Point – as Annette stated, if property is sold, this is not conceptual, Agreement has actual guarantees, responsibilities and contingencies; you should consider worst case scenarios and hold new buyers to it, taking care in structuring this Agreement. This is meant as friendly input, in the best possible way, and we want a successful outcome for Toquerville.

Anita Lowe (PC) – I'm not sure which road gives access to this property; in PC and CC, there's been concern of construction access; I only see Westfield Rd, across bridge and up the draw. City said they did not want this traffic through the (lower) streets and that's why discussion went to the Bypass Rd. ATT. Snow – There is public access and Developer does realize there are roads denied for construction use. Lynn O. – We appreciate the intent of the Lowe letter; even with these issues and roads in, the Sewer District and Water Dept could hold them with infrastructure requirements. Developers are aware and will deal with all issues; the area above the Park was on hold (previously) because of this issue.

Darrin LeFevre – I would like ATT. Snow to give us a specific definition of the Conflict of Interest for CC. ATT. Snow – The technical definition is "direct pecuniary gain" to be derived from the outcome of a decision the City has made. If you or your firm is assisting with work, and then further approvals allow for continual work it could be perceived as pecuniary gain. A "conflict of interest" is usually a personal determination of that feeling, and if it exists, you should refrain from participating; an abstention of voting is not a yes or no, it is not considered at all.

 Paul Heideman - MOTION to approve the ACC Development Agreement, Draft #7; Randy Scott seconded; all in Favor? Answered Yes, unanimously; NOTE: Darrin LeFevre Abstained

Lynn Olds – I would like to excuse the Mayor who's been ill; he'll be back in a couple weeks and I've been in contact with him on a regular basis. He's reviewed this Draft and has also been in contact with City Attorney.

~~#2 – Review and possible approval of LMC; Darrin LeFevre - MOTION to TABLE the Land Management Code until Dec. 13<sup>th</sup> Meeting; Paul Heideman seconded; all in favor? Yes, unanimously.~~

~~D. New Business; Item #1. Review and consideration of Sewer District Expansion; Paul Heideman – City Representative to the Board. The City has already passed a Resolution #RES.2007.08, opposing this expansion; the County has not offered money or benefits to the Town and there are no reasons for us to do this. They asked us to take this proposal back to the Council to reconsider; we chose 100% to oppose before Hurricane has already done so again. I see it costing us money and benefiting unincorporated area of the County; I consider this a County Commission problem.~~

~~ATT. Snow – There are both issues on the Agenda; to recall the previous Resolution (RES.2007.08), in opposition, then possibly approve the reorganization of the Board and expansion of the District. You've stated that CC agrees to keep "status quo". Lynn O. – I understand Hurricane and possibly LaVerkin will oppose this again and it must have all three Cities in agreement to pass. MOTION by Paul Heideman to allow the previous MOTION for a denial to accept this expansion (RES.2007.08) to stand; that it will remain as written in opposition of this expansion; seconded by Daren Cottam; all in favor? Yes, unanimously.~~

Lynn Olds – Any further business from Work Mtg? ATT. Snow – I would like to convene an Executive Session. Lynn O. – We will finish our Council Department Reports from the Regular Mtg.

CC Mtg Minutes – July 12<sup>th</sup>, '07

**Regular Meeting, New Business (Cont.)**

**Item #2. Review and possible approval of Ashcreek Crossing Zone Request.** ATT. Snow – I will recommend that PC Condition #5, Economic Study should be clarified as to scope (I don't know how to do that), or to be more specific, not open-ended. Lastly, **make clear determination for baseline or maximum level of Equivalent Residential Units (ERUs), and designate (now) the commercial acres** – is this 80 acres? Doug Westbrook (Ashcreek Crossing) – There is no specific number. Lynn O. – We can designate commercial and subtract two (2) units per acre of total. Doug W. – 3,116 units minus (2) units per commercial acre. ATT. Snow – And set aside minimum commercial areas. We need basic guideposts like that to do Development Agreement; Developer needs to determine where best to designate (commercial) and the minimum acreage.

Randy Scott – Should there be a **scope of study cost on the #5 Condition of Economics?** ATT. Snow – There was quite a bit of discussion at PC about cost of Study and cap on costs. Doug Westbrook – I propose confidence in the City that whatever they need from experts, we'll cooperate; but to say we want a master study which takes a year or two (that no Cities do); we'd like parameters to keep it down as to "all inclusive". We bring each Phase in with your current and large requirements. Darrin L. – I don't believe we can impose this on one Developer; we have a lot more land and potential developers than this 1600 acres in Toquerville City limits. We have plans for roads, water plans; then we go into the Capital Facilities Plan (CFP) with City Engineers; these are economic tools for City to plan for the future. ATT. – The CFP doesn't necessarily talk about municipalities, administration, etc.; it's tough to include all. Daren Cottam – When I worked on the LaVerkin Council there was 1,450 people and it went to 3,000; growth took care of administration and there was not a lot of commercial, but they get along. If City plans well, and has CFP and Impacts to help as community grows, commercial will grow. St George is on down-turn with residential, but commercial is going strong. I believe with more population, opportunity for commercial will grow also.

Paul Heideman – Will an Economic Plan be included in Impact Fees? ATT. Snow – One element of CFP talks about sources of revenue, operational costs and maintenance costs; this is one slice of CFP. **Darrin asked about this Study for whole City; in PC motion, this failed because this was only one part of the City;** thought was if it did address all, the City would pay for a portion.

John Shaw - Intent was straight forward Darrin, this was not like a 3-house subdivision, this is major and significant change; **City should have some sense, somehow of what expenses they're saying "yes" to. Given an \$18 mil. Budget in Hurricane, with our current population and at build-out of this Development.** It's not meant to penalize, it's meant to plan; not to say they're bad Developers, they're good Developers. This is to say, if we are planning, then how can we go into something without any concern of what the expenses are going to be. The idea that opportunity for commercial will come with population is - now or later? ATT. Snow – John, **do you (as a PC) have any idea of firms who do these types of studies?** John S. – This was pending CC approval of Proposal. ATT. Snow – My struggle is, what is the scope, cost, and who does it? Joe Phillips (Sunrise) – There is a company in Colorado – Winston Associates, that I think does that. As an Engineering firm, our focus is primarily on utilities and financial viability; the bigger picture is the (whole) City; we could e-mail and ask them.

Darrin L. – Winston and Associates was our City Planner once; had dissatisfaction and bad experience. I agree there are **more planning type engineering firms, but costs are still not put to one developer;** should be city wide. Paul H. – Perhaps we can use the Impact Fees. Darrin L. – Should take in all acreage in City; this is only a small portion. Paul H. – I agree. Lynn O. – I take, as initiative for City, this as something we need done but not to one Developer. Carol P. – Should be a Budget item; Lynn O. – **We can look for help with League of Cities and other avenues to find answers; send to PC.** Daren C. – Can we ask Joe Phillips how much commercial area we should designate? Joe P. – A little out of our expertise, the viability of the City as a whole. Darrin L. – This is driven by our market needs; right now in Washington County, due to lots of residential, we have one half of engineering work as commercial development; has been 100% residential and commercial did not come until after residential. I see need for City Planner, as we hired Winston, but nearly "broke us".

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**Regular Mtg ( Ashcreek Crossing Zone Change, Cont.)** - Lynn O. – I believe there are avenues we can find to lead us in right direction. I know developers coming in can get into that also.

**Paul Heideman** – MOTION to accept Ashcreek Zone Change for Ashcreek Crossing Development with recommendation that PC Conditions be met, except #5, Economic Study; plus addition that minimum of 60 acres commercial areas be so designated. ATT. Snow – and maximum residential ERUs be 3,116, minus (2) units for every commercial acre. **Paul Heideman**, SO MOTIONED; Is there a 2<sup>nd</sup>? Daren Cottam – I agree we need a Development Agreement with 60 acres of commercial - is that enough? Doug Westbrook – We believe you'll need more than that and have no problem agreeing with 60 acres; with population being the driver, and commercial means nothing until you have that population to warrant increase for demand. Lynn O. – When you take 60 acres stretched out on the roads, it could take a lot of ground. I think it should be put in the Agreement for not just a 60 acre minimum, but a possible 10% across. Paul H. – How can you be more specific with the Zone Change? ATT. Snow – When planning with conceptual level, you want to not use up good commercial areas in residential area, yet set aside some and give the flexibility of market driven factors. It could be 120 acres in several different pockets so we can plan for a baseline.

Lynn O. – Can we amend or restate this Motion? Daren Cottam – I will second Paul Heideman MOTION as stated; all approve? Poll taken: Paul Heideman – Yes, Randy Scott – Yes, Lynn Olds – Yes, Daren Cottam – Yes, Darrin LeFevre – Abstained; Motion carried in the affirmative. 

**Item #3 – Planning Commission (Land Management Code - LMC) Proposal for Sensitive Lands**

~~Committee. John Shaw~~ – The current LMC does not have a Sensitive Lands Ordinance and PC feels this should be addressed. The mechanism for this preparation is driven by the fact of those wanting to develop in Toquerville. **There is not, in written format, what TOQ deems to be sensitive lands; nor does it have any direction on how those (decided to be) sensitive lands should be addressed relative to development.** The PC passed (two months ago) a unanimous resolution that should have been presented to CC last meeting and was not because it didn't get on the Agenda. It should be in your packet - a Proposal on how we go about establishing a Sensitive Lands Ordinance. Carol P. – Unless PC passed paper to me, I would not have it; this may have been in your boxes. John S. – We had a long discussion from last PC meeting on the insistence it be included in your packet; since it wasn't the previous time and should have been. Carol P. - Pam said she had asked for PC (Annette) direction on Agenda this past month (when I asked her) and was waiting for Attorney input. Lynn O. – Carol – will you put this on the Agenda for next month and note we get in touch with PC for packet information? Carol P. – Yes. John S. – Part of the confusion may have been **the Attorney had a substitute; he was asked by Mike V. to draft this in an Ordinance format.**

~~John S. – This is a Proposal for a “down the line” Ordinance.~~ Lynn O. – I think the PC can give us the criteria and we can review. John S. – **The essence of the Proposal is we don't have that “Sensitive Lands” today, with significant development coming to Toquerville; Hunter Cove (T. Hoskins) not mentioning they want (not only) to develop at the bottom, but up the side and across the top of the hill with the Morgan Bros.** That's a major departure for the kind of development Toquerville has allowed in the past. If CC approves, there may be sensitive areas and if we don't get started in the process, we may be in the same situation two years from now. Lynn Olds – Note in the Minutes Carol that we need something from PC for next Meeting.

~~ATT. Snow – John, you mentioned procedure, can you be more specific on adopting this?~~ Is it as simple as PC preparing Draft, a public hearing, input and comments from CC, etc.? John S. - It was all written out as you've asked; that's why it's frustrating; should have been copied in your packet. Daren Cottam – I'm also frustrated if PC passes a resolution and we don't get it. **Carol P. – When John called, I was able to add this as a review item the day before publishing – there was no backup noted or request for action given.**

~~John S. – The Proposal was for two CC Members, and two PC Members (or appointees) and a representative from the City at large – five people – identifying what is “sensitive land” and how do we want to identify (animal, plant, geological, etc.). Without a defining Ordinance, we could lose some of those things forever.~~ Resources of local education facilities would be used to gather data at least expense; do an inventory of what is here; public meetings and people's wishes; provision for costs of expertise to define and CC Agreement to fund necessary costs for process to complete – a full and open intent.

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**Regular Meeting (Engrg Funding, Cont.)**

**ATT. Snow – Does this service come at a cost or as part of package?** Doug N. – This comes with projects funded with lump sum. Joe P. – Doug is under the corporate umbrella and his fee never comes across an invoice, is built into his salary. ATT. Snow – Then charged (as attorney settlements) if we get the funding? Doug N. – Yes, we do all the legwork and applications, than gain a percentage. Joe P. – Usually in project costs there are administration line items cost, time, etc. - but not Doug's. When it gets to Capital Improvement stuff, Doug goes to all the meetings and knows rates; we advise you of the best package for funding.

**Lynn O. – We'll hear from the Departments if you need further discussion:** Streets? – Daren Cottam: We're OK. Parks & Cemetery? – Randy Scott: I'm OK; Development & Water? – Lynn Olds: I'd like to say we had good information before City Council tonight and I would like to give the PC an assignment to find the resources (requested) to evaluate and investigate the economic questions; can you do this and bring information back? Annette K. – Yes, and no further discussion for Planning Commission; Culture & Recreation: Paul H. – We're OK – we had approximately 300 attendees at the July 4<sup>th</sup> Celebration. Lynn O. – Mayor will bring his report next month. ATT. Snow – Nothing further from me tonight.

**9:45 PM**

**Daren Cottam – MOTION to adjourn City Council Meeting; Paul Heideman – 2<sup>nd</sup>; all in favor? Yes.**

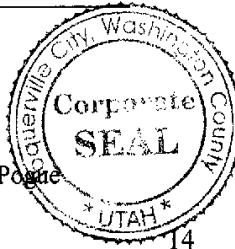
**ACTIONS & ASSIGNMENTS**

1. Blaire Gubler – (1) Talk to Steve Gilbert about road fix; get back to Daren Cottam; (2) Check sewer hook-up at Garner's on Ashcreek, south of Old Church about 4 houses, east side (Neils Fuegal).
2. Doug Gubler – Get info on pumps back to CC, meet with L. Olds.
3. Lynn Olds – New Pump Project with Doug G.
4. Daren Cottam – (1) "Punch List" for Old Church Rd; (2) Paint on curbs from corner.
5. Darrin LeFevre – Northern Engrg "mitigation" with Pope and Harris properties.
6. Joe Phillips (Sunrise) – (1) Give Sara Colosimo phones for Darin Cottam and Lynn Olds; (2) Check schedule for Openhouse on Roads MP.
7. Mike Vercimak – (1) Transportation Plan review with LaVerkin & Hurricane; (2) S.I.N.A – Aug. 6<sup>th</sup> Mtg; (3) Water Valve Project w/TRE and Cholla Creek.
8. Attorney Snow – (1) Follow-up with Pooling Addendum; (2) PC Sensitive Lands; (3) LMC Review.
9. Carol Pogue – (1) Ask Pam if Billing all charges? (2) Westfield Road "go-ahead"? (3) Cost of Dwgs from Magellan; (4) GL # for Park Charges; (5) Eng. Invoices to be itemized for CC; (6) Agenda for Aug. 9 CC – Sensitive Lands Info.

The Minutes of the 07-12-07 Toquerville City Council Work and Regular Meetings will be presented for review and approval in the August 9th, 2007 City council Meeting:

Approved: Lynn Olds  
Mayor Pro-Tem, Lynn Olds

Dated: 8-9-07



Attested: Carol Pogue  
Carol Pogue, Recorder

Recorded and Typed by Carol Pogue

Chairman Kleinman—No Mark has taken Paul Bryners place on the board.

Chairman Kleinman— It seems like the problem folks, is that the empirical study should not be a part of the development agreement with the requirement that the developer pay for it, so, to make this thing pass we want an empirical study but we don't want the developer to have to pay for all of it.

John Shaw— Madame Chairman, I modify my motion to suggest that the city and the developer share equally in the cost of the empirical economic impact study.

Greg Walker— Would the costs get worked out between the City and ....inaudible....the other conditions are that we recommend that the CC approve an empirical study of economic factors.

Chairman Kleinman—yes, but we're talking about the payment for these things.

Greg Walker— We haven't talked about the payment of .....

John Shaw— .....simple fact that we..... split the cost..... In my opinion we have to have some economic baseline before we move forward. If the city picks up part of it and the developer picks up part of it, I don't really care. I just want to have.....

Greg Walker— and the CC could override this whole thing.

John Shaw—And they can—it's not my concern what the CC does—it's our recommendation that concerns me.

Chairman Kleinman—So now your proposal is to recommend the study be done and the cost be shared equally by the city and developer, correct?

John Shaw—Yes.

*Acc. Devel. Agree*

Chairman Kleinman— I have a motion with that in it. Do I have a second?

Greg Walker— I will second the motion.

Chairman Kleinman— Do I hear any other discussion?

No further discussion was heard.

All those in favor of recommending this zone change application to the CC for approval with the conditions as follows:

1. That a general development agreement for the entire parcel be approved, adopted and recorded.
2. That each individual phase receive preliminary site plan, preliminary plat, final site plan, and final plat approval from the City.
3. That each individual phase have an approved, adopted and recorded development agreement.
4. That any other conditions set forth by the PC and or CC be met.
5. That an empirical economic impact be conducted to determine the future economic impact of this development on the City, that said impact study be approved by the CC and that the costs of said impact study be shared equally between the developer and the City.

All those in favor: John Shaw—Yea Greg Walker—Yea Jared Elison—Yea Dave Cannon—Nay. Motion carried.

Chairman Kleinman. I need a motion to go into public hearing on the matter of the Application for Home Occupation Conditional Use permit for Dave Cannon.

Motion was made by Greg Walker. Motion was seconded by Jared Elison. Motion carried. Vote was unanimous.

Public Hearing for Home Occupation Conditional Use Permit for Dave Cannon.

Dave Cannon—I've retired from Washington City and have started my personal LLC and I am in the business of doing home inspections as a third party. My home is my office. I do no work on site; I actually physically go to the site to do the work.

Chairman Kleinman—Are there any comments from the public or commission regarding this application?

No Comments were heard.

The motion was made by Jared Elison to approve the application for Home Occupation Conditional Use Permit for Dave Cannon. Motion was seconded by Greg Walker. Motion Carried. Vote was unanimous.

Chairman Kleinman recognized those in the audience. Mr. & Mrs. Bulicz introduced themselves to the Commission and ask that someone show them on the plat map the situs of the proposed development so they could determine just how close it will be to their residence. Mike Vercimak indicated that he would be glad to do so.

Chairman Kleinman asked for a motion to adjourn.

Motion was made by Dave Cannon. Motion was seconded by Jared Elison. Motion Carried. Vote was unanimous.

Meeting adjourned at approx. 8:30 p.m.

The preceding Minutes of the Toquerville Planning Commission Meeting were duly approved by the Toquerville Planning Commission at its regular meeting, this 15 day of August 2007.

Annette Kleinman  
Annette Kleinman, Chairman

ATTEST:

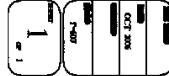
Pamela Jarman  
Pamela Jarman, Clerk

Minutes taken and recorded by Pamela Jarman



**EXHIBIT D**

Zone Change Approvals given by Toquerville City Council  
July 11, 2007

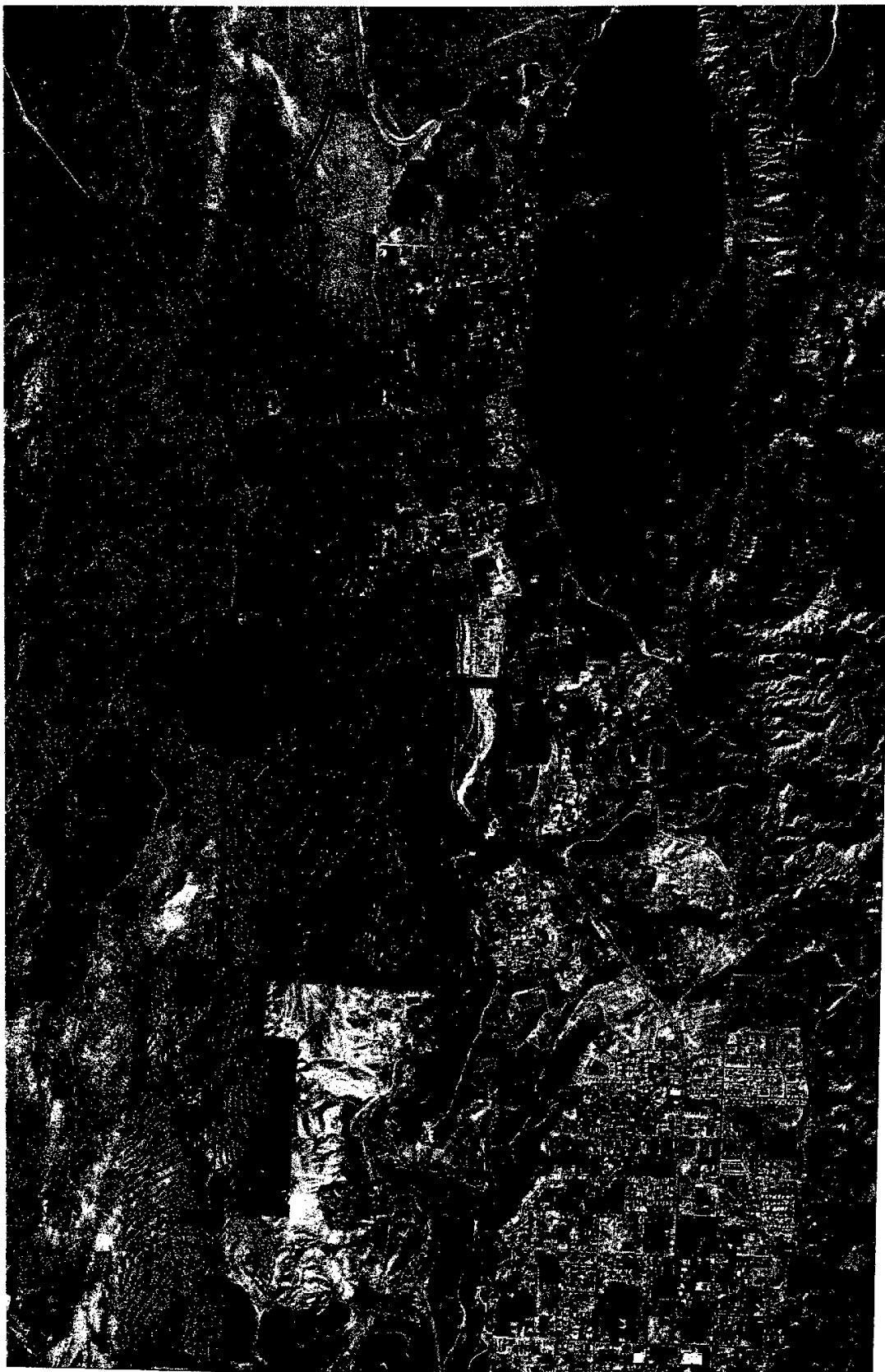


MASTER PLAN  
FOR  
DOUG WESTBROOK  
TOQUerville, UTAH



PRATT PRECISION ENGINEERING, P.C.  
• CIVIL ENGINEERING DESIGN & LAND SURVEYING •  
51 NORTH 1000 WEST, SUITE 2  
HURRICANE, UTAH 84737  
TEL: 435-635-1465  
FAX: 435-635-5900

REVISIONS		
NO.	DESCRIPTION	DATE



EX-92	PREPARED FOR MR. DOUG WESTBROOK	SR-17 BYPASS EXHIBIT	N	REVISIONS	DATE BY APP.
EX-92	CONTACT: (435) 425-1535	PROJECT LOCATED IN TOOELEVILLE, UTAH			
EX-92	105 WEST 100 NORTH, SUITE B	WEST AND SOUTH OF TOOELEVILLE CITY PARK			
EX-92	HURRICANE, UTAH 84737	SECTION 2,3,10,11,14,15,22 T 13 W R 41 S 8,000'			
EX-92	NORTHERN ENGINEERING INC	Northern ENGINEERING INC ENGINEERING-LAND PLANNING CONSTRUCTION MANAGEMENT			
EX-92	105 WEST 100 NORTH, SUITE B				
EX-92	HURRICANE, UTAH 84737				
EX-92	105 WEST 100 NORTH, SUITE B				
EX-92	HURRICANE, UTAH 84737				

**EXHIBIT E**

Revised Conceptual Site Plan  
(Showing modified By-Pass Road location and alternate southern connection to SR-17)