

**WHEN RECORDED, RETURN TO:**

**Brett Coombs, Esq.**  
**Grantsville City Attorney**  
**429 East Main Street**  
**Grantsville City, Utah 84029**

01-040-A-0022  
01-115-O-0020  
16-031-O-0002

**GRANTSVILLE CITY  
DEVELOPMENT AGREEMENT  
FOR  
DESERT EDGE DEVELOPMENT**

148454-CAF

THIS MASTER DEVELOPMENT Agreement (“**Agreement**”) is made and entered as of the 29 day of NOVEMBER, 2021 (the “**Effective Date**”), by and between Grantsville City, a municipal corporation of the State of Utah (“**City**”) and CW Land Co., LLC, a Utah limited liability company (“**Developer**”).

**RECITALS**

A. The capitalized terms used in this Agreement and in these Recitals are defined in Section 1.2, below.

B. Developer is the owner of the Property located in Grantsville City, Tooele County, State of Utah as is more particularly described on **Exhibit A**, attached hereto.

C. Developer is developing the Property as a mixed-use development. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the applicable Zoning, that certain Memorandum of Understanding and this Agreement.

D. Developer desires to sell the Residential Property to the Residential Owner and retain the Commercial Property.

E. Developer and Residential Owner have prepared that certain Land Use Map for the Property, which is attached hereto as **Exhibit B**, attached hereto.

F. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to city ordinances and the requirements of this Agreement.

G. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 (2005) *et seq.* This Agreement conforms with the intent of the City’s General Plan and the Zoning.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following, incorporating by reference the prior recitals as if fully set forth herein:

## TERMS

1. **Definitions.** As used in this Agreement, the words and phrases specified below shall have the following meanings:

- 1.1. **Agreement** means this Master Development Agreement including all of its Exhibits and Addenda, if any.
- 1.2. **Applicant** means a person or entity submitting a Development Application.
- 1.3. **Buildout** means the completion of all of the development, both residential and commercial, on the entire Project in accordance with this Agreement.
- 1.4. **City** means Grantsville City, a political subdivision of the State of Utah.
- 1.5. **City's Future Laws** means the ordinances, policies, standards, and procedures which and may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this Agreement.
- 1.6. **City's Vested Laws** means the ordinances, policies, standards, and procedures of the City in effect as of the Effective Date and consistent with the City's master plan.
- 1.7. **Commercial Property** means that certain portion of the Property comprised of approximately 29.29 acres of real property, which will be retained and developed by the Developer.
- 1.8. **Council** means the elected City Council of the City.
- 1.9. **Default** means a breach of this Agreement as specified herein.
- 1.10. **Developer** means CW Land Co., LLC, a Utah limited liability company, and its successors/assignees as permitted by this Agreement.
- 1.11. **Development** means the development of all or a portion of the Property pursuant to one (1) or more approved Development Application(s).
- 1.12. **Development Application** means an application to the City for development of all or a portion of the Project or any other permit, certificate or other authorization from the City required for development of the Project.
- 1.13. **Final Plat** means one (1) or more recordable maps or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603 (2019), and approved by the City, subdividing any portion of the Project.
- 1.14. **Final Unit Count** means the total number of both Single-Family Dwelling Units and Townhome Dwelling Units within the Residential Property, which number shall be between 700 and the Maximum Residential Units.
- 1.15. **GLUDMC** means the Grantsville Land Use Management and Development Code.
- 1.16. **Land Use Map** means that certain graphic depiction of the Project attached hereto, for demonstrative purposes only, as **Exhibit B**.
- 1.17. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2005), *et seq.*
- 1.18. **Maximum Residential Units** means the development on the Property of a maximum

of seven hundred and fifty (750) allocated between Single-Family Dwelling Units and Townhome Dwelling Units, which is a reduction from the one thousand two hundred and ninety-two (1,292) units approved in the Memorandum of Understanding.

1.19. **Memorandum of Understanding** means that certain *Resolution Approving a Memorandum of Understanding Between Grantsville City and Mountain Vista Development, Inc. Concerning the Development of the Old Lincoln Highway Mixed-Use Project* with an effective date of July 13, 2021, a copy of which is attached hereto as **Exhibit C**.

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

1.21. **Party/Parties** means, in the singular, Developer or the City; in the plural Developer and the City.

1.22. **Planning Commission** means the Planning Commission of the City.

1.23. **Project** means the mixed-use development to be constructed on the Property pursuant to this Agreement with the associated Public Infrastructure and private facilities, and all of the other aspects approved as part of this Agreement.

1.24. **Property** means the real property owned by and to be developed by Developer, with respect to the Commercial Property, and Residential Owner, with respect to the Residential Property, more fully described in **Exhibit A**.

1.25. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City or other public entities as a condition of the approval of a Development Application.

1.26. **Residential Owner** means that certain third-party homebuilder that will be charged with development and constructing Residential Dwelling Units on the Residential Property.

1.27. **Residential Property** means that certain portion of the Property comprised of approximately 119.23 acres of real property, which will be sold to the Residential Owner.

1.28. **Single-Family Dwelling Unit** means a structure designed and intended for use as a detached single-family residence in the locations set forth on the Land Use Map.

1.29. **Subdivision** means a portion of the Property which is divided or proposed to be divided into two or more lots, units or other division of land for the purpose of sale or lease.

1.30. **Townhome Dwelling Unit** means a structure or portion thereof designed and intended for use as attached residences in the locations set forth on the Land Use Map.

1.31. **Zoning** means the mixed-use zoning of the Property as further set forth in the Memorandum of Understanding.

## 2. **Development of the Project.**

2.1. **Generally.** The Memorandum of Understanding, Zoning, and this Agreement establish and vest the development rights for the Project, including the general use, maximum residential density, intensity and general configuration for the project. Subject to the terms of this Agreement and the Zoning, variations to the Land Use Map, such as exact locations and densities of the Single-Family Dwelling Units and Townhome Dwelling Units, exact locations of open space and parking, roads and rights-of-way and changes to building size may be varied by the Developer with Planning Commission approval.

**2.2. Compliance with this Agreement.** Development of the Project shall be in accordance with LUDMA, GLUDMC, the City's Future Laws and this Agreement. City and Developer expressly agree that following acceptance and recordation of this Agreement, developer shall have the ability, subject to approval by the City, to submit preliminary plat(s) or concept plan(s) based upon the Land Use Map, which preliminary plat(s) or concept plan(s) may adjust lot sizes and relocate density for Developer's desired phasing and use of the Residential Property, but in no event shall the final residential unit count within the Project exceed the Maximum Residential Units.

**2.3. Maximum Residential Units.** Subject to Section 2.1 above, at Buildout Developer shall be entitled to have developed up to the Maximum Residential Units.

### **3. Vested Rights.**

**3.1. Vested Rights Granted by Approval of this Agreement.** To the maximum extent permissible under the City's Vested Laws, the laws of Utah and the United States and at equity, the Parties intend and agree that this Agreement grants and confirms to Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, LUDMA, GLUDMC, the Memorandum of Understanding, and the Zoning of the Property, except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2019). Subject to Section 2.2 above, City further confirms that Developer shall have the right to submit preliminary plat(s) or concept plan(s) for City approval which will locate buildings of the type described and generally depicted, along with contemplated configurations, and densities reflected in the Land Use Map, consistent with City's Vested Laws. By way of further clarification, Developer is vested with the right to develop and locate on the Property its intended uses and densities including, among other provisions, Developer's ability to increase density to the Maximum Residential Units, and to develop in accordance with dimensional requirements as allowed by City's Vested Laws and / or as modified herein. The Parties intend that the rights granted to Developer hereunder are contractually vested rights and include the rights that exist as of the Effective Date under Statute, common law and at equity. The Parties acknowledge and agree that this Agreement provides significant and valuable rights, benefits, and interests in favor of Developer and the Property, including, but not limited to, certain vested rights, development rights, permitted and conditional uses, potential rights for new improvements, facilities, and infrastructure, as well as flexible timing, sequencing, and phasing rights to assist in the development of the Property.

**3.1.1. Land Use Map.** Execution of this Agreement neither constitutes approval of nor vest the Land Use Map as a preliminary plat, site plan, or concept plan, as the Land Use Map is attached hereto for demonstrative purposes only. Developer shall make application to the City pursuant to City's Vested Laws to receive preliminary plat, concept plan or site plan approval and vesting for the Project.

**3.2. Exceptions.** The vested rights and the restrictions on the applicability of the City's Future Laws to the Project as specified in Section 3.1 are subject to the following exceptions:

**3.2.1. Master Developer Agreement.** The City's Future Laws or other regulations to

which the Developer expressly agrees in writing;

3.2.2. State and Federal Compliance. The City's Future Laws or other regulations which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

3.2.3. Codes. Any City's Future Laws that are updates or amendments to the City's existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

3.2.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated, provided that nothing in this Agreement shall be construed as waiving or limiting in any way Developer's or its assign's right to challenge taxes imposed by the City, which right is hereby expressly reserved; or,

3.2.5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State and local law.

3.2.6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2011) *et seq.*

3.2.7. Planning and Zoning Modification. Changes by the City to its planning principles and design standards as permitted by Local, State or Federal law.

3.2.8. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2019).

3.3. **Reserved Legislative Power.** The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited.

4. **Term of Agreement.** Unless earlier terminated as provided for herein, the term of this Agreement shall be until January 31, 2031. If Developer has not been declared to be currently in Default as of January 31, 2031 (and if any such Default is not being cured) then this Agreement shall be automatically extended until January 31, 2036. This Agreement shall also terminate automatically at Buildout.

5. **Addendum No. 1.** Addendum No. 1 contains the provisions of this Agreement that are specific to the development of the Project. If there is a conflict between this Agreement and Addendum No. 1, then Addendum No. 1 shall control.

6. **Public Infrastructure.**

6.1. **Construction by Developer.** Developer, at Developer's cost and expense, shall have the right and the obligation to construct or cause to be constructed and install all Public Infrastructure reasonably and lawfully required as a condition of approval of a

Development Application pursuant to GLUDMC. Such construction must meet all applicable standards and requirements and must be approved by the City's engineer.

**6.2. Responsibility Before Acceptance.** Developer shall be responsible for all Public Infrastructure covered by this Agreement until final inspection of the same has been performed by the City, and a final acceptance and release has been issued by the City Council. Prior to acceptance, the City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the Public Infrastructure, nor shall any officer or employee thereof, be liable for any persons or property injured by reason of said Public Infrastructure; all of such liabilities shall be assumed by the Developer.

**6.3. Warranty.** Developer shall repair any defect in the design, workmanship or materials in all Public Infrastructure which becomes evident during a period of one year following the acceptance of the improvements by the City Council or its designee ("**Durability Testing Period**"). If during the Durability Testing Period, any Public Infrastructure shows unusual depreciation, or if it becomes evident that required work was not done, or that the material or workmanship used does not comply with accepted standards, said condition shall, within a reasonable time, be corrected.

**6.4. Timing of Completion of Public Infrastructure.** In accordance with the diligence requirements for the various types of approvals as described in the GLUDMC, construction of the required Public Infrastructure within a subdivision shall be completed within one (1) year following city council approval of the subdivision. Upon a showing of good and sufficient cause by Developer the City shall, in accordance with the provisions of GLUDMC, extend the time of performance if requested prior to expiration of the completion date.

**6.5. Bonding.** In connection with any Development Application, Developer shall provide bonds or other development security, including warranty bonds, to the extent required by GLUDMC, unless otherwise provided by Utah Code § 10-9a-101, *et seq.* (2005), as amended. The Applicant shall provide such bonds or security in a form acceptable to the City or as specified in GLUDMC. Partial releases of any such required security shall be made as work progresses based on GLUDMC.

**6.6. City Completion.** The Developer agrees that in the event it does not: (a) complete all improvements within the time period specified under paragraph two above, or secure an extension of said completion date, (b) construct said improvements in accordance with City standards and as set forth in Paragraph one above, and (c) pay all claimants for material and labor used in the construction of said improvements, the City shall be entitled to declare the Developer(s) in default, request and receive the funds held by the guarantor as surety and utilize the monies obtained to install or cause to be installed any uncompleted improvements and/or to pay any outstanding claims, as applicable. Provided however, that the City shall not be responsible for any work beyond the amount of funds so provided. Any funds remaining after completion of the improvements shall be returned to the Guarantor. The Developer further agrees to be personally liable for any cost of improvements above the amount made available under the terms of this agreement.

## **7. Upsizing/Reimbursements to Developer.**

**7.1. Upsizing.** The City shall not require Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service

the Project) unless financial arrangements reasonably acceptable to Developer are made to compensate Developer for the incremental or additive costs of such upsizing to the extent required by law.

**8. Default.**

8.1. **Notice.** If Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

8.2. **Contents of the Notice of Default.** The Notice of Default shall:

8.2.1. Specific Claim. Specify the claimed event of Default;

8.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; and

8.2.3. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration, if weather conditions permit.

8.3. **Remedies.** Upon the occurrence of any Default, and after notice as required above, then the parties may have the following remedies:

8.3.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

8.3.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

8.3.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developer until the Default has been cured.

8.4. **Public Meeting.** Before any remedy in Section 8.3 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

8.5. **Default of Assignee.** A default of any obligations expressly assumed by an assignee shall not be deemed a default of Developer.

8.6. **Limitation on Recovery for Default – No Damages against the City.** Anything in this Agreement notwithstanding Developer shall not be entitled to any claim for any monetary damages as a result of any breach of this Agreement and Developer waives any claims thereto. The sole remedy available to Developer and any assignee shall be that of specific performance.

9. **Notices.** All notices required or permitted under this Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

**To the Developer:**

CW Land Co., LLC  
Attn: Colin Wright  
1222 W. Legacy Crossing Blvd., Ste. 6  
Centerville, UT 84014

**To the City:**

Grantsville City  
Attn: Mayor  
429 East Main Street  
Grantsville, Utah 84029

10. **Dispute Resolution.** Any disputes subject to mediation or arbitration shall be resolved pursuant to Addendum No. 2.

11. **Incorporation of Recitals and Exhibits.** The Recitals and Exhibits are hereby incorporated into this Agreement.

12. **Headings.** The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidences of intent.

13. **No Third-Party Rights/No Joint Venture.** This Agreement does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Except as specifically set forth herein, the parties do not intend this Agreement to create any third-party beneficiary rights.

14. **Assignability.** The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part, respectively, by Developer with the consent of the City as provided herein.

14.1. **Sale of Lots.** Developer's selling or conveying of the Residential Property shall be deemed a partial assignment of this Agreement to the Residential Owner.

14.2. **Related Entity.** Developer's transfer of all or any part of the Property to any entity "related" to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer's entry into a joint venture for the development of the Project or Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an assignment. Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

14.3. **Process for Assignment.** Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee. Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment. The City shall not unreasonably withhold consent.

14.4. **Partial Assignment.** If any proposed assignment is for less than all of Developer's rights and responsibilities then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain jointly and severally liable with assignee(s) to perform all obligations under the terms of this Agreement which are specified to be performed by Developer.

14.5. **Complete Assignment.** Developer may request the written consent of the City of an assignment of Developer's complete interest in this Agreement, which consent shall not be



unreasonably withheld, conditioned, or delayed. In such cases, the proposed assignee shall have the qualifications and financial responsibility necessary and adequate, as required by the City, to fulfill all obligations undertaken in this Agreement by Developer. The City shall be entitled to review and consider the ability of the proposed assignee to perform, including financial ability, past performance and experience. After review, if the City gives its written consent to the assignment, Developer shall be released from its obligations under this Agreement for that portion of the Property for which such assignment is approved.

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

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

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

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

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

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

21. **Venue.** Any action to enforce this Agreement shall be brought only in the Third District Court for the State of Utah.

22. **Entire Agreement.** This Agreement, and all Exhibits thereto, documents referenced herein, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

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

24. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

25. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

26. **Recordation and Running with the Land.** This Agreement shall be recorded in the chain of title for the Project. This Agreement shall be deemed to run with the land.

27. **Priority.** This Agreement shall be recorded against the Property senior to any respective covenants and any debt security instruments encumbering the Property.

28. **Authority.** The Parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to Ordinance 2021-85 adopted by the City on November 17, 2021.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

DEVELOPER  
CW Land Co., LLC

CITY  
Grantsville City

Celia H. Wright  
By: Celia H. Wright  
Its: Manager

Brent K. Marshall  
By: Brent K. Marshall,  
Its: Mayor

Approved as to form:  
Brett M. Coombs  
Brett M. Coombs, City Attorney

Attest:  
Braydee Baugh  
Braydee Baugh, City Recorder

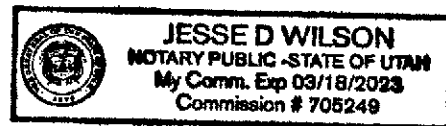
**CITY ACKNOWLEDGMENT**

STATE OF UTAH )  
 ) :SS.  
COUNTY OF TOOELE )

On the 24 day of November, 2021 personally appeared before me Brent K. Marshall who being by me duly sworn, did say that he is the Mayor of Grantsville City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.

Jesse D Wilson  
NOTARY PUBLIC

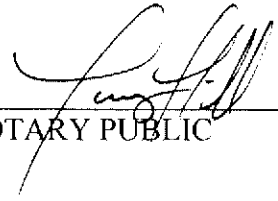
My Commission Expires: 3/18/2023  
Residing at: Grantsville, UT



**DEVELOPER ACKNOWLEDGMENT**

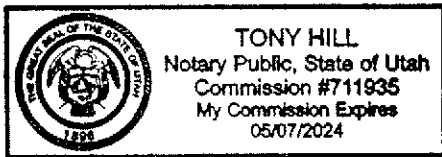
STATE OF UTAH                    )  
  :ss.  
COUNTY OF DAVIS            )

On the 29 day of NOVEMBER, 2021, personally appeared before me COLIN WRIGHT, who being by me duly sworn, did say that he/she is the MANAGER of CW Land Co., LLC, a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 05/07/2024

Residing at: DAVIS COUNTY, UT



## TABLE OF EXHIBITS

|                |                               |
|----------------|-------------------------------|
| Exhibit A      | Legal Description of Property |
| Exhibit B      | Land Use Map                  |
| Exhibit C      | Memorandum of Understanding   |
| Addendum No. 1 | Specific Project Terms        |
| Addendum No. 2 | Dispute Resolution Procedures |

Exhibit A  
Legal Description of Property

Land located in Tooele County, State of Utah, more particularly described as follows:

A Tract of Land, located in the NW1/4 and the NE1/4 and the SE1/4 of Section 22, and the SW1/4 of Section 23 of Township 2 South, Range 6 West, Salt Lake Base and Meridian. Basis of Bearing for description is N89°51'07"E between the North quarter corner and the Northwest corner of said Section 23, being more particularly described as follows: Beginning at a point on the Westerly right of way line of Old Lincoln Highway as established by previous subdivisions and surveys, being S89°48'41"W 2644.79 feet along the Section line to a found Section corner and S89°48'32"W 146.00 feet along a Section line from the Northeast corner of Section 22, Township 2 South, Range 6 West, Salt Lake Base and Meridian, and running thence along said Easterly right of way line S60°30'28"E 1403.98 feet; thence continuing along said Easterly right of way line S33°09'09"E 476.29 feet to the Westerly deed line of a Warranty Deed as recorded at Entry No. 454397 in the Tooele County Recorder's Office; thence along said Westerly deed line S00°44'24"E 238.71 feet; thence along the Southerly line of said deed N89°54'46"E 152.68 feet to the Westerly right of way line of said Old Lincoln Highway; thence along said Westerly right of way line the following six (6) courses, (1) S33°09'09"E 273.60 feet; thence (2) S32°58'50"E 888.24 feet; thence (3) S33°10'04"E 920.24 feet; thence (4) S33°38'57"E 102.25 feet; thence (5) S33°27'52"E 438.32 feet; thence (6) S33°42'20"E 1862.84 feet to the Northeast corner of Silver Fox Estates Subdivision as recorded at Entry No. 244610 in the Tooele County Recorder's Office; thence along said Silver Fox Estates the following two (2) calls, (1) S88°46'46"W 909.31 feet; thence (2) S52°58'33"W 191.30 feet to the Easterly right of way line of SR-138 as established by UDOT Project, F-86(12) Revised 5-12-04; thence along said Easterly right of way line the following five (5) courses, (1) N37°01'30"W 2141.51 feet; thence (2) N36°59'06"W 1000.00 feet; thence (3) N37°06'50"W 1048.53 feet; thence (4) N38°02'17"W 400.72 feet; thence (5) N38°58'49"W 529.85 feet to the Westerly deed line of a Special Warranty Deed as recorded at Entry No. 525821 in the Tooele County Recorder's Office; thence along said deed line the following two (2) courses, (1) N00°43'59"W 1218.99 feet; thence (2) N89°48'32"E 19.02 feet to the point of beginning.

Tax Parcel No.: 01-115-0-0020

Tax Parcel No.: 16-031-0-0002

Tax Parcel No.: 01-040-A-0022

## Exhibit B Land Use Map

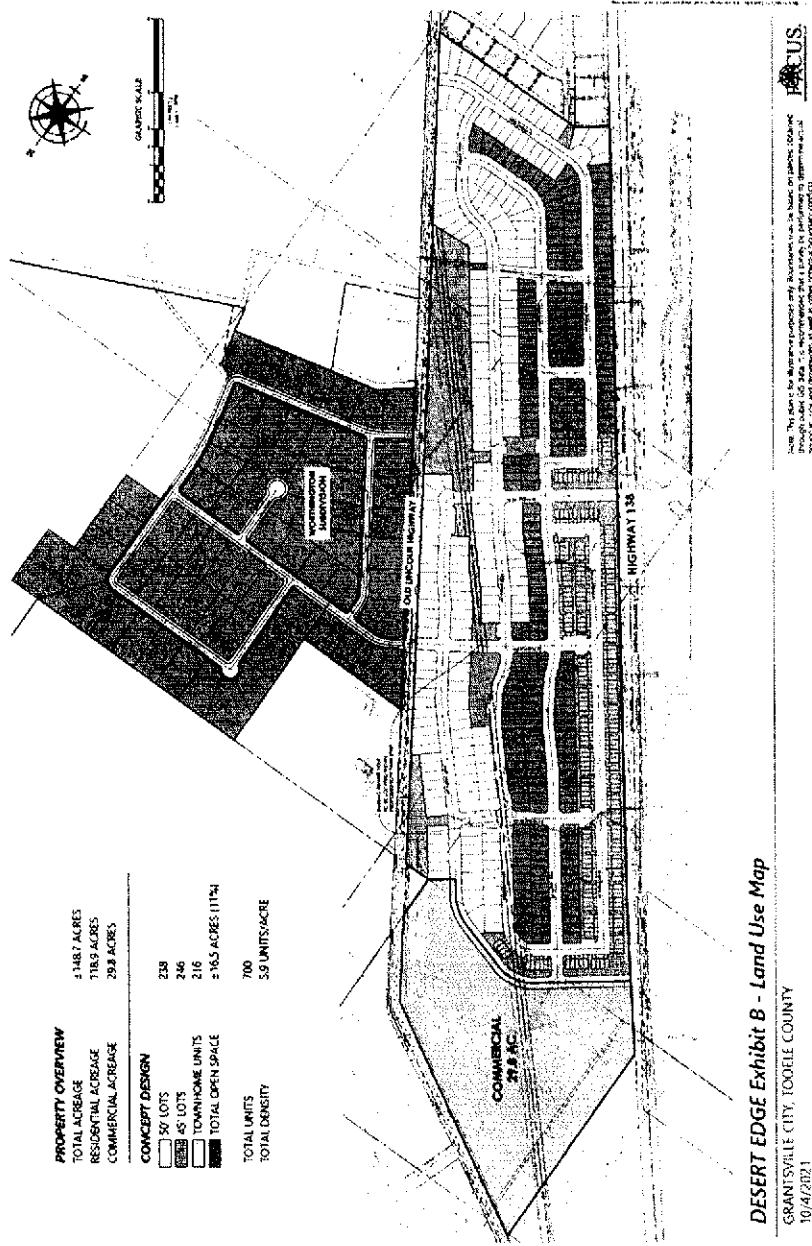


Exhibit C  
Memorandum of Understanding

**GRANTSVILLE CITY  
RESOLUTION NO. 2021-50**

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN  
GRANTSVILLE CITY AND MOUNTAIN VISTA DEVELOPMENT, INC. CONCERNING  
THE DEVELOPMENT OF THE OLD LINCOLN HIGHWAY MIXED-USE PROJECT.**

**WHEREAS**, this Memorandum of Understanding (MOU) is entered into as of the effective date (as indicated by the latest signature below (the “Effective Date”)) by and between Grantsville City (the “City”) and Mountain Vista Development, Inc. (“Owner”); and

**WHEREAS**, the Owner owns and seeks to develop certain real property located in Grantsville, City Utah, which property is located at approximately 1,201 North Old Lincoln Highway and consists of 148.73 acres contained within parcels 010-40-A-0022 (consisting of previous parcel Tax ID #'s including all of 01-115-0-003, 01-115-0-019, 16-031-0-0002, 01-040-A-0019, and 01-040-A-0020 and parts of 01-115-0-017, and 01-040-A-0010), 01-115-0-0020 (consisting of previous parcel Tax ID #'s including all of 01-115-0-003, 01-115-0-019, 16-031-0-0002, 01-040-A-0019, and 01-040-A-0020 and parts of 01-115-0-017, and 01-040-A-0010), and 16-031-0-0002 (collectively the “Property”).

**WHEREAS**, the Owner and the City have entered into this Memorandum of Understanding to memorialize the general understanding of the parties as it relates to the master plan for the development of the heretofore described property (“Project”); and

**WHEREAS**, the City Council and Owner met in an open work meeting on December 9, 2020, and discussed the concept plan of the future development of the Project, the approved minutes from the work meeting are attached as “Exhibit A” and incorporated herein by this reference; and

**WHEREAS**, the property subject to this MOU is currently zoned for Mixed Use and Commercial uses; and,

**WHEREAS**, it is anticipated that at some time in the future the parties will negotiate and enter into a Master Development Agreement for the Project; and

**WHEREAS**, the Owner and the City have agreed that the Project will be developed to contain



no more than 1,292 residential units constructed in accordance with the Grantsville City General Plan, Future Land Use Map and the Grantsville City Land Use Development and Management Code (GLUDMC); and

**WHEREAS**, should this Agreement terminate for any reason, other than a breach of contract by the Owner, then Owner shall not be limited to 1,292 residential units, and shall be permitted to develop the property as permitted by the laws and ordinances of Grantsville City and the State of Utah; and

**WHEREAS**, the Owner and the City have agreed that the Project will utilize a minimum of 20% of the land area - 29.75 Acres - for commercial development and that such development is required as a condition of this MOU; and

**WHEREAS**, the Owner presented to the City Council the "Project Master Plan" (the "Master Plan"), attached as "Exhibit B" and incorporated herein by this reference, which document shows the Project being separated into uses, as well as potential road placements; and

**WHEREAS**, the Owner and City have agreed that the 20% commercial use may be considered for relocation to a parcel located directly west of SR-138 to another parcel within the project area to provide a residential buffer between existing uses to the east of Old Lincoln Highway and to encourage the use of Old Lincoln Highway for local traffic retaining the through traffic and truck traffic on SR-138; and

**WHEREAS**, the Owner and City agree that the Owner shall not develop more than an additional 258 residential units on the Property and that such additional development shall be granted in place of the 20% commercial use on the Property, if the commercial use is relocated; and

**WHEREAS**, notwithstanding anything to the contrary on this Memorandum of Understanding, the City and Owner specifically agree and acknowledge that the Owner shall be entitled to seek the creation of one or more Public Infrastructure Districts permitted pursuant to Utah statutes, particularly Chapter 2a, Part 12 of the Public Infrastructure District Act, (the "PID Act") as determined by Owner,

in order to implement and facilitate the financing, construction and operation of public infrastructure for the Subject Property. Subject to the provisions of the PID Act, the City and Owner agree to continuing cooperation in connection with the formation and operation of Public Infrastructure Districts, if created, in order to accommodate development circumstances, to fund, construct and/or provide public facilities and services set forth in this Memorandum of Understanding or otherwise required in connection with the development of the Property, within or otherwise serving all or a portion of the Subject Property. The City agrees that it will exercise any rights reserved to the City under the PID Act in connection with the establishment or operation of any Public Infrastructure District for the Subject Property in accordance with the requirements of the PID Act, or any portion thereof. Any Public Infrastructure District created for the Subject Property, or any portion thereof, shall not create any financial liabilities for the City.

**WHEREAS**, the City Council hereby finds these actions are in the best interest of the public's health, safety, and general welfare.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF GRANTSVILLE CITY, STATE OF UTAH, AS FOLLOWS:**

**Section 1. Memorandum of Understanding.** The City Council hereby authorizes the Mayor to enter into this Memorandum of Understanding ("MOU").

**Section 2. Amendments.** This MOU may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is signed by all signatories.

**Section 3. Termination.** If any signatory to this MOU determines that its terms will not or cannot be carried out, the party shall immediately consult with the other part(ies) to attempt to develop an amendment to this MOU. If within 120 days an amendment cannot be reached, any signatory may terminate the MOU upon written notification to the other signatories.

**Section 4. Duration.** This MOU shall remain in effect for a period of five (5) years after the

date it takes effect, unless it is terminated prior to that time. If there are no objections from any signatory, the term of this MOU will be automatically extended for an additional five (5) years, so long as the signatories agree to an extension at least thirty (30) days prior to the termination date. If any party objects to extending this MOU, or proposes amendments, the parties should consult to consider amendments to avoid termination.

**Section 5. Severability Clause.** If any part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution and all provisions, clauses and words of this Resolution shall be severable.

**Section 6. Assignability.** The rights and responsibilities of Owner under this Agreement may be assigned in whole or in part, respectively, by Owner with the consent of the City as provided herein.

**6.1 Sale of Lots.** Owner's selling or conveying lots in any approved subdivision shall not be deemed to be an assignment.

**6.2 Related Entity.** Owner's transfer of all or any part of the Property to any entity "related" to Owner (as defined by regulations of the Internal Revenue Service in Section 165), Owner's entry into a joint venture for the development of the Project or Owner's pledging of part or all of the Project as security for financing shall also not be deemed to be an assignment. Owner shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

**6.3 Process for Assignment.** Owner shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee. Unless the City objects in writing within twenty (20) business days of notice, the City shall be

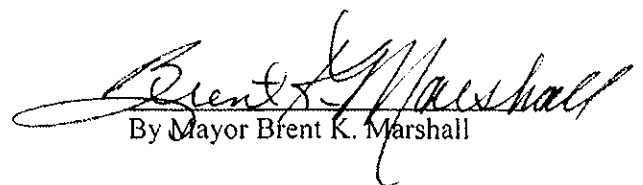
deemed to have approved of and consented to the assignment. The City shall not unreasonably withhold consent.

**6.4 Partial Assignment.** If any proposed assignment is for less than all of Owner's rights and responsibilities herein then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment Owner shall not be released from any future obligations as to those obligations which are assigned but shall remain jointly and severally liable with assignee(s) to perform all obligations under the terms of this Agreement which are specified to be performed by Owner.

**Complete Assignment.** Owner may request the written consent of the City of an assignment of Owner's complete interest in this Agreement, which consent shall not be unreasonably withheld. In such cases, the proposed assignee shall have the qualifications and financial responsibility necessary and adequate, as required by the City, to fulfill all obligations undertaken in this Agreement by Owner. The City shall be entitled to review and consider the ability of the proposed assignee to perform, including financial ability, past performance and experience. After review, if the City gives its written consent to the assignment, Owner shall be released from its obligations under this Agreement for that portion of the Property for which such assignment is approved.

ADOPTED AND PASSED BY THE CITY COUNCIL OF GRANTSVILLE CITY, THIS 7th  
DAY OF JULY, 2021.

BY ORDER OF THE  
GRANTSVILLE CITY COUNCIL

  
By Mayor Brent K. Marshall

ATTEST

Corinna Matlis  
FA Christine Webb, City Recorder  
Corinna Matlis, Deputy Recorder



MOUNTAIN VISTA DEVELOPMENT, INC

Date: 7/13/21

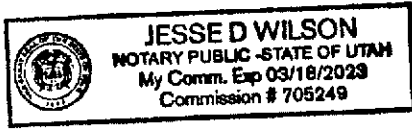
[Signature]  
By: [Signature]


STATE OF UTAH )

COUNTY OF Toweles )

: ss.

Before me, a notary public, appeared Perck Ellis on the 13 day of July, in the year 2021, who affirmed that (s)he is an authorized agent for Mountain Vista Development, Inc, and that (s)he read, understood and executed that foregoing Agreement on behalf of Mountain Vista Development, Inc., for its stated purposes.



  
\_\_\_\_\_  
Notary Public

Residing at Grantsville, UT

My Commission Expires: 3/18/2023

# EXHIBIT A

Approved

**MINUTES OF A WORK MEETING OF THE GRANTSVILLE CITY COUNCIL, HELD ON DECEMBER 9, 2020 AT THE GRANTSVILLE CITY HALL, 429 EAST MAIN STREET, GRANTSVILLE, UTAH AND ONLINE AS A ZOOM MEETING. THE MEETING BEGAN AT 6:45 P.M.**

**Mayor and Council Members Present:**

Mayor Brent Marshall  
Jewel Allen  
Jeff Hutchins  
Darrin Rowberry  
Krista Sparks

Scott Stice was excused.

**Appointed Officers and Employees Present:**

Christine Webb, City Recorder  
Brett Coombs, City Attorney  
Sherrie Broadbent, Finance Director  
Jaime Topham, Planning Commission Chair  
Kristy Clark, Zoning Administrator  
Timm Dixon, City Engineer

**Citizens and Guests Present:**

Whit Cook  
Monte Kingston  
Derek Ellis  
Shay Stark  
Marilyn  
Adam Long

**AGENDA:**

- 1. Discussion with Monte Kingston and Mountain Vista Development on 155 acres in the northwest area of Grantsville City about the future uses and density for that property.**

Derek Ellis and Monte Kingston were present. They provided a conceptual land use plan. Mr. Ellis explained this was a conforming use to the General Plan. He stated they are going to come to the City for a re-zone on this property. He said they are looking for some direction from the City on what they would like to see in this area. He commented this seems like a good area for the zoning they are requesting because of the direct freeway access.



## Approved

Mayor Marshall reported he received a comment concerning the property directly north of the Silver Fox Development. The road ties in on the existing road and there is concern about traffic going from the subdivision to the commercial area. Mr. Ellis pointed out these were conceptual roadways. Mayor Marshall stated the individual was not opposed to the development, but had some concerns. He noticed there is another through street that could help alleviate some of the residential traffic going in and coming out coming off both Hwy. 138 and Old Lincoln Hwy. Mr. Ellis stated he expected the City would want them to extend that road.

Mayor Marshall shared that the individual who spoke with him hoped the homes will be equivalent to the homes already there. Mr. Ellis asked if he meant in square footage of the homes or lot sizes. Mayor Marshall believed that he wanted the new homes to blend with the existing homes. Mr. Ellis explained they normally take some form of transition from the density and structure type to the commercial area. Mayor Marshall shared from the information he had that this person is requesting that any homes that directly connect to their neighborhood only be zoned as R-1-21. And that the City require any developer to adhere to the design presence or equivalent that has already been set. They felt that if the developer requests to build a residential neighborhood with properties that are smaller than half acre or that use a different design or abated quality, they request that there is no direct access through the community but be required to create separate access points from the Old Lincoln Highway or 138. This person believed that to maintain uniformity and aesthetic appeal the lots sizes should be larger further south than they are and decrease in size as they go north. They felt the intersection at Old Lincoln Hwy. and 138 would be an ideal location for access to any potential apartment or business complexes to be built. Mr. Ellis stated as long as the Fire Marshal is okay with it, he suggests they do not bring that street through. He added there will be transitional density starting with what goes up (which will not be half-acre) from that point moving north.

Mayor Marshall reported another request of the individual was to have them bury the power lines already there. Mr. Ellis stated they cannot do that. Mayor Marshall stated the next concern was a park. The nearest park is Lincoln Park which is farther south and a considerable distance away. The individual felt it would be greatly appreciated if there was open public space equal in size to the Lincoln Park but closer to the size of a regional park with walking trails and paths. Other concerns from people in the neighborhood were increasing the water pressure, improving the Old Lincoln Hwy., and getting faster internet speeds into the area. Mr. Ellis stated this area is not conducive to a regional park. He pointed out there is a great area next to the current Worthington development that would be great for a regional park. He agreed there should be a regional park and they will work towards it just like they have with Wells Crossing.

Councilwoman Allen inquired about the trail idea. Mr. Ellis answered they love that idea. He thought this area is conducive that, but as far as open soccer fields and baseball fields, the land next to Worthington would better serve for a regional park. Mayor Marshall agreed that there

Approved

would be more room to do some of those things at the Worthington area. Mr. Ellis reported there is a lot of area that can't have sewer and a regional park would be the perfect use of that land. Councilman Hutchins commented the sewer in this area of town and asked if Mayor Marshall could give him an update. Mr. Ellis explained what allows them to use this piece of property is the engineering they put in place at the Worthington project. They have been working on that project for two to three (2 – 3) years.

Mayor Marshall stated there was a comment on Zoom that they could not hear the audio of the meeting.

Mayor Marshall, Mr. Ellis, and Mr. Kingston talked about the easements. Councilwoman Allen asked about the church sites shown on the map provided. Mr. Ellis confirmed it was either one site or the other. He explained this is the biggest project they have ever done. They thought the best approach would be to come to the City to find out what the City would like to see happen, discuss what they, as developers, would like for densities, and what the City would like for amenities and businesses. Then they will design a master plan for the development. Councilwoman Sparks asked what the current zone is for the property. Mr. Ellis answered there are two zones; one is commercial and the other is mixed use. He stated they would like to have an MOU (Memorandum of Understanding) or a Master Development Agreement so they can lock in some numbers on the densities. He stated they are not asking for the densities listed on the conceptual plan. They do not want thirty (30) units to the acre for commercial; those came from the general plan.

Mayor Marshall felt the commercial part of this is one of those things we would like to see. He thought something along the lines of a mini-truck stop to get the trucks off the road would be a good idea. Mr. Ellis reported he contacted Flying J about placing a facility in this location. There was a discussion about possible commercial ideas.

Councilwoman Allen inquired about the concern on water pressure. Mayor Marshall stated there is not a water pressure issue because there is a huge (twelve inch) waterline out there. He explained it is partially looped because there is a waterline on Hwy 138 and one on the Old Lincoln Hwy which goes beyond Bonnie Plants.

Councilwoman Sparks asked about the water usage and whether they will fully landscape the property or have xeriscape. Mr. Ellis felt they will have more of a xeriscape. Councilwoman Allen expressed concern about light pollution. Mr. Ellis stated they would prefer to minimize light pollution and felt it is best to have downward facing sconces on any residential developments.

Approved

**2. Discussion with Monte Kingston and Mountain Vista Development regarding water for the Scenic Slopes P.U.D. Subdivision.**

Councilman Hutchins stated he and Councilman Stice were concerned about being asked to minimize the water requirements in the area. He said they are all about xeriscaping and think it is important. He reported they are concerned about how long we can assure it doesn't change. He added the number one issue with growth in this valley is water. Mayor Marshall added that if we allow Scenic Slopes to do the xeriscape, would there be some covenants of the development stating it will remain xeriscaped even if the home is sold. Mr. Ellis stated they will restrict it. He commented they talked to the Mayor about getting a regional park put together and even with the density being used in the subdivision, the amount of land dedicated as a park will exceed the requirement by over 100%. He stated they will restrict the water usage any way the City would like them to.

Mr. Ellis reported they are installing landscaping. He stated this is difficult in Utah because you only have four or five months out of the year where you can't grade to install landscaping. He commented that one of the difficulties that comes with this subdivision is they will have to bond with the City. This will create some administrative process for staff. Timm pointed out that is part of the Land Disturbance Ordinance.

Councilman Hutchins explained Councilman Stice was concerned about the precedence of allowing the water requirements to be adjusted. Councilman Hutchins stated he had a hard time talking to constituents and saying they made exceptions to water. We need to educate the public on the fact that this provides conservation of watering. Mr. Ellis added that they are going to deed restrict it and that makes sense. Mayor Marshall liked having the deed restriction on the mylar. Mr. Ellis said they will deed restrict it, add it to the mylar, and put it in the CC&Rs. Mr. Dixon requested to see the calculations they used to come up with the amount of outdoor water. Mr. Kingston will provide Mr. Dixon with the calculations.

**3. Closed Session (Personnel, Real Estate, Imminent Litigation).**

**Motion:** Councilwoman Allen made a motion to go into a closed session for pending or imminent litigation.

**Second:** Councilwoman Sparks seconded the motion.

**Vote:** The vote was as follows: Councilwoman Allen, "Aye", Councilman Rowberry, "Aye", Councilman Hutchins, "Aye", and Councilwoman Sparks, "Aye". The motion carried and the Council went into a closed session at 8:07 pm.

Approved

Those in attendance were: Mayor Marshall, Councilman Rowberry, Councilwoman Allen, Councilman Hutchins, Councilwoman Sparks, Brett Coombs, Christine Webb, Adam Long, and Sherrie Broadbent.

**Motion:** Councilman Hutchins made a motion to go back into an open session.

**Second:** Councilwoman Sparks seconded the motion

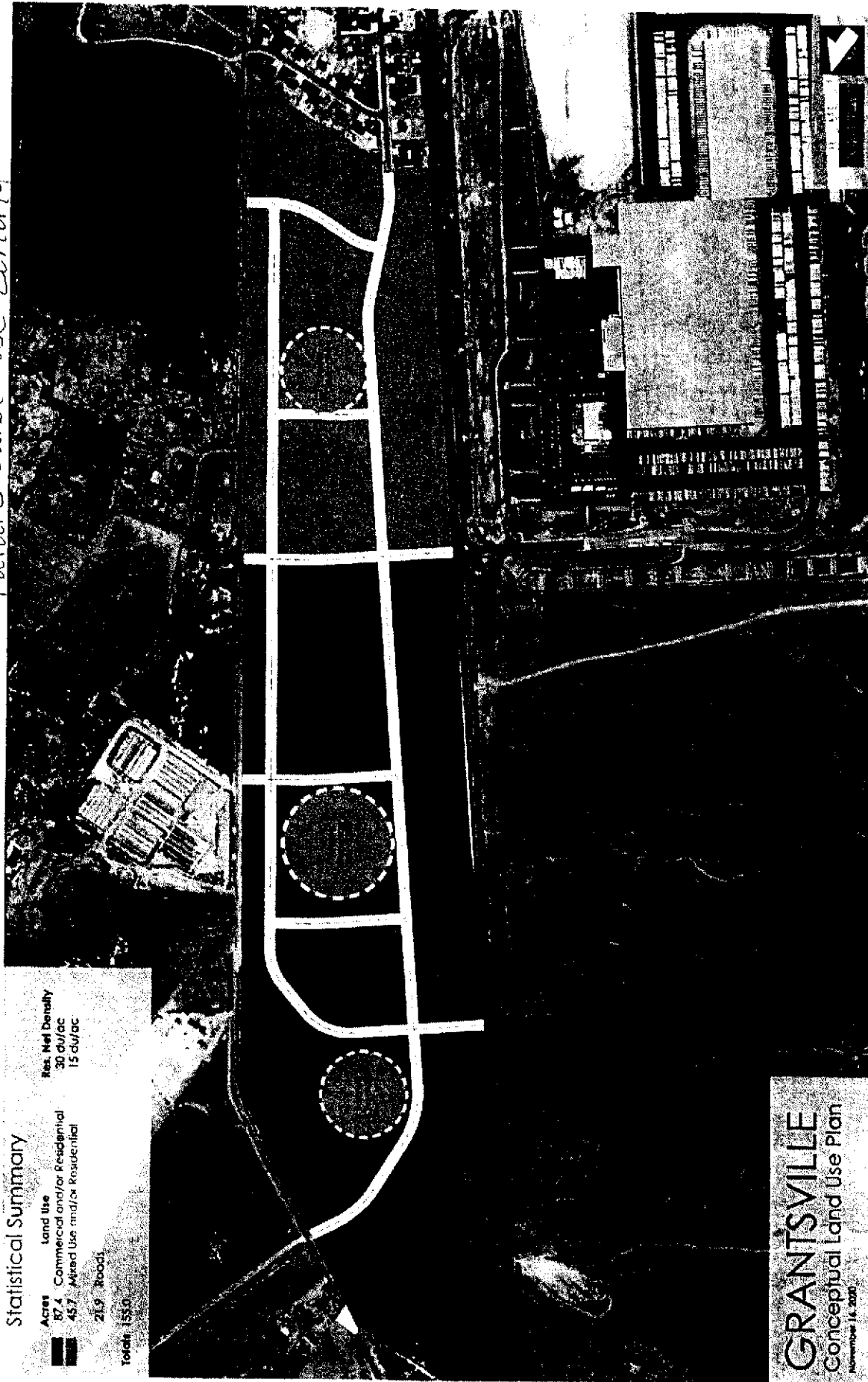
**Vote:** The vote was as follows: Councilman Rowberry, "Aye", Councilwoman Allen, "Aye", Councilman Hutchins, "Aye", and Councilwoman Sparks, "Aye". The motion carried.

**4. Adjourn.**

**Motion:** Councilwoman Allen made a motion to adjourn. Councilman Rowberry seconded the motion. The meeting was adjourned at 9:18 p.m.

# Exhibit B

Future Land Use Zoning



Statistical Summary

| Acres               | Land Use                      | Res. Net Density |
|---------------------|-------------------------------|------------------|
| 87.4                | Commercial and/or Residential | 30 du/ac         |
| 45.7                | Mixed Use and/or Residential  | 15 du/ac         |
| 21.9                | Roads                         |                  |
| <b>Total: 155.0</b> |                               |                  |

**GRANTSVILLE**  
 Conceptual Land Use Plan  
 November 14, 2000

Addendum No. 1  
(Project-specific terms)

1. **Memorandum of Understanding.** This Section 2.4 hereby incorporates and includes the terms and provisions agreed to, and which have fully vested with respect to the Property, in the Memorandum of Understanding.

2. **Culinary Water.** The culinary water requirement shall be consistent with existing City code, as the same may be amended to reduce the culinary water requirement. Upon approval of this Agreement, the City will work with Developer to determine the improvements necessary to provide culinary water connections to the Residential Property up to, and including, the Final Unit Count.

3. **Sewer.** Upon approval of this Agreement, the City will work with Developer to determine the improvements necessary to provide sanitary sewer connections to the Residential Property up to, and including to service the Final Unit Count.

4. **Storm Drain.** Developer shall be responsible to improve retention/ detention ponds constructed with sufficient capacity for runoff generated by the Property, and to address the offsite or regional stormwater that is currently crossing the Project during a 100-year storm.

5. **Model Home.** Developer shall have the right to construct one (1) model home prior to final approval of the applicable Final Plat containing said model home, so long as the Zoning standards are satisfied, as well as compliance with the City's fire and building codes.

6. **Future Amendment(s) to the Agreement.** Developer and City acknowledge that as of the Effective Date the parties are unable to address (i) Project phasing, and (ii) Project open space (the "**Additional Provisions**") until such time as the preliminary plan for the Residential Property (the "**Preliminary Plan**"), which the parties acknowledge is in process, is completed and submitted to the City. Therefore, within thirty (30) days following Developer's submittal of the Preliminary Plan to the City, the parties expressly agree to use good faith and commercially reasonable efforts to prepare an amendment hereto to establish each party's rights, duties, and obligations with respect to the Additional Provisions, which shall include, but not be limited to the following:

G.6.1. **Phasing.** Notwithstanding Section 21.4.3 of the City code and subject to review of, and agreement on, the Preliminary Plan by City and Developer, the parties expressly acknowledge that it is Developer's desire and intent to determine the timing, sequencing, and phasing of the Project including the submittal, processing, and recording of multiple subdivision plats concurrently.

G.6.2. **Project Open Space.** Residential Owner shall be responsible for completion of all Project open space located within the Residential Property and Developer shall be responsible for completion of all Project open space within the Commercial Property.

Addendum No. 2  
(Dispute Resolution)

1. **Meet and Confer.** The City and Developer/Applicant shall meet within fifteen (15) business days of any dispute under this Agreement to resolve the dispute.

2. **Mediation.**

2.1. Disputes Subject to Mediation. Disputes that are not subject to arbitration provided in Section 3 shall be mediated.

2.2. Mediation Process. If the City and Developer/Applicant are unable to resolve a disagreement subject to mediation, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the Parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Developer/Applicant and the City shall each pay half of the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days from selection, or such other time as is reasonable under the circumstances, review the positions of the Parties regarding the mediation issue and promptly attempt to mediate the issue between the Parties. If the Parties are unable to reach an agreement, the Parties shall request that the mediator notify the Parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the Parties.