

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of August 31 ____, 2023 (the "Effective Date") by and between EAGLE MOUNTAIN CITY, a municipal corporation of the State of Utah (the "City") and QTS Eagle Mountain I, LLC a Delaware limited liability company (together with its affiliates and their respective successors and assigns, the "Company"). The City and the Company are sometimes referred to herein collectively as the "Parties" and each individually as a "Party".

RECITALS

A. Company has the right to acquire certain real property; consisting of approximately 95.153 acres and 98.043 acres of undeveloped land located in the City of Eagle Mountain, County of Utah, State of Utah, as more particularly described on Exhibit A hereto (the "Property").

B. Assuming Company's acquisition of the Property, Company proposes to establish on the Property a multi-year, large-scale project, that may include multiple Phases extending over a period of years. The Project's uses are anticipated to contain one or more data centers and ancillary uses and/or other facilities used to house said facility. It is expected that such facilities will be the location in which the data centers' equipment is operated, maintained and replaced from time to time. Such equipment is anticipated to consist of computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing the Property's performance (including generators), and equipment used for the transformation, transmission, distribution and management of electricity (including substations), internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Property and other related or associated uses, buildings or structures such as utility buildings, structures, improvements and appurtenances located on, adjacent or near the Property that are reasonably related to the data center(s) (collectively, the "Project").

C. City finds developments such as Company's Project to be in the public interest of the citizens of City, and thus desires to encourage and support Company's Project.

D. Company anticipates that the Project will require a substantial, long-term commitment of capital and resources by the Company, as well as the careful integration of public capital facilities, construction schedules and the phasing of the development of the Project, in order for the Project to be successful, both for the Company and the City. Company is unwilling to risk such capital and resources without sufficient assurances from the City that, among other things, (i) the Property has been adequately entitled and zoned to permit the development and operation of the Project, (ii) all required approvals and entitlements for the Project have been granted, (iii) the City Zoning Ordinance, including the development standards set forth therein, in existence as of the Effective Date of this Agreement, and the other corresponding documents referenced herein, which are applicable to the Project will remain unchanged with respect to the Property and the Project during the Term (as defined below), and (iv) the City is committed to facilitate and assist Company in the development and operation of the Project.

E. Additionally, the Parties to this Agreement expressly note that Company's strong incentive to advance the Project, as defined and outlined hereafter, is at least in part due to City's willingness to assure City's commitment to perform regardless of the current elected officials. As such the Parties wish to incorporate their understandings, and the City's assurances, with respect to the Project into this

Agreement. It is therefore emphasized that the enforceability of this Agreement, its provisions, terms and conditions, are paramount to Company's incentive.

F. The City's commitment to Company allows for the full enforcement of this Agreement. Emphasizing this fact, and to protect Company's significant economic investment, City agrees to honor any permit it issues in connection with the Project, unless **both** of the following conditions are met: (1) the permit is erroneously issued, and (2) the work to be performed pursuant to the permit creates an objectively verifiable, substantial and unjustified risk to human health or safety. The terms and conditions of this recital are more fully set forth in section 3.5(a)(iv) below.

G. City and Company, in recognition of the scope, magnitude, and investment of this project intend that both Parties to this Agreement shall be bound by the terms of this Agreement, including the future performances that are outlined, inferred, or defined herein.

NOW, THEREFORE, in consideration of the foregoing recitals, mutual covenants, and agreements as contained herein; and in exchange for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and the Company hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 "Act" means the Limited Purpose Local Government Entities – Community Reinvestment Agency Act in Title 17C, Chapters 1 through 5, Utah Code Annotated 1953, as amended, or such other amendments as shall from time to time be enacted or any successor or replacement law or act.

1.2 "Applicable Rules" means all of the rules, regulations, ordinances and official policies of the City in force and effect as of the Effective Date, including the Code and the restrictions set forth in the Project Approvals, except as may be modified pursuant to Section 5.2.

1.3 "City Council" means the City Council and the legislative body of the City.

1.4 "Code" means the Eagle Mountain Municipal Code (or any subsequent recodification of such ordinance).

1.5 "Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the Company by contract or otherwise.

1.6 "Controlling Entity" means any entity or one of a group of entities directly or indirectly having Control of any entities or group of entities affiliated with the Company.

1.7 "Existing Roadway" means the Existing Roadway as of the Effective Date and located within the municipal limits of the City.

1.8 "Existing Zoning" means the City's Agricultural Zone, with an overlay of the City's Regional Technology and Industry Overlay Zone.

1.9 "Force Majeure Event" means a matter beyond the reasonable Control of the Party to perform (excluding unfavorable economic conditions), including: acts of God, including earthquakes, fire,

floods, tornados, hurricanes and extreme weather conditions; acts of terrorism; financial and/or banking crises that limit normal extensions of credit; civil disturbances; discovery of hazardous materials; and acts of the United States of America or the State of Utah.

1.10 “General Plan” means that certain Eagle Mountain City, General Plan, January 2023, or successor General Plan and Future Land Use and Transportation Map, dated as of January 18, 2022, as amended.

1.11 “GFA” means gross floor area.

1.12 “Maximum Height” means one hundred feet (100’).

1.13 “Mortgage” means a mortgage, deed of trust, sale and leaseback or other form of secured financing.

1.14 “Mortgagee” means the holder of a Mortgage.

1.15 “Official Records” means the Official Records of Utah County, Utah.

1.16 “Parking Ratio” means (i) at least one (1) space for each two thousand (2,000) square feet of GFA for regular employee use areas (i.e. office space, kitchens, training areas, employee circulation, etc.) and one (1) space for each eleven thousand (11,000) square feet of GFA for data halls (not including penthouses used for mechanical equipment or air circulation) or (ii) the reasonable number of parking stalls, as determined by the Company and approved by the Design Review Committee of the City, to meet the requirements of the Project.

1.17 “Participation Agreement” means a written agreement by and between the City and the Company that includes a description of the project area development that the Company will undertake, the amount of project area funds the Company may receive, and the terms and conditions under which the Company may receive project area funds; and approved by resolution of the board.

1.18 “Phase” means any data center building.

1.19 “Project Approvals” means the permits, approvals, reviews, and any other governmental approvals needed for the development of the project.

1.20 “Project Area” mean the geographic area for the Project as described in the Project Area Plan.

1.21 “Project Area Budget” means the definition for “Project Area Budget” as listed within the Project Area Plan.

1.22 “Project Area Plan” means the Project’s written plan (outlined by 17C-5-105 of the Act) that, after its effective date, guides and Controls the community reinvestment activities within the Project Area.

1.23 “Taxes” means any and all taxes, special taxes, assessments, levies, impositions, duties, deductions, withholding, charges and fees, including those imposed with respect to any assessment districts,

infrastructure financing, community facilities districts, community taxing districts, maintenance districts or other similar districts. Taxes do not include Impact Fees (as defined below).

1.24 “Tax Increment” means the definition for “Tax Increment” as listed within the Project Area Plan.

1.25 “Zoning Ordinance” means that certain Title 17 of the Code.

ARTICLE II CITY PROCEDURES AND ACTIONS

The City Council, after conducting a duly-noticed public meeting, adopted Resolution No. RES-20-2023 on July 18, 2023, effective immediately upon adoption; which resolution (i) confirmed the City Council’s approval of this Agreement and the City Council’s finding that the provisions of this Agreement are consistent with the General Plan and the Applicable Rules and (ii) authorized the execution of this Agreement. The City represents and warrants to the Company that (a) the City has the full power and authority to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement is a valid and binding obligation, enforceable against the City in accordance with the terms hereof and (c) the execution and delivery of this Agreement has been validly authorized by all necessary governmental or other action and does not conflict with any other agreements entered into by the City.

ARTICLE III TAXES AND FEES

3.1 Right to Oppose. The Company shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all Taxes.

3.2 New Taxes. The City shall not, during the Term of this Agreement, recommend or support any new Taxes that are applicable solely and exclusively to the Project, the Property or the data center industry; or with the express or inferred intent to specifically or inequitably target the Project, the Property or the data center industry.

3.3 Impact Fees.

(a) The Company acknowledges that the City may impose impact fees in connection with development activity on the Property to the extent required and calculated in accordance with this Agreement and the Applicable Rules. The City shall impose any impact fees in connection with the Property only in amounts in place pursuant to the Applicable Rules as of the Effective Date of this Agreement (collectively, the “Impact Fees”).

(b) The Parties acknowledge and agree that there may be certain of the Infrastructure Improvements to be required by the City, and paid by the Company, in accordance with this Agreement that represent “oversizing” required by the City or otherwise constitute improvements considered to be in the nature of “System Improvements”, as defined in the Utah Impact Fees Act, Utah Code Ann., § 11-36a-101, etseq. (collectively, the “System Improvements”). In the event the City requires Company to construct System Improvements, City shall reimburse Company for any and all construction costs paid by the Company for the System Improvements (collectively, the “System Reimbursement”). In the event City

requires Company to construct System Improvements, the City shall pay the System Reimbursement to the Company in the manner agreed upon by the Parties in a separate agreement.

3.4 Building Permit and Inspection Fees. The Company acknowledges that the City will impose application fees, building permit and inspection fees, and plan check fees (together, "Building Fees") in connection with development activity on the Property to the extent required and calculated in accordance with this Agreement and the Applicable Rules.

3.5 Real and Personal Property Tax Reimbursement.

(a) If the Company is required to pay a real or personal property tax ("Property Tax") imposed by the City, the City agrees to reimburse the Company the amount of Property Tax paid by the Company ("Property Tax Reimbursement") as follows:

(i) For each Phase of the Project, the total real property tax ("RPT") imposed by the City shall be reimbursed to Company at a rate of sixty-one percent (61%) for a period of up to twenty (20) years from the date of the first Tax Increment received by the Company subject to Paragraph 3.5. Notwithstanding the foregoing, the total reimbursement period for all Phases of the Project shall not extend longer than forty (40) years from the date that the first reimbursement is received; and

(ii) For each Phase of the Project, the total personal property tax ("PPT") imposed by the City shall be reimbursed to Company at a rate of seventy-four percent (74%) for a period of up to twenty (20) years from the date of the first Tax Increment received by the Company subject to Paragraph 3.5. Notwithstanding the foregoing, the total reimbursement period for all Phases of the Project shall not extend longer than forty (40) years from the date that the first reimbursement is received; and

(iii) The Eagle Mountain Redevelopment Agency will take an annual percentage of 2.5% to administer the Community Reinvestment Agency. An annual percentage of 10% will be allocated to affordable housing, as required by the Utah Community Reinvestment Agency Act. The remaining 87.5% of the Property Tax Reimbursement will be reimbursed to the Company;

The following hypothetical is offered by way of example and to demonstrate the manner in which §3.5(a)-(iii) generate a *Gross* and *Net* reimbursement:

■ §3.5(a)(i) is intended to mean that 61% of all (RPT) paid will be reimbursed. Hypothetically speaking, if \$100.00 were paid in RPT Company would be reimbursed a total of \$61.00. This amount constitutes the *Gross* reimbursement amount.

■ Similarly, §3.5(a)(ii) is intended to demonstrate that 74% of all PPT will be reimbursed to company. Thus, if \$100.00 were paid in PPT, Company would be reimbursed \$74.00, which is a *Net* reimbursement amount as it pertains to PPT.

■ Additionally, the Parties wish to make plain the intent and scope of §3.5(a)(iii). The language of that section is intended to demonstrate that 87.5% of the *Gross* amount that is to be reimbursed to Company for amounts paid in RPT shall be the amount Company actually receives as a final *Net* reimbursement.

The way in which the *Net* reimbursement is calculated is illustrated hereafter: If \$100.00 were spent in RPT by Company, Company would receive a reimbursement, pursuant to §3.5(a)(i), of \$61.00 as a *Gross* reimbursement. However, pursuant to §3.5(a)(iii) the following adjustments to that *Gross* amount will be made. From the \$61.00 *Gross* reimbursement 10% will be allocated to Affordable Housing, meaning \$6.10 would be subtracted from the *Gross* reimbursement. Additionally, 2.5% would be subtracted from the *Gross* reimbursement, meaning \$1.52 would be subtracted, and delivered to Community Reinvestment Agency. These reductions result in a *Net* reimbursement to Company, based on the above hypothetical, of \$53.38. This amount constitutes 87.5% of the 61% of the paid RPT and is the *Net* reimbursement amount.

(iv) The Eagle Mountain Redevelopment Agency and City acknowledge that this Agreement is entered into with the understanding that each Project Area Budget, for each Phase of the Project, will receive the necessary approvals as outlined within the Act, the Participation Agreement, the Project Area Plan, the Interlocal Corporation Agreements, and the Inducement Resolution. The enforceability of all of the referenced approvals is a primary and material inducement to Company. Accordingly, and for that reason the City has agreed to honor even erroneously issued permits, unless the work to be performed pursuant to those permits creates an objectively substantial danger to human health or safety. Accordingly, Company is specifically entitled to rely on any permit, certificate, impact fee, or other document executed, issued and delivered to Company, whether by an elected official or employee of the City. City shall not be allowed to retract any such document once issued under the guise that the issuance was in error, as a result of negligence, or by someone other than the City Council, because City by this representation affirms that Company is, or will be, expending significant resources in reliance on such documents and is entitled to rely on those representations, permits, impact fees, plat approvals, and agreements issued by City.

(b) For each Phase, Property Tax Reimbursement will begin to be generated in the tax year (ending Dec 1st) following construction completion. The Property Tax Reimbursement will actually be paid to the Company in March or April after collection. The Company understands that the City's obligations hereunder are limited by the total amount of Property Tax actually collected by the City, and the City shall not be required to reimburse the Company from any of the City's funds other than those constituting Property Tax collected by the City for the Project.

(c) The foregoing shall not in any way limit the Company's right to claim any exemption for the obligation to pay Property Tax pursuant to applicable law.

ARTICLE IV ENTITLEMENTS

4.1 Entitlement to Develop. The City represents to the Company that as of the Effective Date: (i) the Existing Zoning, the Parking Ratio and the Maximum Height apply to the Property pursuant to the Applicable Rules; (ii) electronic data management businesses, corporate campuses, offices, and research and development uses are expressly listed in the Zoning Ordinance as permitted uses under the Existing Zoning; and (iii) no Applicable Rule prohibits, prevents or encumbers the development, completion, operation or occupancy of the Project or any portion thereof in compliance with the use, density, design, height, set back, parking and signage regulations and requirements and other development entitlements incorporated in the Project Approvals. The Company has the vested right to develop and operate the Project, including the right to maintain, remodel, renovate, rehabilitate, rebuild, replenish or replace the Project or any portion thereof (including any equipment used in operating the Project) throughout the Term

for any reason, including in the event of damage, destruction or obsolescence of the Project or any portion thereof (including any equipment used in operating the Project), subject only to the Applicable Rules.

4.2 Changes in Applicable Rules. Subject to Section 4.9 below, no addition to, or modification of, the Applicable Rules, including any zoning, land use or building regulation, adopted or effective after the Effective Date, shall be applied to the Project or the Property, except changes to the Applicable Rules that are generally applicable on a City-wide basis and are updates or amendments to building, plumbing, mechanical, electrical, 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. The Company may elect in its sole discretion, and upon written notice to the City, to have any other changes to the Applicable Rules apply to the Project or the Property or any portion thereof, in which case such addition or modification shall be deemed incorporated into the Applicable Rules with respect to the Project or the Property or such portion thereof, as applicable. The City represents to the Company that no Applicable Rule conflicts with the provisions of this Agreement. If applicable state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as necessary to comply with such state or federal laws or regulations. The City shall not add or modify any Applicable Rule, including any zoning, land use or building regulation, with the express or inferred intent to specifically or inequitably target the Project, the Property or the data center industry or in a manner that adversely affects the Project, the Property or the data center industry. City staff shall not support or initiate any zoning application or change to the Applicable Rules to rezone any property adjacent to the Property to residential, unless such rezone is expressly conditioned on the recognition of the vested right to develop the Project and contains protections to assure that the Project is not required to eliminate or reduce the level of noise, light, traffic or other activity on or in the vicinity of the Property.

4.3 Project Approvals. The City represents to the Company that the Project Approvals are the only permits, approvals, reviews and actions of the City (including any agencies, departments or other approving bodies thereof) that are required to commence and complete the development of the Project and the Infrastructure Improvements under the Applicable Rules. Nothing herein shall prohibit the Company from seeking other or further permits, approvals, reviews or other actions in connection with the Project or the Infrastructure Improvements as may be deemed necessary or desirable by the Company in its sole discretion. The City has taken all of the actions with respect to the Project Approvals indicated on Exhibit B and shall process any and all remaining Project Approvals in accordance with the timeframes set forth on Exhibit B.

4.4 Moratoria or Interim Control Ordinances. No ordinance, resolution, policy or other measure enacted after the Effective Date that relates directly or indirectly to the Project or to fees associated with or the timing, sequencing or phasing of the development or construction of the Project shall apply to the Property or this Agreement, unless it is (i) reasonably found by the City to be necessary to the public health and safety of the residents of the City and (ii) generally applicable on a City-wide basis (except to the extent necessary in the event of a natural disaster).

4.5 Timeframes and Staffing for Processing and Review. To the extent reasonably possible, the City shall expedite processing of all Project Approvals (including staff review and processing and actions by any boards and commissions) and any other approvals or actions requested by the Company in connection with the Project or the Infrastructure Improvements, provided that the Company shall be responsible for payment of any third-party fees or charges to facilitate the expedited processing of Project Approvals. The City shall assign a building inspector or contracted third-party dedicated to the prompt

review of any and all plans and the prompt performance of any and all inspections required for the design, construction, development and occupancy of the Project or the Infrastructure Improvements. The City acknowledges and agrees that the Project is of sufficient size to meet the minimum requirements set forth in Section 17.48.030 of the Zoning Ordinance and confirms that the City will review the Project in accordance with the special approval process set forth in Section 17.48.030 of the Zoning Ordinance.

4.6 Other Approvals. The City shall assist and cooperate in good faith with the Company in connection with obtaining any (i) approvals and permits from other governmental or quasi-governmental agencies having jurisdiction over the Property, the Project or the Infrastructure Improvements and (ii) similar documents and instruments from third parties, as may be necessary or desirable in connection with the development or operation of the Project or the Infrastructure Improvements. Except for actions that require public hearings or noticing periods pursuant to state law (which actions the City shall take within the minimum time periods required pursuant to state law), if City action is required in connection with obtaining any such approvals, permits, documents or instruments, the City shall take final action within ten (10) Business Days (as defined below) following its receipt of each such request; provided that such period shall be tolled for any period during which the City is awaiting revisions or additional information from the Company that are necessary to complete the City process.

4.7 Timing and Rate of Development. The Project may include multiple Phases extending over a period of years. The City acknowledges that as of the Effective Date, the Company cannot predict when or at what rate the development of the Project will occur, which will depend upon numerous factors, including factors outside of the Control of the Company, such as market orientation and demand, competition, availability of qualified laborers and weather conditions. Subject to the Project Approvals, the Company may develop the Project in such order and at such rate and times as the Company deems appropriate in its sole and absolute discretion, which the City agrees is consistent with the intent, purpose and understanding of the Parties. Notwithstanding the foregoing, Company anticipates commencing construction on the Project during the third quarter of 2024 and completion of the first Phase in the final quarter of 2025. These dates are conceptual and not binding. Nevertheless, Company commits to beginning construction on the first Phase within three (3) years of the Effective Date. In the event that it becomes apparent to Company that Company will be unable to begin construction within three (3) years of the Effective Date, Company shall provide notice to the City in a manner compliant with Section 10.3 of this Agreement. After delivery and receipt of notice, the Parties shall meet to confer in good faith as to how to amend this provision of the Agreement in a manner that fulfills the intent of the Parties.

4.8 Additional Property. This Agreement is hereby adopted and approved by the City to apply to any real property within the municipal limits of the City that is adjacent and contiguous to the Property (or that is separated from the Property only by roads, public rights of way, easements or similar land rights or uses) that the Company or an affiliate of the Company may from time to time acquire following the Effective Date (whether in one or more parcels, "Additional Property"), subject to the Zoning Ordinance in effect at the time of such acquisition, including any setback or buffering requirements in the Zoning Ordinance. If the Company or an affiliate of the Company acquires Additional Property, then automatically upon notice thereof to the City, this Agreement shall apply with respect to, and the definition of "Property" hereunder shall include, such Additional Property regardless of whether the legal description of such Additional Property is actually attached hereto.

4.9 Vested Rights Doctrine. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the Effective Date. Notwithstanding the retained power of the City to enact such legislation under its police power, such

legislation shall not modify the Company's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d388 (Utah, 1980), its progeny or any other exception to the doctrine of vested rights recognized under state or federal law, including 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)(ii)(A).

4.10 Amended and Restated. Recently, City informed all Parties to this Agreement that documents incident to, and incorporated by reference herein, to this Agreement are in the process of being amended by Third-Party entities. Because Company has no representation in that process, and because the amendments could materially impact Company's rights, obligations, duties, and opportunities under this Agreement, and because the amendments will not be completed prior to the need for this Agreement's execution, City and Company agree, that following the completion of the agreements, which agreements must be accepted by City, that City and Company will negotiate in good faith to amend this Agreement and fully restate the same so that the original intention of this Agreement can be properly completed.

ARTICLE V INFRASTRUCTURE IMPROVEMENTS

5.1 Sewer Improvements. The City acknowledges that sewer infrastructure capable of meeting the needs of the Project must exist and remain operational to allow for the successful development and operation of the Project, without which the Company would be unable to locate the Project on the Property. Specifically, a sewer lift station is necessary to develop the Project. As a result, the Company shall commence and thereafter use diligent efforts to complete the design and construction of certain improvements to the City's existing sewer infrastructure (as more particularly described on Exhibit C, the "Sewer Improvements") in accordance with this Agreement. Company is currently contemplating using a third party to complete these improvements. Nevertheless, the Parties agree that Company is ultimately responsible for ensuring that these Sewer Improvements are completed. Upon completion, Sewer Improvements will be transferred to City ownership as public infrastructure.

5.2 Roadway Expansion.

(a) The Parties acknowledge that public roadways providing direct access to the Project must exist and remain adequately maintained to allow for the successful development and operation of the Project, without which the Company would be unable to locate the Project on the Property. Company shall commence and thereafter use diligent efforts to complete the design and construction of an expansion and extension of the Existing Roadway and any existing municipal utilities located therein (as more particularly described and shown on Exhibit D, the "Roadway Expansion", and collectively with the Sewer Improvements, the "Infrastructure Improvements") in accordance with this Agreement. The Roadway Expansion shall extend the Existing Roadway on Virtual Drive (shown on Google Maps as Magnolia Road) from its current southern terminus through the Property, to the southern boundary of the Property at 1000 North, along the eastern boundary of the Property, as depicted on Exhibit D. The Roadway Expansion shall also extend west from Virtual Drive along the northern boundary to the western boundary of the Property and extend south along the western boundary to the southern boundary of the property at 1000 North, as depicted on Exhibit D. For these Roadway Expansions, Company shall construct a half road width plus ten (10) feet up to a total of twenty-four (24) feet of asphalt. Company is currently contemplating using a third party to complete this Roadway Expansion. Nevertheless, the Parties agree that Company is ultimately responsible for ensuring that this Roadway Expansion is completed in accordance with City standards.

Upon completion, Roadway Expansion Improvements will be transferred to City ownership as public infrastructure.

(b) The Parties recognize that Company may acquire additional real property that may become subject to this Agreement in accordance with paragraph 4.8 or through amendment. If Company acquires additional real property that becomes subject to this Agreement, City may require additional Roadway Expansion in accordance with its duly adopted Transportation Master Plan.

(c) The City acknowledges that the Company will need to rely solely on the Existing Roadway and the Roadway Expansion for access to the Property, including during construction of the Project, and without such access, the Company would be unable to locate the Project on the Property. The City shall not abandon, vacate, or close any existing City roadways necessary to provide access to the Property, unless the City first provides reasonable alternative access to the Property. In addition, the City shall make reasonable efforts to ensure that routine maintenance and construction on roadways that serve as the only public access to the Property are done in a manner as to not unreasonably restrict or delay access to the Property.

5.3 Power. The Company may, or cause Rocky Mountain Power to, construct and maintain above-ground distribution power lines and structures in connection with the development of the Project (collectively, the “Overhead Power Lines”), without obtaining any variance or further documentation from the City. The City acknowledges and agrees that no variance is required for the Overhead Power Lines because the Overhead Power Lines are permitted under the Applicable Rules due to the temporary nature of the Overhead Power Lines.

ARTICLE VI MORTGAGES

6.1 Mortgages. This Agreement shall not prevent or limit the Company from encumbering the Property or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more Mortgages with respect to the construction, development, use or operation of the Project or any portion thereof. The City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement. Upon the Company’s request from time to time, the City shall meet with the Company and such Mortgagees to negotiate in good faith any such requests for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification that is consistent with the intent and purposes of this Agreement.

6.2 Mortgagee Not Obligated. A Mortgagee shall not have any obligation or duty to perform pursuant to the terms set forth in this Agreement.

6.3 Mortgagee Notice and Cure Rights. If requested in writing by a Mortgagee, the City shall deliver to such Mortgagee any notice of default delivered to the Company hereunder. A Mortgagee shall have the right, but not the obligation, to cure such default within thirty (30) days after such Mortgagee receives such notice, during which period the City shall not exercise any remedies hereunder.

6.4 Disaffirmation. If this Agreement is terminated with respect to a portion of the Property by reason of any default by the Company or as a result of a bankruptcy proceeding of the Company, or if this Agreement is disaffirmed by a receiver, liquidator or trustee for the Company or its property, then the City, if requested by a Mortgagee, shall negotiate in good faith, with the most senior requesting Mortgagee,

a new development agreement for the Project as to such portion of the Property. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section 7.4.

ARTICLE VII TERM

The term of this Agreement (the “Term”) shall commence on the Effective Date and continue for a period of forty (40) years. The Company may at any time and for any reason terminate this Agreement automatically upon notice thereof to the City.

ARTICLE VII THIRD PARTY TRANSACTIONS

8.1 Estoppel Certificate. At any time, and from time to time, either Party may deliver written notice to the other Party requesting that such other Party certify in writing, to the knowledge of the certifying Party: (i) that this Agreement is in full force and effect and a binding obligation of the Parties; (ii) that this Agreement has not been amended or modified, or if amended or modified, a description of each such amendment or modification; (iii) that the requesting Party is not then in breach of this Agreement, or if in breach, a description of each such breach; (iv) that the Infrastructure Improvements have been completed, or if not completed, a description of each component of the Infrastructure Improvements that has not been completed; (v) that all Construction Costs have been incurred and paid by the City (if true), and the amount of all Construction Costs incurred and paid by the City; (vi) that all Construction Costs have been reimbursed by the Company to the City (if true), and the amount of any and all Construction Costs reimbursed by the Company to the City (and any other amounts paid by the Company to the City for the Infrastructure Improvements); (vii) the matters required to be recorded by the City; and (viii) any other factual matters reasonably requested (an “Estoppel Certificate”). The City Administrator, or such other person(s) authorized by the City Council may execute, on behalf of the City, any Estoppel Certificate requested by the Company that is consistent with this Section 8.1. The City acknowledges that an Estoppel Certificate may be relied upon by transferees or successors in interest to the Company and by Mortgagees holding an interest in the Property.

8.2 No Third-Party Beneficiaries. The only parties to this Agreement are the City and the Company. There are no third-party beneficiaries under this Agreement, and except for assignees and successors-in-interests to either Party, this Agreement shall not be construed to benefit or be enforceable by any other party whatsoever.

ARTICLE IX DEFAULT AND REMEDIES

9.1 Generally. In the event of a default of this Agreement, the non-defaulting Party may provide written notice of the default to the defaulting Party and specify a period of not less than sixty (60) days during which the defaulting Party shall have the right to cure such default; provided, however, that such cure period may be extended if (i) the default cannot reasonably be cured within the cure period provided in such notice, (ii) the curing Party notifies the non-defaulting Party of such fact by no later than the end of the cure period provided in the notice, (iii) the curing Party has theretofore been diligent in pursuing the cure and (iv) the curing Party in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. Without limiting Section 6.3, if the defaulting Party fails to cure the default within such cure period, the non-defaulting Party may either (a) terminate this Agreement or (b) enforce this Agreement by the additional remedies set forth below.

9.2 Company's Additional Remedies Upon Default by City. The Company's sole and exclusive remedy under this Agreement for a default by the City shall be specific performance of the rights granted in this Agreement and City's obligations under this Agreement.

9.3 CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.

ARTICLE X MISCELLANEOUS

10.1 Force Majeure. If due to the occurrence of a Force Majeure Event a Party is unable to meet any obligation hereunder, then the deadline for performing such obligation shall be automatically extended by one (1) day for each day of such Force Majeure Event; provided that such Party shall diligently and in good faith Act to the extent within its power to remedy the circumstances of such Force Majeure Event affecting its performance or to complete performance in as timely a manner as is reasonably possible. The occurrence of a Force Majeure Event shall not cause any change to or extension of the Construction Schedule, or any portion thereof, or extend the deadlines, milestones or other dates set forth therein .

10.2 Recitals. The recitals of this Agreement are material terms hereof and shall be binding upon the Parties.

10.3 Notice. Whenever any notice is required or permitted under this Agreement, it shall be in writing and shall be delivered personally, with acknowledgment of receipt being obtained by the delivering Party, or by U.S. Certified Mail, return receipt requested, or by overnight delivery service by a reliable company, such as Federal Express or United States Parcel Service. Until further notification by written notice in the manner required by this Section 10.3, notices to the Parties shall be delivered as follows:

City:	Eagle Mountain City Attn: City Recorder 1650 E. Stagecoach Run Eagle Mountain, UT 84005
Company:	QTS Eagle Mountain I, LLC Attn: Legal Real Estate 12851 Foster Street Overland Park, Kansas 66213

If notice is given by U.S. Certified Mail, then the notice shall be deemed to have been given on the second (2nd) Business Day after the date the envelope containing the notice is deposited in the U.S. Mail, properly addressed to the Party to whom it is directed, postage prepaid. Notice made by personal delivery or overnight delivery shall be deemed given when received.

10.4 Assignment. The Company may assign its rights and obligations under this Agreement to any (i) affiliate Controlling Entity that Controls, is Controlled by or is under common Control with the Company (and upon such assignment the assigning entity shall be relieved of its covenants, commitments,

and obligations hereunder) or (ii) subsequent owner of all or any portion of the Property. If the Company sells the Property in its entirety and assigns its rights and obligations hereunder to its successor in title to the Property, then the assignee shall assume those rights and obligations and the Company shall be relieved of all its covenants, commitments and obligations hereunder.

10.5 Run with the Land. This Agreement shall run with the Property and any portion thereof as it may be subdivided or recombined. The Company shall record in the Official Records a memorandum of this Agreement in a form acceptable to the City and the Company setting forth the existence of this Agreement.

10.6 Entire Agreement. This Agreement, including all Exhibits attached hereto, (i.e. interlocal agreements, participation agreements, etc.) contains the entire agreement between the Parties regarding the subject matter hereof, and all prior or contemporaneous communications or agreements between the Parties or their respective representatives with respect to the subject matter herein, whether oral or written, are merged into this Agreement and extinguished. Except for the Company's right to modify the description of the Property from time to time as set forth herein no agreement, representation or inducement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless in writing and signed by the Party or Parties to be bound by such change, modification or termination. If any term or provision of this Agreement or any application thereof shall be unenforceable, the remainder of this Agreement and any other application of any such term or provision shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated and agreed upon by the Parties and their respective legal counsel. Therefore, the Parties agree that the fact that one Party or the other Party may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause this Agreement to be interpreted against such Party. It is the Parties' collective intention to encourage, promote and aid the Project so that the opportunities and positive community impacts of the Project are fully realized by the City, its citizens and the Company.

10.7 Waivers. Neither Party may waive any condition or breach of any representation, term, covenant or condition of this Agreement, except in a writing signed by the waiving Party and specifically describing the condition or breach waived. The waiver by either Party of any condition or breach of any representation, term, condition or covenant contained in this Agreement shall not be deemed to be a waiver of any other representation, term, condition or covenant or of any subsequent breach of the same or of any other representation, term, condition or covenant of this Agreement.

10.8 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of Utah.

10.9 Interpretation. The section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders. All references herein to "Section" or "Exhibit" reference the applicable Section of this Agreement or Exhibit attached hereto; and all Exhibits attached hereto are incorporated herein and made a part hereof to the same extent as if they were included in the body of this Agreement. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific terms, statements or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference

thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such term, statement or matter.

10.10 Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature.

10.11 Business Days. As used herein, the term “Business Day” shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Utah. All other references to “days” hereunder shall mean calendar days. If the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in the State of Utah, then the date for performance thereof shall be extended to the next Business Day.

10.12 Effect on Other Vested Rights. This Agreement does not abrogate any rights established or preserved by any applicable law, or by the Water and Sewer Agreement or by any other agreement or contract executed by the City and the Company in connection with the Project, or that have vested or may vest pursuant to common law or otherwise.

10.13 Confidential Information. The Company may designate any trade secrets or confidential business information included in any report or other writing delivered to the City pursuant to or in connection with this Agreement by any method intended to clearly set apart the specific material that the Company claims to be either its trade secrets or confidential business information that, if released, would give an advantage to competitors or result in unfair competitive injury to the Company (such information, collectively, “Confidential Business Information”). For the avoidance of doubt, all building plans shall be deemed Confidential Business Information. The City shall redact or delete any Confidential Business Information from any records it makes available for inspection or of which it provides copies. Within two (2) Business Days following the City’s receipt of any request to inspect or obtain copies of public records relating to this Agreement or the Project, the City shall provide written notice of the same to the Company, which notice shall include a copy of such request. The City shall not allow inspection or provide copies of any such records until the Company shall have had not less than ten (10) Business Days (following and excluding the day on which the Company receives such notice) to determine whether to contest the right of any party to inspect or receive copies of such records. Any such action to enjoin the release of Confidential Business Information may be brought in the name of the Company or the City. The costs, damages, if any, and attorneys’ fees in any proceeding commenced by the Company or at its request by the City to prevent or enjoin the release of Confidential Business Information in any public records relating to this Agreement or the Project shall be borne by the Company.

10.14 Attorneys’ Fees. If any action is brought by either Party against the other Party, relating to or arising out of this Agreement or the enforcement hereof, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys’ fees, costs and expenses incurred in connection with the prosecution or defense of such action, including the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this Section 10.14 shall survive the termination of this Agreement and the entry of any judgment and shall not merge, or be deemed to have merged, into any judgment.

10.15 Further Assurances. Upon the request of the other Party, each Party agrees to (i) furnish to the other Party such requested information, (ii) execute and deliver to the other Party such requested

documents and (iii) do such other acts and things reasonably required for the purpose of carrying out the intent of this Agreement.

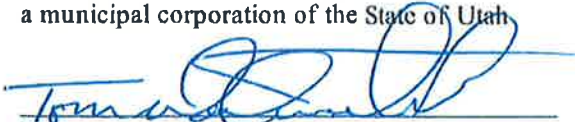
10.16 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A BENCH TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

[Signatures appear on following page]



CITY:

EAGLE MOUNTAIN CITY,
a municipal corporation of the State of Utah


Tom Westmoreland, Mayor

ATTEST:


City Recorder



APPROVED TO FORM:


City Attorney

COMPANY:

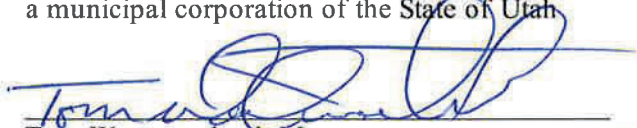
QTS Eagle Mountain I, LLC,
a limited liability company



DocuSigned by:
By: 
Name: David Robey
Title: Chief Operating Officer

CITY:

EAGLE MOUNTAIN CITY,
a municipal corporation of the State of Utah



Tom Westmoreland, Mayor

ATTEST:



City Recorder



APPROVED TO FORM:



City Attorney

COMPANY:

QTS Eagle Mountain I, LLC,
a limited liability company

By: _____
Name: David Robey
Title: Chief Operating Officer