

DEVELOPMENT AGREEMENT

South Weber City, a Utah municipal corporation (the “City”), and Farrell Poll and Steward Land Holdings LLC, a Utah limited liability company (together, the “Developer”) enter into this Development Agreement (this “Agreement”) effective as of _____, 2022 (the “Effective Date”), and agree as set forth below.

RECITALS:

A. The City, acting pursuant to its authority under Utah Code Annotated §§ 10-9a-101, et seq., as amended, and the Municipal Code for South Weber City (the “City Code”), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the proposed development of the Property (defined in Recital B), in exercise of its legislative discretion and administrative authority, and has elected to enter into this Agreement.

B. Developer is the owner of certain real property located at approximately 2400 East South Weber Drive, in South Weber City, Davis County, Utah, and legally described in attached **Exhibit A** (the “Property”).

C. On July 20, 2021, the City passed Ordinance No. 2021-10 as set forth in attached **Exhibit B** (the “Rezone Ordinance”) approving the rezone of the Property from Agricultural to Commercial Highway and Residential R-7.

D. Developer desires to make improvements to the Property in conformity with this Agreement, the Rezone Ordinance, the requirements as outlined in City Code (the “Land Use Ordinance”), any future approvals, and in accordance with all other applicable provisions of the City Code.

E. Developer has submitted a Site Plan for approval by the City Council, which Site Plan is consistent with City Code, is expected to be approved by the City Council on May 10, 2022, and shall be attached to this Agreement as **Exhibit C** (the “Site Plan”) upon approval.

F. The City will authorize execution of this Agreement by resolution within 30 days of the Effective Date, which resolution shall be attached to this Agreement as **Exhibit D**.

G. The City intends to amend its Land Use Ordinance to allow R-7 developments to be platted as townhomes that can be sold as individual units with zero lot line between such townhome units, and to make a minor amendment to the legal description of the Property covered by the Rezone Ordinance.

DEVELOPER AND THE CITY AGREE AS FOLLOWS:

1. Recitals; Definitions. The foregoing recitals are incorporated into and made a part of the terms of this Agreement. Any capitalized term used but not otherwise defined in this Agreement shall have the meaning ascribed to such term in the City Code.

2. Developer. Developer agrees the following terms and conditions apply to the development of the Property:

a. The Property shall be developed in accordance with the provisions of this Agreement, the Land Use Ordinance and all other applicable provisions of the City Code in effect as of the date of the Rezone Ordinance. The parties agree that this Agreement does not conflict with the requirements of the Land Use Ordinance or the City Code.

b. Developer will proceed in good faith with development of the Property and submit site plan(s), plats, architectural designs, elevations and concept renderings relative to the development of the Property (collectively, the "Developer Plans") as necessary to obtain the approval of the City in accordance with the City Code through its Planning Commission and City Council. The City agrees to process all further land use approval applications relating to the Project, including but not limited to administratively issued approvals like building permits, in conformance with all of the City's laws and without undue delay.

c. If and when the City amends its Land Use Ordinance to allow R-7 developments to be platted as townhomes, Developer agrees to apply to replat the Property as a townhome plat with individually platted units.

d. If Developer's application to replat the Property as a townhome plat is otherwise consistent with amendments to the City's Land Use Ordinance, the City agrees to approve such application without requiring any material changes to the Site Plan. For purposes of this agreement, new architectural requirements, changes to setbacks, landscaping requirements, or loss of control over individual units by the Developer would constitute a material change. Minor modifications necessary to accommodate utility access would not be considered material changes.

e. Developer agrees to develop the Property in phases as is described below and depicted in the Phasing Plan attached hereto as **Exhibit E**:

i. Phase One shall include a minimum of three retail pads constructed concurrently with no more than thirty (30) townhome units;

ii. Phase Two shall include a minimum of one additional retail pad with a building size approximately as drawn in the Site Plan, constructed concurrently with no more than thirty-one (31) townhome units.

iii. Phase Three shall include a final commercial pad constructed according to market demands.

f. The City shall not issue a Notice of Occupancy for any unit in phase two until Developer has completed and received Notice(s) of Occupancy for all structures in Phase One. Phase Three may be constructed and receive a Notice of Occupancy prior to the completion of Phases One and Two.

g. As part of the Final Site Plan approval, the City and Developer agree to amend the legal descriptions to reflect the updated dimensions of commercial and residential areas as depicted in the Site Plan.

h. To enhance pedestrian safety, Developer agrees to extend the walking path adjacent to unit 21 as indicated in the image attached hereto as **Exhibit F**.

3. **Term**. This Agreement shall be effective as of the date of recordation, shall run with the land and shall continue in full force and effect unless and until this Agreement is terminated by mutual consent of the parties.

4. **General Provisions**.

a. **Notices**. Any notice to be given by any party hereunder must be given in writing and delivered in person, or by reputable nationwide overnight courier, or forwarded by certified or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of address. Notices are effective on the date of delivery (or refusal to accept delivery), if notice is given by personal delivery, on the next succeeding business day after deposit with an overnight courier for next day delivery, or if notice is sent through the United States mail, on the earlier of the date of actual delivery as shown by the addressee's receipt or the expiration of three (3) days following the date of mailing.

If to Developer:
Steward Land Holdings, LLC
Attn: Terrance Sky Hazlehurst
1708 E 5550 St. 18
South Ogden, UT 84403

If to City:
South Weber City
Attn: David Larson, City Manager
1600 E South Weber Drive
South Weber City, UT 84405

b. **Waiver**. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement.

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

d. **Authority**. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer represents and warrants it is fully formed and validly existing under the laws of the State of Utah, and that it is duly qualified to do business in the State of Utah and is in good standing under applicable state laws. Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.

e. Entire Agreement. This Agreement, including exhibits, constitutes the entire Agreement between the parties.

f. Assignment. Neither this Agreement, nor any of the provisions, terms or conditions hereof can be assigned by Developer to another party, individual or entity without assigning the rights as well as the obligations under this Agreement, and without the prior written consent of the City, which shall not be unreasonably withheld. Such assignments shall be subject to review by the City which is intended to provide assurances that the proposed assignee possesses sufficient ability to assume the provisions, terms, and conditions of this Agreement. The City shall review and approve, approve with conditions or deny all proposed assignments by Developer to a subsequent fee owner, as required by this Section, within twenty-one (21) days of notice of proposed sale, assignment, or other transfer. If the City takes no action to either approve (with or without conditions) or deny a proposed assignment, the assignment shall be deemed approved by the City. If the City in good faith determines that the proposed assignee does not have sufficient financial ability to assume and carry out the affirmative provisions, terms and conditions of this Agreement, a portion of this Agreement may still be assigned but Developer shall remain responsible for the performance of all obligations of this Agreement. Notwithstanding the foregoing, the City hereby consents to the assignment by Developer of any or all its rights under this Agreement to its Lender, provided that notice of the assignment is given to the City of such assignment promptly after the transfer is accomplished. The rights of the City under this Agreement shall not be assigned.

g. Agreement to Run with the Land; Priority. This Agreement shall be recorded in the office of the Davis County Recorder against each Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors and assigns of Owner in the ownership or development of any portion of the Project, senior to any debt security instruments encumbering the Property. The benefits of this Agreement shall inure to successors-in-interest and/or subsequent owners of the Property only if the Agreement is transferred or assigned in accordance with the provisions of paragraph (4)(f) above.

h. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the parties to this Agreement or by their successors-in-interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Davis County Recorder's Office.

i. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and Developer's ability to complete the development of the Property is not defeated by such severance.

j. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Davis County, Utah, and the Parties hereby waive any right to object to such venue.

k. Remedies. Without limiting any other provision of this Agreement, if any party to this Agreement breaches any provision of this Agreement, the non-breaching party shall be entitled to all remedies available at both law and in equity.

l. Attorney's Fee and Costs. If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

m. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

n. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

o. No Agency Created. Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

DEVELOPER:
STEWARD LAND HOLDINGS, LLC
a Utah limited liability company

CITY:
SOUTH WEBER CITY, UTAH

By: _____
Terrance Sky Hazlehurst

By: _____
Rod Westbroek, Mayor

Date: _____

Date: _____

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the day of , 2022, personally appeared before me ROD WESTBROEK who being by me duly sworn did say that he is the Mayor of SOUTH WEBER CITY, and that the foregoing instrument was signed in behalf of said City by authority of a resolution of its Council; and they acknowledged to me that said City executed the same.

Notary Public

My Commission Expires:

Residing at:

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the day of , 2022, personally appeared before me TERRANCE SKY HAZLEHURST, Steward Land Holdings, LLC, known to me to be the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of Steward Land Holdings, LLC, by authority of its Operating Agreement.

Notary Public

My Commission Expires:

Residing at:

EXHIBIT “A”
Legal Description

[INSERT LEGAL DESCRIPTION HERE]

EXHIBIT "B"
Rezone Ordinance

EXHIBIT "C"
Site Plan

EXHIBIT “D”
Authorizing Resolution

EXHIBIT “E”
Phasing Plan

EXHIBIT "F"
Pedestrian Improvement

