

RESOLUTION 21-18
A RESOLUTION OF THE SOUTH WEBER CITY COUNCIL
APPROVING A PROPERTY EXCHANGE AGREEMENT

WHEREAS, South Weber City is under contract to purchase a lot for a future Public Work's Shop; and

WHEREAS, the parcel is located on State Road 60 (South Weber Drive) which is controlled by the Utah Department of Transportation (UDOT); and

WHEREAS, UDOT requires the entrance to be located west of the originally proposed access upon property owned jointly by the Larry D Ray Revocable Trust and Susan A Ray Revocable Trust; and

WHEREAS, that property is under contract for purchase with Nilson Homes for development and will require access across the public work's property for ingress/egress; and

WHEREAS, both the owner and developer have agreed to exchange the land for the Public Work's entry site for the land for the future Harper Way connection;

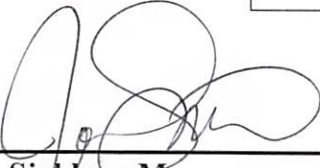
NOW THEREFORE BE IT RESOLVED by the Council of South Weber City, Davis County, State of Utah, as follows:

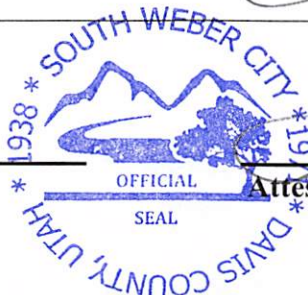
Section 1. Approval: The Property Exchange Agreement attached as Exhibit 1 is hereby approved.

Section 2: Repealer Clause: All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by the City Council of South Weber, Davis County, on the 8th day of April 2021.

Roll call vote is as follows:		
Council Member Winsor	FOR	AGAINST
Council Member Petty	FOR	AGAINST
Council Member Soderquist	FOR	AGAINST
Council Member Alberts	FOR	AGAINST
Council Member Halverson	FOR	AGAINST


Jo Sjoblom, Mayor





Attest: Lisa Smith, Recorder

EXHIBIT 1
PROPERTY EXCHANGE AGREEMENT

RETURNED

APR 14 2021

E 3371592 B 7738 P 411-426
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/14/2021 09:42 AM
FEE \$ 0.00 Pgs: 16
DEP RT REC'D FOR SOUTH WEBER CITY

PROPERTY EXCHANGE AGREEMENT

This **PROPERTY EXCHANGE AGREEMENT** ("Agreement") is made and entered into as of the 8th day of April, 2021, by and among **SOUTH WEBER CITY**, A Utah municipal corporation, hereinafter referred to as the "City"; **NILSON LAND DEVELOPMENT, LLC**, hereinafter referred to as "Nilson"; and the **LARRY D. RAY REVOCABLE TRUST** under Declaration of Trust Dated December 29, 1997, as amended, and the **SUZANNE A. RAY REVOCABLE TRUST** under Declaration of Trust dated December 29, 1997, as amended, hereinafter referred to collectively as "Ray." City, Nilson, and Ray are sometimes referred to collectively herein as the "Parties," and individually as a "Party."

RECITALS:

A. The City has entered into a Real Estate Purchase and Sale Agreement ("REPSA") with Elite Training Centers, LLC ("Elite"), to purchase a portion of parcel numbers 13-005-0037 and ~~13-315-001~~, approximately 11.92 acres, located in South Weber City, Utah. The real estate the City has contracted to buy is located at approximately 128 East South Weber Drive, South Weber City, Utah, hereinafter referred to as the "Property Purchase Area," and is identified as item one (1) in Exhibit A, a copy of which is attached hereto and incorporated herein by reference. *See ALSO Exhibit [B] LEGAL DESCRIPTION*

B. Nilson has a contract to purchase real property from Ray (the "Ray Property"). The Ray Property is identified as parcel number 13-005-0036 and abuts South Weber Drive and the Property Purchase Area described in paragraph A above. *See ALSO EXHIBIT [C] LEGAL DESCRIPTION*

C. The Ray Property is owned by the Larry D. Ray Revocable Trust and the Suzanne A. Ray Revocable Trust as tenants in common with each owning an undivided 1/2 interest.

D. For the Property Purchase Area to serve the City as a site for its future maintenance facility, the City must establish access from the Property Purchase Area to South Weber Drive. To this end, a condition of the REPSA between City and Elite is preliminary approval of an access permit for South Weber Drive from the Utah Department of Transportation ("UDOT").

E. From South Weber Drive, the existing access point to the Property Purchase Area crosses the Ray Property.

F. It is the City's understanding that UDOT will not approve a second access point from South Weber Drive to the Property Purchase Area.

13-315-001

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are fully incorporated herein by this reference.
2. **City Access to South Weber Drive.** To provide the City access from the Property Purchase Area to South Weber Drive, Ray and Nilson agree to convey to the City fee simple title to approximately 0.26 acres of property identified as two (2) and three (3) in Exhibit A to this Agreement. Such conveyance shall be executed and duly recorded prior to April 15, 2021, either by deed or by signing the Public Works Subdivision Plat.
3. **Extension of Harper Way.** To allow for the future extension of Harper Way, the City agrees to convey approximately 0.24 acres of property necessary for a seventy-foot (70') right-of-way across the Property Purchase Area. The right-of-way is identified as four (4) in Exhibit A to this Agreement. Conveyance of the right-of-way shall be executed if and when Ray, Nilson, or their successors or assigns petition the City for approval to develop the Ray Property. One-hundred percent (100%) of the cost of constructing the future extension of Harper Way shall be borne by Ray, Nilson, or their successors or assigns. The future extension of Harper Way shall be constructed according to City standards in effect at the time of the development application.
4. **Abandonment of existing access to South Weber Drive.** Upon approval and construction of a new access road to-from the Property Purchase Area and South Weber Drive ("Future Access Road"), Ray and Nilson agree to abandon the existing driveway access from the Ray Property to South Weber Drive.
5. **Cross-Access Easement.** Upon approval and construction of the Future Access Road, the City shall provide a cross-access easement along the Future Access Road to the west, adjacent Ray Property. The City shall provide this cross-access easement at the time the old access is abandoned and the Future Access Road is constructed.
6. **Future improvements to future access road.** If and when the Ray Property is developed for a use other than the current agricultural use, Ray, Nilson, and their successors and assigns agree to make all required improvements to the Future Access Road. Such improvements shall be constructed in accordance with City standards and may include curb, gutter, drainage infrastructure, asphalt/concrete paving, among other things.
7. **Additional access to South Weber Drive.** This agreement shall not preclude Ray, Nilson, or their successors or assigns from seeking additional access to South Weber Drive if such access becomes necessary to support development of the Ray Property. The City shall support such additional access to the Ray Property insofar as the additional access is consistent with the City's General Plan, permitted by UDOT, and is not precluded by law. In the event that

UDOT refuses to grant a second street access to the Ray Property in a location consistent with the General Plan, the City agrees to allow a future public street to cross the property in this Agreement in order to access the current access point. Ray and Nilson would be responsible for the cost of relocating the City's access to the new public street.

8. Notices. Any notice required or desired to be given pursuant to this Agreement shall be delivered personally or mailed by certified mail, return receipt requested, postage prepaid, to the parties as follows:

City: South Weber City
Attn: City Manager
1600 East South Weber Drive
South Weber, Utah 84405

Ray: Larry D. Ray Revocable Trust
Suzanne A. Ray Revocable Trust
Attn: Lynn J. Wood, Trustee
2490 Wall Ave.
Ogden, UT 84401

Nilson: Nilson Land Development, LLC
Attn: Steve Bingham, Manager
5617 South 1475 East
South Ogden, UT 84403

The Parties may change their addresses by notice given as required above.

9. Default. In the event any Party fails to perform its obligations hereunder, or to comply with the terms hereof, within thirty (30) days after giving written notice of said default, and if the defaulting Party has failed to take reasonable steps to remedy the default, the non-defaulting Party, at its election, shall have the following remedies.

9.1 All rights and remedies available as law and in equity, including injunctive relief, specific performance and/or damages;

9.2 The rights and remedies set forth hereinabove shall be cumulative. Any legal actions commenced or file in connection the with Property or any matters contained herein shall be filed in the Second Judicial District Court in and for Davis County, Utah.

9.3 If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings) be instituted by any Party against another Party to enforce this Agreement or any rights arising hereunder, or in connections with the subject matter hereof, the Prevailing Party shall be entitled to recover all costs of suit and reasonable attorneys' fees. For purposes of this paragraph, the term "Prevailing Party" shall, in case of a claimant, be the Party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the Party who is successful in denying substantially all of the relief sought by

the claimant; and

9.4 The rights and remedies of any of the Parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the Parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunctions, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the Parties that the respective rights and obligations of the Parties hereunder shall be enforceable in equity as well as at law or otherwise.

10. Time of the Essence. Time is expressly made of the essence for each and every provision of this Agreement.

11. No Partnership or Joint Venture. The Parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship among them and expressly affirm that they have entered into this Agreement as part of an “arms-length” transaction. No Party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other Party hereto, nor shall it make any representation to any third party inconsistent with this provision.

12. Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, and when taken together shall constitute one and the same original Agreement, which shall be fully binding upon each Party who executes the same.

13. Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between the Parties. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

14. Applicable Law. This Agreement shall be construed in accordance and governed by the laws of the State of Utah.

15. Run with the Land/Successors. This Agreement shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. Any party shall have the right to sell, assign, or transfer its rights under this Agreement as it deems appropriate.

16. Integration. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings

pertaining thereto. No covenant, representations or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the Parties.

17. Waiver. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term or condition.

18. Authorization. Each Party to this Agreement represents and warrants that it has taken all appropriate actions and steps necessary (including, without limitation, obtaining all requisite and/or applicable approvals, consents, and authorizations) to ensure that this Agreement shall be binding upon such Party and the individual executing this Agreement for each respective Party represents that he/she has all requisite authority to execute the same for and on behalf of the party for which it is aligning.

19. No Public Use/Dedication. The Developer Property, the Property, and until dedicated, the Right-of-Way Property, are and shall at all times remain the private property of Developer, and neither the City, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to all or any portion of the Developer Property, and until dedicated, the Right-of-Way Property, beyond the express terms and conditions of this Agreement. The use of the Developer Property, the Property and the Right-of-Way Property is permissive and shall be limited to the express purposes contained herein.

20. Non-Liability of City Officials, Employees and Others. Except for claims relating to authorization as may arise in Section 18, no officer, employee, representative or agent of the City shall be personally liable to Ray, Nilson, or their successors or assignees in the event of any default or breach by the City, or for any act or omission arising out of, or connected to, any of the matters set forth herein, or for any amount which may become due to Haws or any obligation arising under the terms of this Agreement.

21. Re-conveyance of Access to South Weber Drive if REPSA Fails. If City and Elite do not transact the sale contemplated in the REPSA, the City will re-convey to Ray and Nilson title to the approximately 0.26 acres of access property described in section two (2) of this Agreement, and all other provisions of this Agreement shall become null and void.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY:

SOUTH WEBER CITY,
a municipality of the State of Utah

By:  _____

Name: David Larson

Its: City Manager

Attest:



City Recorder

NILSON LAND DEVELOPMENT,
LLC:

By: [Signature]
Name: Steve Bingham
Its: Manager

LARRY D. RAY REVOCABLE
TRUST:

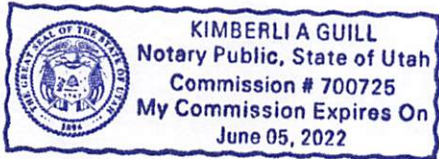
By: [Signature]
Name: Lynn Wood
Its: Trustee

SUZANNE A. RAY REVOCABLE
TRUST:

By: [Signature]
Name: Lynn Wood
Its: Trustee

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

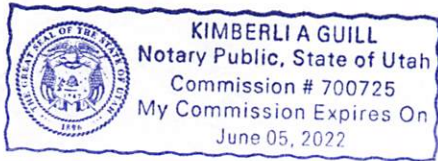
On the 9 day of April, 2021, personally appeared before me
Steve Bingham, known or satisfactorily proved to me to be the
MANAGER of NILSON LAND DEVELOPMENT, LLC, who
acknowledged to me that he/she signed the foregoing instrument as Member
for NILSON LAND DEVELOPMENT, LLC and in its behalf.



Kim Buell
Notary Public for Utah

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On the 9 day of April, 2021, personally appeared before me David Larson, who being duly sworn, did say that he is the City Manager of SOUTH WEBER CITY, a municipal corporation of the State of Utah, and that the foregoing instrument was signed on behalf of the City by authority of its governing body and said David Larson acknowledged to me that the City executed the same.

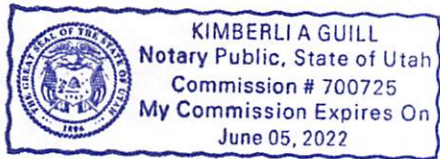


Kim Guill

Notary Public for Utah

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On the 9 day of April, 2021, personally appeared before me Lynn Wood
known or satisfactorily proved to me to be the Trustee of the LARRY D. RAY REVOCABLE
TRUST, who acknowledged to me that he/she signed the foregoing instrument as Trustee for the
LARRY D. RAY REVOCABLE TRUST and signed on its behalf.



Kim Guill
Notary Public for Utah

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On the 9 day of April, 2021, personally appeared before me Lynn Wood
known or satisfactorily proved to me to be the Trustee of the SUZANNE A. RAY REVOCABLE
TRUST, who acknowledged to me that he/she signed the foregoing instrument as Trustee for the
SUZANNE A. RAY REVOCABLE TRUST, and signed in their behalf.



Kim Guill
Notary Public for Utah