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REC FOR: WEBER COUNTY PLANNING

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

and

15-796-0055

Ogden 3, L.L.C.

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DEVELOPMENT AGREEMENT

Winston Park Phase 2

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and Ogden 3, L.L.C. ("Developer"), known together herein as the "Parties."

RECITALS

WHEREAS, The Developer desires and intends to develop a residential subdivision (the "Project") in the unincorporated area of Weber County known as West-Central Weber; and

WHEREAS, The Developer's objective is to develop a residential subdivision that complements the character of the community and is financially successful; and

WHEREAS, The County's objective is to only approve development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners; and

WHEREAS, The general plan advocates, and the Board of County Commissioners hereby further affirm, that new development in the area resulting from a rezone should not only compensate for its impacts on the character of the community and the existing residents, it should also enhance and benefit the existing and future community using smart growth principles such as expansion of parks and open space areas, street and pathway connectivity, and other smart growth principles specified in the plan; and

WHEREAS, The Project is currently zoned A-1 (Agricultural). In order to benefit from the additional development rights that the R1-15 zone offers, Developer desires to rezone the Project to the R1-15 (Residential) zone consistent with the terms and provisions contained herein; and

WHEREAS, Developer acknowledges that a rezone is not compulsory and that Developer is hereby volunteering to be rezoned. Developer understands that volunteering to be rezoned will result in the obligations and benefits set forth in this Agreement as well as in the new zone. Developer further acknowledges that some of the obligations and benefits set forth in this Agreement might not otherwise be applicable or enforceable without Developer volunteering to comply and benefit from this Agreement; and

WHEREAS, Developer understands that the Board of County Commissioners is not obligated to rezone the project, but does so as a result of Developer's voluntary contributions as set forth in this Agreement, without which the County would not realize the full benefits of this Agreement and would not have rezoned the Property.

WHEREAS, In consideration of Developer's voluntary contributions, the Board of County Commissioners desire to rezone the Project to the R1-15 (Residential) zone consistent with the terms and provisions contained herein, as generally depicted in **Attachment D**: Associated Rezone Area; and

WHEREAS, The Project will be located on land referred to herein as the "Project Site". The Project Site is as more specifically described in **Attachment A**: Project Area Legal Description and illustrated in **Attachment B**: Project Area Graphic Representation. A concept plan showing the general location and layout of the Project is contained in **Attachment C**: Concept Plan;

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Effective Date, Expiration, Termination.**

   1.1. **Effective Date.** The Effective Date of this Agreement is the latter of:

      1.1.1. The last date upon which it is signed by any of the Parties hereto;

      1.1.2. The recordation of this Agreement; or

      1.1.3. The recordation of the rezone ordinance to which this Agreement is associated and inextricably linked.

   1.2. **Expiration.** This Agreement shall be in full force and effect until (10) years from the Effective Date of this Agreement, at which point this Agreement shall expire. This Agreement may be extended for two 5-year terms upon mutual agreement of the Parties before the expiration date(s).

   1.3. **Termination.** This Agreement may be terminated by mutual written agreement of the Parties to this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:

      1.3.1. The term of this Agreement expires and is not extended as provided above;

      1.3.2. The Project is abandoned or the use is discontinued, as provided for by Weber County Code Chapter 108-12; or

      1.3.3. The Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 12 of this Agreement.

2. **Definitions and Interpretation.**

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized. Words not defined herein shall have the same meaning as provided by the Code. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall apply to all genders whenever the context requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

   2.1. **Agreement.** "Agreement" means this Development Agreement between the County and Developer, approved by the Board of County Commissioners, and executed by the undersigned.

   2.2. **Code.** "Code" means the Weber County Code.

   2.3. **County.** "County" means Weber County, Utah.

   2.4. **County Laws.** "County Laws" means the ordinances, policies, standards, and procedures of the County related to zoning, subdivisions, development, public improvements, and other similar or related matters that have been adopted or may be adopted in the future.

   2.5. **Developer.** "Developer" means Ogden 3, LLC or its Assignees or Successors as provided in Section 11.1 or 11.2 of this Agreement.

   2.6. **Effective Date.** "Effective Date" has the meaning set forth in Section 1 of this Agreement.

2.7. **Side Setback, Exterior.** "Exterior Side Setback" means the side setback for the exterior side of a building; the opposite of Interior Side Setback.

2.8. **Side Setback, Interior.** "Interior Side Setback" means the setback of the exterior wall of a dwelling unit that directly abuts, by means of a zero side yard setback, the wall of the adjoining dwelling unit; or, if allowed by applicable laws, the two abutting units may be sharing the same wall.

2.9. **Force Majeure Event.** "Force Majeure Event" means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of governmental or judicial authority.

2.10. **Parties.** "Parties" means the Developer and the County.

2.11. **Project.** "Project" means the development of a subdivision on the Project Site pursuant to this Agreement and the County Code.

2.12. **Project Site.** "Project Site" means the land area on which the Project will be sited, as more specifically described in **Attachment A**: Project Area Legal Description and **Attachment B**: Project Area Graphic Depiction, but may also include improvements on adjacent or nearby properties where more specifically provided for herein.

2.13. **Routine and Uncontested.** "Routine and Uncontested" means simple and germane to the Project or Project Site, having very little chance of effect on the character of the area, and not anticipated to generate concern from the public.

2.14. **Transferee.** A party to which the Project is transferred or assigned in part or in whole. "Assignee" shall also mean the same.

3. Conflicting Provisions

Development of the Project shall be in accordance with the County Laws in effect as of the Effective Date, and this Agreement and its Attachments. In the event of a conflict between the County's laws and this Agreement, the more specific provisions of this Agreement and its Attachments shall control. In the event of a conflict between the Attachments of this Agreement and the main body of this Agreement, the main body shall control.

4. Project Description and Density.

A residential subdivision within the R1-15 zone that generally complies with the requirements of Code Section 106-2-4.030 "Connectivity-Incentivized Subdivision, as illustrated in **Attachment C.** While this Agreement provides obligations and benefits that only pertain to development within the area described in **Attachment A,** the density allowed is based on the overall legal description of the existing Winston Park Subdivision, recorded in the Office of the County Recorder on July 12, 2022, which is 40.152 acres. The R1-15 zone enables 116 dwelling units on 40.152 acres. The existing Winston Park Subdivision contains 54 lots. This Agreement contains three of those lots and other areas designated as open space. Given this, the County agrees that the Developer is entitled to develop no more than 65 total dwelling

units within the area described in **Attachment A.**

5. **Restriction on Right to Protest Annexation**

If a city or district attempts to annex the Property, Developer, on behalf of itself and any successive property owner within the Project, hereby waives the right to protest the annexation, and agrees that any filed protest is void, and agrees to support the annexation unless County agrees, in writing, with and to the protest. If more than one municipality or district is available into which the entire Project can be annexed, Developer may choose which municipality or district the entire project will join.

6. **Project Location and Illustration.**

The Project is as described in **Attachment A**, and illustrated in **Attachment B and C**.

7. **Vested Rights and Reserved Legislative Powers.**

7.1. **Vested Rights**. Developer shall have the vested right to develop and construct the Project on the Property in accordance with the R1-15 zone, development standards, and other matters specifically addressed in this Agreement, subject to compliance with the terms and conditions of this Agreement and other applicable County Laws in effect as of the Effective Date. The Parties intend that the rights granted to the Developer under this Agreement are contractual and also those rights that exist under statute, common law, and at equity.

7.2. **Exceptions to Vesting.** The Parties understand and agree that the Project will be required to comply with future changes to County Laws that do not limit or interfere with the vested rights granted pursuant to the terms of the Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the County that would be applicable to the Project:

7.2.1. Future laws that Developer agrees in writing to the application thereof to the Project;

7.2.2. Future laws which are generally applicable to all properties in the County and which are required to comply with State and Federal laws and regulation affecting the Project;

7.2.3. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AASHTO 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;

7.2.4. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the County to all properties, applications, persons and entities similarly situated;

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

7.2.6. Impact Fees or modifications thereto which are lawfully adopted, imposed, and collected.

7.3. **Reserved Legislative Powers.** Developer acknowledges that the County is restricted in its authority to limit its police powers by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to the County all of its police power that cannot be so limited. Notwithstanding the retained power of the County to enact such legislation under tis police powers, any such legislation shall only be applied to modify the vested rights of Developer as referenced herein under the terms of this Agreement based upon policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah as codified in Utah Code 17-27a-508. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the unincorporated areas of the County; and unless in good faith the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

8. Certificate of Occupancy Requirements.

8.1. **Each Dwelling to Comply.** Developer, including assigns and successors, understands and agree that no certificate of occupancy for any dwelling unit in the Project will be provided until Weber County has verified compliance with this section.

8.2. **Landscaping.** Installation of an operable smart watering controller, as provided in Section 9.4.

8.3. **Energy Efficiency.** Installation of operable energy efficient appliances, as provided in Section 9.7.1.

8.4.

8.5. **Outdoor Lighting.** Use of dark-sky friendly lighting, as provided in Section 9.8.

9. Development Standards and Requirements.

9.1. **Project Density.** In exchange for the benefits offered by the developer in this Agreement, County agrees to allow no more than 116 total dwelling units within the original 40-acre boundaries of the Winston Park Subdivision, as provided in Entry 3245491 in the Weber County Recorder's Office. No more than 24 of these units shall be patio homes, as further governed in Section 9.9 herein. The remaining shall be for typical single-family dwelling lots.

9.2. **Connectivity Incentivized.** Developer hereby volunteers and agrees to follow the minimum street and pathway standards as provided in Section 106-2-4.030 of the Code. The County hereby agrees to allow the flexible lot standards as provided by that section of Code. The County also agrees that the conceptual street layout illustrated in **Attachment C** satisfactorily complies with that code section for the purposes of this Project.

9.3. **Street Improvements.** Streets in the Project shall be designed and installed by the Developer in accordance with the street cross sections depicted in **Attachment E.**

9.3.1. **Driveway Accesses along 1800 South Street.** Developer agrees that no lot will be platted to provide driveway access to 1800 South Street.

9.3.2. **Street Wall Along Rear-Facing or Side-Facing Lots on 1800 South.** Developer agrees install a solid wall along 1800 South Street where the rear or side of a residential lot or unit abuts or is otherwise adjacent to and visible from this street. The wall shall be designed to provide visual breaks in the horizontal wall plane at least every 30 feet, such as a column or similar, and the wall and each column shall have a cap. The wall

shall be muted earth-tone in color. Except for the required clear-view triangles, this fence shall be at least six feet in height, but no more than eight feet. Examples of such a fence is provided in **Attachment F**. Alternative fencing along this street may be approved by the Planning Director if it provides similar or better visual qualities and materials. Vinyl fencing along this street is prohibited.

9.3.3. Public Street Landscaping.

9.3.3.1. Street Trees. All streets shall be lined with shade trees in the parkstrip.

9.3.3.1.1. Trees lining an adjacent and parallel sidewalk or pathway shall suffice for the street's trees.

9.3.3.1.2. Except as provided herein or when otherwise prohibited by Code, no less than two trees shall be planted for every 60-feet of a lot's frontage. Trees shall be spaced as evenly as practicable, and shall not be planted within the clearview triangle of an intersection.

9.3.3.1.3. At least two different tree varieties shall be used and dispersed in a manner to avoid transmission of pests/disease, or as may otherwise be specified by a landscape architect or other professional qualified in tree health, such that the trees have optimal chance of long-term health.

9.3.3.1.4. Developer agrees to provide or cause to be provided by means of the homeowner's association each street tree with an irrigation mechanism tied either to a homeowner's association master meter, or tied directly to the secondary water meter of the lot that the tree is fronting.

9.3.3.1.5. No tree with a caliper less than two inches shall be planted.

9.3.3.1.6. Developer is responsible for tree health throughout the duration of the warranty period. Developer agrees to obligate the homeowners association to provide for the tree health thereafter.

9.3.3.2. Parkstrip Landscaping. Developer shall place six-inch angular rock, 8-inches deep, in the parkstrip of 1800 South, with a weed barrier beneath. Alternatively, County agrees that Developer may, at its option, install alternative planting and landscaping along 1800 South Street as long as it is operated and maintained by a homeowner's association. County agrees that other park strips in the project may be planted with grass or other landscaping by the Developer or homeowners, which will be operated and maintained either by the adjoining owner or a homeowners association, as may be provided in the covenants.

9.3.3.3. Construction Drawings to Include Landscaping. Each development application submitted shall provide a detailed public landscape plan that, at a minimum, shows landscaping materials proposed to be used, the proposed location, species, including the measurements of each tree's mature crown, and the method of vegetation irrigation.

9.4. Non-Public Water-Wise Landscaping. All lots within the development will have water wise landscaping implemented as follows:

9.4.1. Smart Controller. A smart watering controller shall be installed and prewired for at least six irrigation zones. "Prewired" means it is connected to live power, but does not mean it needs to be connected to control valves. A smart water controller, such as an Orbit B-

Hyve smart controller or a Rainbird ESP smart controller, is an automatic landscape watering controller that can connect to the internet to automatically adjust watering schedules or amounts based on local weather and environmental conditions. County and Developer mutually agree that the requirement of this Section 9.4.1 will be applied to the homebuilder or homeowner, and that the Developer's obligation herein is satisfied upon recordation of covenants that stipulate the same.

9.4.2. Landscape Certificate of Occupancy Requirement. See Section 8.

9.5. Public Utilities. Developer agrees to underground all utilities in a manner that complies with adopted standards, including any existing overhead utilities within the property and within any right-of-way adjacent to the property. High voltage power transmission lines are exempt from this requirement.

9.6. Parks, Open Space, and Trails

In consideration for the rezone of the Property, Developer hereby agrees to provide, at no cost to the County, the following parks, open space, and trails amenities:

9.6.1. Parks and Open Space: Developer agrees to donate $7,500 per lot or unit within the Project to the Park District. Developer agrees that this is a donation offered of the Developer's own free will and is not a fee or exaction imposed by the County or Park District. Developer also agrees that once this donation is made the Park District has full discretion on how to use the donation and Developer has no claim to the donation or how it is used. The per-lot donation shall be remitted to the Park District prior to recordation of a subdivision plat. No Building Division or Planning Division application will be accepted or approved in the Project until the County receives written confirmation of this donation from the Park District.

9.6.2. Trails, Sidewalks, and Pathways:

9.6.2.1. Locations. Developer agrees to install 10-foot wide asphalt pathways in the locations as indicated on **Attachment C** and in accordance with Section 106-2-4.030 of the Code.

9.6.2.2. Pathway or Sidewalk Trees. Each pathway and sidewalk within the development shall be lined with shade trees in a manner as specified in Section 9.3.3.1 herein.

9.6.2.3. Pathway Landscaping. Developer agrees to install a low-maintenance native seed mix, ground cover, or rock mulch, or a combination thereof along the shoulders of the pathways. Native seed mix shall be hydro-seeded. Mulch shall be substantial enough to minimum its migration onto the pathway. The shoulders shall also be lined with weed barrier. The landscaping shall be such that it will minimize weed growth along the pathway right-of-way. County agrees that other landscaping may be installed by the Developer or homeowners, which will be operated and maintained either by the adjoining owner or a homeowners association, as may be provided in the covenants.

9.6.2.4. Phase 1 Pathway Right-of-Way. Prior to recordation of the first plat, Developer agrees to provide a public pathway right-of-way through a lot(s) in the existing Winston Park subdivision. The lot(s) shall be selected from lots 105 through lot 112. The pathway right-of-way shall be no less than 12-feet wide and shall be dedicated or conveyed to Weber County prior to the recordation of a subdivision plat. It shall be configured so that it connects

the sidewalk along Fitzroy Road to the western most edge of the lot(s), providing a stub to the adjacent property to the west. Developer may, at its option, install a pathway within this right-of-way. The pathway shall be at least 10 feet wide.

9.6.2.5. **Construction Drawings to Include Landscaping.** Each subdivision's improvement plans shall provide a detailed landscape plan that, at a minimum, shows landscaping materials proposed to be used, the proposed location, species, including the measurements of each tree's mature crown, and the method of vegetation irrigation.

9.6.3. **Drainage Detention Landscaping.** Developer agrees to install turf grass and appropriate turf sprinkler system in the drainage detention basin for both the Winston Park Subdivision Phase 1 and any additional drainage basins resulting from this Project. The Parties agree that the HOA shall manage and maintain the turf grass.

9.7. **Emissions and Air Quality Standards.** Developer further agrees that all buildings will be designed to an energy efficiency rating that is one climate zone colder than the area. The following are also required:

9.7.1. **Appliance Efficiency.** Natural gas heating appliances, such as furnaces, water heaters, boilers, etc., shall have a 95% efficiency rating. County and Developer mutually agree that this requirement will be applied to the homebuilder or homeowner, and that the Developer's obligation herein is satisfied upon recordation of covenants that stipulate the same.

9.7.2. **Environmental Certificate of Occupancy Requirement.** See Section 8.

9.8. **Outdoor Lighting.** Developer agrees that all outdoor lighting within the Project will be governed by the County's Outdoor Lighting ordinance, Chapter 108-16 of the Code. Except for lights installed by Developer, County and Developer mutually agree that this requirement will be applied to the homebuilder or homeowner, and that the Developer's obligation herein is satisfied upon recordation of covenants that stipulate the same.

9.9. **Patio Homes Development Standards.** County agrees to allow and Developer agrees to build no more than 24 patio homes in the location as generally depicted in **Attachment C**. The County agrees to allow each patio home to be accessed by means of a Shared Private Lane pursuant to Section 106-2-2.030 of the Code. Each shall comply with the following standards:

9.9.1. **Condominiums.** The County agrees that some or all of the patio homes may be platted as condominium dwelling units pursuant to State and County Laws.

9.9.1.1. If platted as a condominium unit, when a unit is attached to another unit by means of a common wall, the combination of units shall be deemed a "building" for the purposes of determining building setbacks.

9.9.1.2. There shall be at least 10-feet distance between any two buildings.

9.9.1.3. The front of each building shall be setback from the 24-foot wide shared private lane right-of-way at least 15 feet.

9.9.1.4. Each building shall be setback from a public street no less than 20 feet, except 30 feet from 1800 South.

9.9.1.5. Only two condominium units are allowed per building.

9.9.2. **Single-Family Attached.** The County agrees that some or all of the patio homes may be platted as single-family attached dwelling units, each on their own single-family lot.

A lot for a single-family attached dwelling unit may have one of the two side setbacks eliminated so that more than two dwelling units can abut or attach to each other at the common side lot line. The other side setback shall be no less than five-feet, except those adjacent to a street shall be no less than 15 feet. Each dwelling shall be setback from the 24-foot-wide Shared Private Lane right-of-way at least 15 feet, and be setback from the rear lot line at least five feet.

9.9.3. **Single-Family Detached.** The County agrees that some or all of the patio homes may be platted as single-family detached dwelling units, each on their own single-family lot. Each side setback shall be no less than five feet. The rear setback shall be no less than five feet. Each dwelling shall be setback from the 24-foot-wide Shared Private Lane right-of-way at least 15 feet.

9.9.4. **Units Backing Onto 1800 South.** For each unit abutting 1800 South Street, each patio home building shall face away from 1800 South Street. The rear of these buildings shall be designed to appear to the common lay-person as a single-family dwelling. This shall be accomplished by, among other means, avoiding repetitive or otherwise redundant configurations of walls, wall massing, wall planes, windows sizes and locations, rooflines, chimneys, patios, door sizes and locations and other related design elements. Unless approved otherwise by the Planning Director after being presented with an alternative that, in the director's sole discretionary discernment, is better, this shall necessitate custom interior layouts that do not repeat from unit to unit, nor from building to building. The rear setback of these units (from 1800 South) shall be 30 feet.

9.9.5. **One Story Buildings.** Each patio home shall be no greater than one story. At least 50 percent shall be designed so that there are no steps entering or within the dwelling unit. The rest may have up to one step.

9.9.6. **Owner Occupancy Requirement.** Each patio home shall be deed-restricted to only allow owner-occupants. Occupancy verification shall be the homeowner association's responsibility. County and Developer mutually agree that the Developer's obligation herein is satisfied upon recordation of covenants that stipulate the same.

9.9.7. **General Design.** The exterior design of the patio homes shall follow the following standards:

9.9.7.1. **Roofline Breaks.** Rooflines shall be broken every 50 feet, with no less than a 12 inch shift between adjacent rooflines that are on a paralleling plane.

9.9.7.2. **Building Massing.** The wall massing of building facades shall be broken at least every 50 feet with no less than a six-inch shift in the plane of adjacent walls.

9.9.8. **Special Considerations.** Developer further agrees to the following:

9.9.8.1. **Privacy Fence and Landscaping.** A six-foot fence shall be constructed between the patio homes development and lots in Winston Park Subdivision Phase 1, and provide privacy trees along said fence, spaced in a manner such that the crown of the trees will converge at their average maturity.

9.9.8.2. **Driveway Buffer.** Where driveways serving the patio homes development are configured in a manner that creates a reasonable likelihood for vehicles to hit fencing, screening, or landscaping between the patio homes and adjoining lots in Winston Park Subdivision Phase 1, a permanent concrete barrier shall be constructed to contain said vehicles.

9.10. **Agreement Alternatives for Moderate Income Housing.** County agrees that the provisions of Sections 9.4, 9.6.1, and 9.7, shall not apply to any lot or unit that has a recorded deed restriction in favor of the Weber Housing Authority for moderate income housing, as defined by State Code, or that restricts the floor area of the residence (excluding basements and garages, if applicable) to no greater than 1,000 square feet.

10. Amendments and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Developer and County (an "Amendment"). This Section 10 specifies what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

10.1. **Project Facility Repair, Maintenance and Replacement.** Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.

10.2. **Authorized Changes, Enlargements, or Alterations.** As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.

10.2.1. **Changes Necessary to Comply with Other Laws.** Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval; provided that the changes are Routine and Uncontested and the application thereof does not materially affect the County's original intent, findings, or conditions on the Project in a manner that would have likely resulted in a different decision on this Agreement, as determined by the Planning Director.

10.2.2. **Landscaping Changes.** Any changes to this Agreement's landscaping designs, guidelines, standards, plantings, materials and installation of the same anywhere in the project.

10.2.3. **De Minimis Changes.** Other de Minimis changes requested by the Developer, which are reasonably consistent with the intent of this agreement and the R1-15 Zone, and are Routine and Uncontested.

11. General Provisions.

11.1. **Assignability.** The rights and responsibilities of the Developer under this Agreement may be assigned. The Developer, as the landowner of the Project Site at the time of the execution of this Agreement, may sell, convey, reassign, or transfer the entire Project Site or entire Project to another entity at any time.

11.2. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Site, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

11.3. **Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.

11.4. **Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.

11.5. **Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.

11.6. **Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.

11.7. **Force Majeure Event.** County agrees to offer a reasonable period for Developer to cure the effect of the event given the extent of the effect on the Project and the Developer's ability to redress the effect as mutually determined by Developer. If mutual determination cannot be reached, the Developer may employ a third party to make a determination. The County shall have the right to reject any third party selected if it determines that the select third party does not possess the necessary expertise in the specific effect of the event.

11.8. **Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

11.9. **Subjection and Subordination.** Each person or entity that holds any beneficial, equitable, or other interest or encumbrances in all or any portion of Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments hereof. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to Developer or the County

11.10. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

11.11. **Other Necessary Acts.** Each of the Parties shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

11.12. **No Third Party Beneficiaries.** All bonds, including but not limited to performance, warranty, and maintenance bonds, and related agreements are between the County, Developer (or contractor if applicable), and financial institution. No other party shall be deemed a third-party beneficiary or have any rights under this subsection or any bond or agreement entered into pertaining to bonds. Any other person or entity, including but not limited to owners of individual units or lots, shall have no right to bring any action under any bond or agreement as a third-party beneficiary or otherwise.

12. **Notices.**

12.1. **Written Notice.** Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.

12.2. **Addresses.** Notices shall be given to the Parties at their addresses set forth as follows in this section.

12.3. **Notice Effect.** Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any Party at any time by Notice to the other Party may designate a different address or person to which such notice or communication shall be given.

If to the County:

Weber County Commission
2380 Washington Blvd, Ste #360
Ogden, UT 84401

With copies to:

Weber County Attorney
2380 Washington BLVD, Ste. #230
Ogden, UT 84401

Weber County Planning Director
2380 Washington BLVD, Ste. #240
Ogden, UT 84401

If to Developer:

Ogden 3, LLC
1835 W 1500 S
Salt Lake City, UT 84104-3801

13. **Default and Remedies.**

13.1. **Failure to Perform Period.** No Party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

13.2. **Remedies.** The Developer's failure to comply with this agreement constitutes a violation of the Land Use Code of Weber County, and is subject to the enforcement provisions and remedies thereof. In addition, the County may withhold any permits from the Project.

13.3. **Dispute Resolution Process.**

13.3.1. **Conference.** In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Developer shall send Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.

13.3.2. **Mediation.** If this Conference process does not resolve the dispute within the 7-day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

14. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Covenants Running with the Land

The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots, as opposed to Subdivided plats or Parcels, in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise

16. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

SIGNATURES

"County"
Weber County, a body corporate and politic of the State of Utah

By: _____

James "Jim H." Harvey
Chair, Weber County Commission

DATE: 11.5.2024

ATTEST: _____

FOR Ricky D. Hatch, CPA
Weber County Clerk/Auditor

CLERK / AUDITOR OFFICIAL SEAL WEBER COUNTY, UTAH

"Developer"

Ogden 3, LLC

By: _____

Print Name: Wade Rumsey

Title: Member | manager

DATE: Nov. 5, 2024

Developer Acknowledgment

IRIS MABREY HENNON
NOTARY PUBLIC ● STATE of UTAH
COMMISSION NO. 736867
COMM. EXP. 04-29-2028

State of Utah)

)ss.

County of Davis)

On the 5 day of November, 2024 personally appeared before me IRIS M HENNON, who being by me duly sworn, did say that he is the Developer of Ogden 3, LLC., a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

04-29-2028

My Commission Expires:

Notary Public, residing in

Utah.

"Owner"

Ogden 3, LLC

By: Wade Rumsey

Print Name: Wade Rumsey

Title: Member / manager

DATE: Nov. 5, 2024

Owner Acknowledgment

IRIS MABREY HENNON
NOTARY PUBLIC • STATE of UTAH
COMMISSION NO. 736887
COMM. EXP. 04-29-2028

State of Utah)

)ss.

County of Davis)

On the 5 day of November, 2024 personally appeared before me _____, who being by me duly sworn, did say that he is the Owner of Ogden 3, LLC, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

04-29-2028

My Commission Expires:

Iris M. Hennon

Notary Public, residing in

Utah

Attachment A – Project Area Legal Description

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. SAID TRACT OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING FENCE LINE EXTENDED DEFINED AS THE WESTERLY BANK OF A SLOUGH, SAID POINT BEING NORTH 89°15'08" WEST ALONG THE QUARTER SECTION LINE 182.77 FEET AND SOUTH 00°48'10" WEST 40.18 FEET FROM THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 38°02'07" WEST 364.48 FEET; THENCE SOUTH 37°51'05" WEST 188.07 FEET; THENCE SOUTH 38°06'04" WEST 513.12 FEET; THENCE SOUTH 43°27'51" WEST 42.80 FEET; THENCE SOUTH 39°10'43" WEST 40.86 FEET; THENCE NORTH 69°58'25" WEST 167.70 FEET; THENCE NORTH 20°01'35" EAST 77.72 FEET; THENCE NORTHEASTERLY 13.91 FEET ALONG A THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS NORTH 46°35'29" EAST 13.42 FEET; THENCE NORTHWESTERLY 161.21 FEET ALONG THE ARC OF A 60.00 FOOT REVERSE CURVE TO THE LEFT, CHORD BEARS NORTH 03°48'52" WEST 116.91 FEET; THENCE NORTH 09°12'52" EAST 96.05 FEET; THENCE NORTH 89°15'08" WEST 397.47 FEET; THENCE NORTH 00°44'52" EAST 289.69 FEET; THENCE NORTH 89°15'08" WEST 244.80 FEET; THENCE NORTH 00°44'52" EAST 272.01 FEET; THENCE SOUTH 89°15'08" EAST 1460.45 FEET TO THE POINT OF BEGINNING.

CONTAINS 16.458 ACRES, MORE OR LESS

Attachment B – Project Area Graphic Depiction

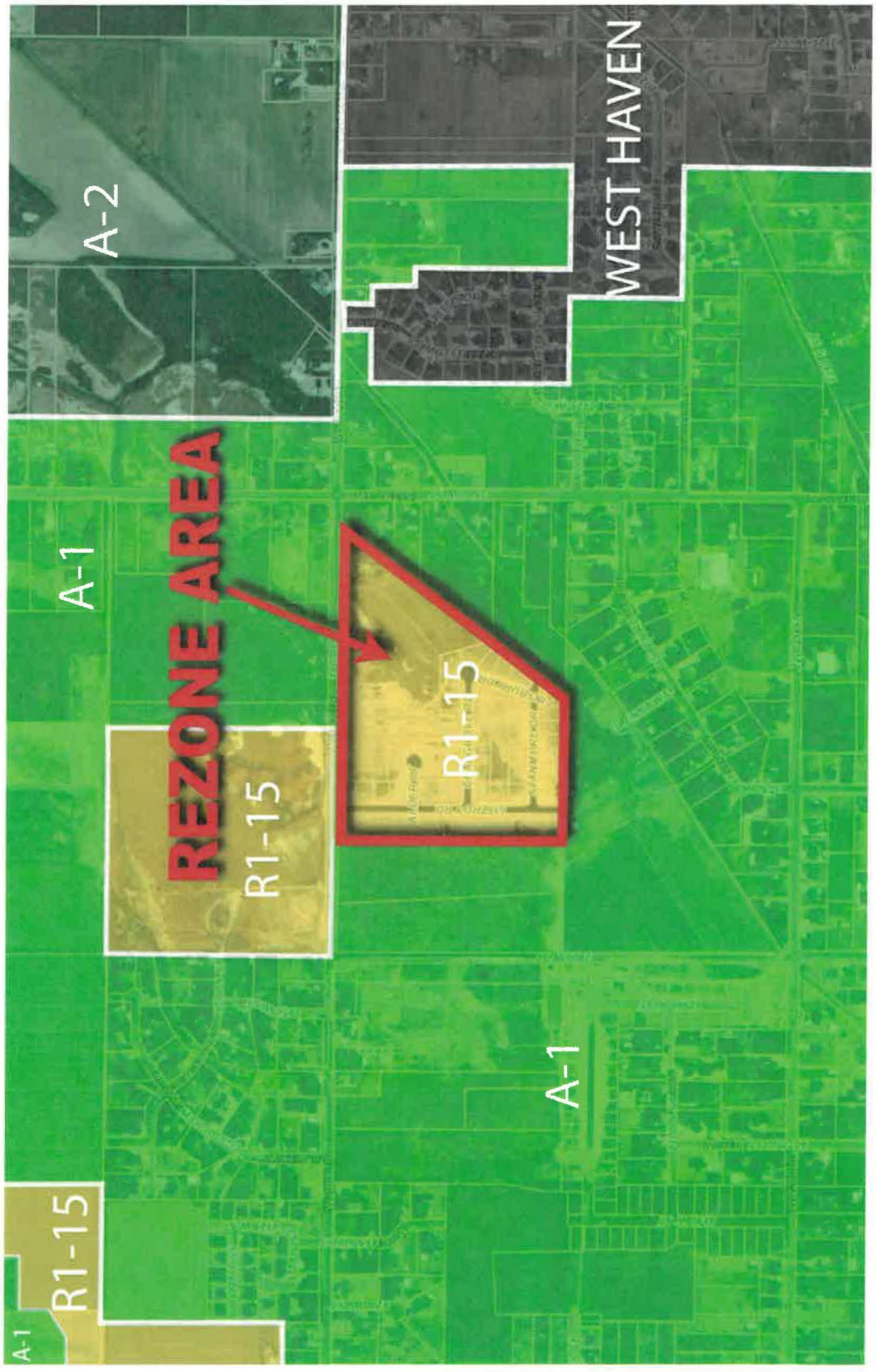




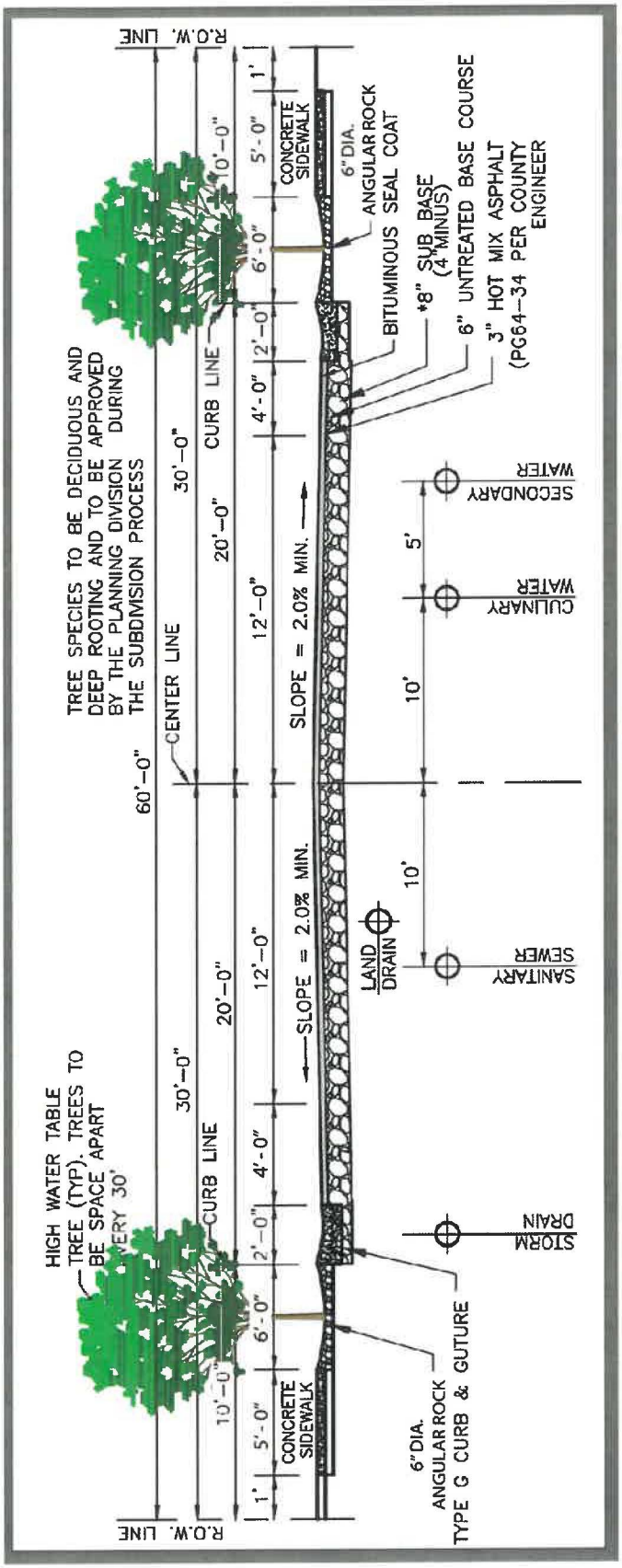
Attachment C – Concept Plan

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Attachment D – Associated Rezone Area



Attachment E – Street Cross Sections



Attachment F – 1800 S WALL





