



Staff Report to the Weber County Commission

Weber County Planning Division

Synopsis

Application Information

Agenda Item:	ZMA 2023-07. A public hearing to consider approval of an ordinance and development agreement to rezone 7.44 acres from the A-2 zone to the R-3 and C-1 zone, property located 3300 S 3500 W, Ogden.
Application Type:	Legislative
Agenda Date:	Tuesday, December 12, 2023
Applicant:	Rick Scadden
File Number:	ZMA 2023-07

Property Information

Approximate Address:	3300 S 3500 W, Ogden
Zoning:	A-2
Existing Land Use:	Agricultural
Proposed Land Use:	Residential
Parcel Number:	08-029-0092

Adjacent Land Use

North:	Commercial/Residential (West Haven)	South:	Residential
East:	Agricultural (West Haven)	West:	Agricultural

Adjacent Land Use

Report Presenter:	Steve Burton sburton@webercountyutah.gov 801-399-8766
Report Reviewer:	CE, RG

Summary

On February 28, 2023, the application for a rezone was accepted for review. The proposal is for the property to be rezoned to R-3 to allow for townhomes, with C-1 along 3500 W and 3300 S. When the application was initially submitted to the County, planning staff requested that the applicant work with West Haven City to discuss annexation into the city. The applicant has had several conversations with West Haven City about annexation, as the property is located within the West Haven City annexation area.

The applicant has chosen to move forward with the request to the county without seeking annexation into West Haven City. The applicant has provided letters of acknowledgement from the secondary water provider, culinary water provider, sewer provider, and a letter of support from the local park district.

Previous planning commission action

On November 7, 2023, the Western Weber Planning Commission unanimously passed the following motion, in making a recommendation to the County Commission:

Recommend approval of the proposed rezone from A-2 to C-1 and R-3, without a master plan overlay zone. The recommendation is based on the following conditions:

1. The developer will enter into a mutually agreeable development agreement with the County, specifying the design of the commercial and multifamily buildings and that states the donation of \$5,000 per dwelling to the parks district will be made before each subdivision plat records. The development agreement will specify that plats need to be recorded in three years, and the project will need to be completed within six years.

Based on the following findings:

1. The proposal helps implement the mixed use and commercial elements of the Western Weber general plan.
2. The proposal provides a meaningful contribution to open space and parks improvements in the area.

Policy Analysis

Section 102-5-6 of the Land Use Code provides direction regarding the duties of the Planning Commission when taking action on legislative items such as rezones:

A decision to amend the zoning map is a matter committed to the legislative discretion of the County Commission and is not controlled by any one standard. However, in making an amendment, the Planning Commission and County Commission are encouraged to consider the following factors, among other factors they deem relevant:

Each of the following sections is the staff's analysis of relevant factors when considering a rezone request. The following sections provide information to help the Commission evaluate the request. Each subsequent section will be titled, County Rezoning Procedure (with its relevant factor).

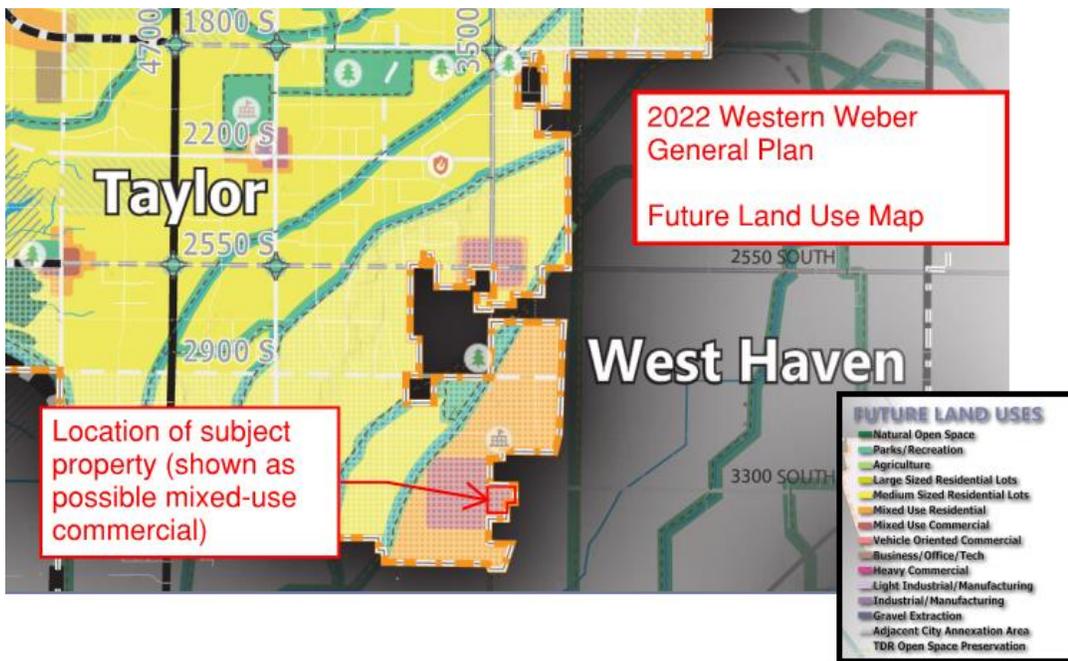
County Rezoning Procedure (a)

- a. *Whether the proposed amendment is consistent with goals, objectives, and policies of the County's general plan.*

Western Weber General Plan: Below is an image of the property shown on the Future Land Use Map of the Western Weber General Plan. This map indicates that the property has a possibility of being rezoned to mixed-use commercial. The Land Use section of the general plan states the following regarding mixed-use commercial (pg 41).

The areas of the future land use map designated as mixed-use commercial are intended to provide a village center in which a variety of land uses can occur nearby. There are currently (2022) no mixed-use commercial uses in the planning area. The closest adjacent mixed-use commercial area comparable to that anticipated herein can be found in the Junction development or 25th street in Downtown Ogden City. However, it is unlikely that the mixed-use areas displayed on the future land use map will be on the same scale as Ogden's Downtown area. In each mixed-use area there should be at least one community "main street." The main street should provide retail sales, services, eateries, and related activities that make the street interesting to use. These uses should be located behind building facades that are at the level of the street and directly adjacent to the street's sidewalk, with plenty of window and door openings facing the street to capture the attention and interests of pedestrians as they engage their public spaces, browse, shop, eat, and play.

The proposal is for a mixed-use master planned area that will include street front commercial along 3300 S and 3500 W, with townhomes located behind the commercial. The applicant proposes C-1 as the allowable zoning along the street front which, if the design of the street and buildings are properly done, can provide for a small scale "main street" anticipated by the general plan. Currently, the commercial design standards of the C-1 zone require a ten foot wide pedestrian access with street trees and pedestrian lighting.



The streets and transportation map of the general plan shows 3300 S as an existing minor collector street (80 ft width) and 3500 W as a future major collector street (100 ft width). When the properties develop the developer will be required to dedicate property to ensure that each street is wide enough according to the transportation plan.

The applicant has proposed that the commercial street front buildings follow the concept shown below, which includes gable roofs and wood or faux wood facades to resemble the features of agricultural buildings that are prominent in the Western Weber planning area. Under the commercial architectural requirements, the proposed buildings will need to have rooflines broken up every 50 ft and white cannot be used as a predominant color.



The following image represents the concept of the townhomes, proposed by the applicant, which include wood or faux wood facades, asphalt shingled roofs, and stone or brick wainscoting.



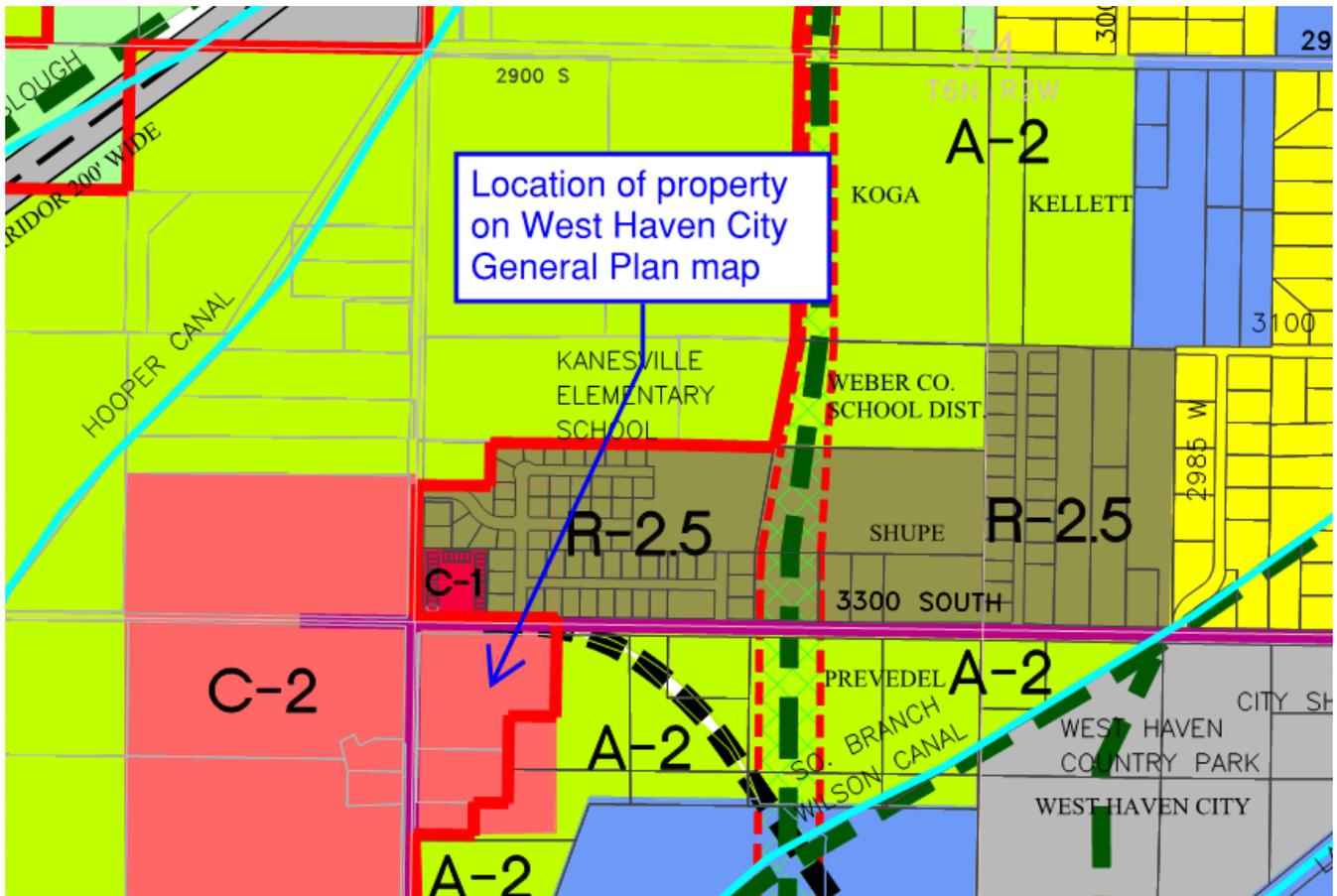
County Rezoning Procedure (b)

- b. Whether the proposed amendment is compatible with the overall character of existing development in the vicinity of the subject property.*

The surrounding area consists mainly of agriculture, except the area to the north is zoned C-1 (West Haven City) and R-2.5 (West Haven City) which includes a mixed-use development called Hylands Ranch Subdivision with a commercial lot and single family lots at approximately 10,000 square feet per lot.

The Western Weber General Plan anticipated a small scale mixed-use development similar to Hylands Ranch Subdivision in West Haven. The proposal to rezone to C- 1 with townhomes behind the buildings should not be too incompatible with existing development in the area.

When the application for rezoning was initially submitted, planning staff met with West Haven City who expressed that the property is in their annexation area and intended to be commercial (C-2) as shown on the City's general plan map. Planning staff recommended that the owner work with the city to have the property annexed. It is the understanding of the county staff that the developer went to work session with the city, but did not receive enough positive feedback on the project to want to annex.



County Rezoning Procedure (c)

c. The extent to which the proposed amendment may adversely affect adjacent property.

The permitted and conditional uses listed in the C-1 zone are the least intense of the allowed commercial uses in the Western Weber planning area. Through the county’s subdivision and commercial development process, certain codes requirements like landscaping, screening, buffering, and upgraded improvements will be applied to the property to lessen adverse impacts to adjacent properties.

County Rezoning Procedure (d)

d. Whether the proposed rezone can be developed in a manner that will not substantially degrade natural/ecological resources or sensitive lands.

The subject properties are not located within any mapped sensitive lands, as defined by county code. There are no wetlands, geologic hazards, or floodplain mapped on the property.

County Rezoning Procedure (e)

e. Whether proposed traffic mitigation plans will prevent transportation corridors from diminishing below an acceptable level of service.

Staff has not requested traffic mitigation plans at this point. The property that is proposed to be rezoned to R-3 includes approximately 5.4 acres (235,224 square feet). The area requirement for a 6-plex in the R-3 zone is 16,000 square feet per building. This would mean there is a potential for 14 6-plex buildings, for a total of 84 dwelling units in the development. The addition of 84 dwelling units will have an impact on existing county roads, as such, a traffic mitigation plan or study will likely be requested when the owner submits a subdivision application.

County Rezoning Procedure (f)

- e. *The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, storm water drainage systems, water supplies, wastewater, and refuse collection.*

During the subdivision review process, the developer may be required to upgrade certain roadway infrastructure as a result of the increased impact to public streets in the area. Planning staff have not requested a traffic mitigation plan or traffic study. The Planning Commission and County Commission may request that information before making a decision on the proposed rezone.

Staff has not reached out to police, schools, and refuse collection to determine if adequate services exist for this rezone, however, the Planning Commission and County Commission may wish to consult these service providers if they feel it is warranted.

The applicant has provided a letter of support from the Taylor West Weber Park District for their proposed open space contribution. The letter from the Park District is included in this staff report as exhibit B.

Development Agreement: The county land use code provides the following considerations that the County Commission may make when considering a development agreement.

102-6-4(e). In reviewing a proposed development agreement, the County Commission may consider, but shall not be limited to considering, the following:

- 1. Public impacts and benefits.*
- 2. Adequacy in the provision of all necessary public infrastructure and services.*
- 3. Appropriateness and adequacy of environmental protection measures.*
- 4. Protection and enhancements of the public health, welfare, and safety, beyond what is provided by the existing land use ordinances.*

The planning commission recommendation included several items they would like to see in a development agreement including the following:

1. The developer will make the proposed \$5,000 per dwelling unit donation at the time each subdivision plat records.
2. The developer will have all lots plated in three years and have the project completed within six years.
3. The development agreement will specify the design of the commercial and multifamily buildings.

Planning staff has suggested the following as additional requirements of the development agreement:

4. The developer will agree to sign a covenant that waives their right, and the right of future owners to protest annexation into an adjacent city.
5. The developer will deed restrict five percent of the dwelling units to be moderate income housing for a period of 25-years. The Weber Housing Authority

Planning staff have written a development agreement and sent it to the developer, requiring all of the above items. The developer has submitted a revised development agreement. In their proposed revisions they have requested a five year timeline with a three year automatic renewal if they are not in breach of the agreement. They have also taken out language regarding the covenant to waive their right to protest annexation in the future and proposed to pay the \$5,000 per dwelling when they propose a building permit.

Because the revised development agreement does not meet the Planning Commission recommendation, staff will bring this up as a matter of discussion during the hearing with the Commission. Depending on the decision of the Commission, the development agreement will be revised before it's recorded with an ordinance, if the Commission chooses to approve with conditions that are agreeable to the developer.

Staff Recommendation

Staff recommends that the County Commission accept the recommendation of the Planning Commission, as written on the first page of this report, and require a development agreement to include requirements for the developer to waive their right for protesting future annexation, require a three year time limit, and require the developer to donate \$5,000 per lot to the parks district before each subdivision plat records, among other development agreement requirements.

Model Motion

The model motions herein are only intended to help the planning commission provide clear and decisive motions for the record. Any specifics provided here are completely optional and voluntary. Some specifics, the inclusion of which may or may not be desired by the motioner, are listed to help the commission recall previous points of discussion that may help formulate a clear motion. Their inclusion here, or any omission of other previous points of discussion, are not intended to be interpreted as steering the final decision.

Motion for positive recommendation **as-is:**

I move that we approve File # ZMA 2023-07, an applicant driven rezone application to amend the zoning map on 7.44 acres from A-2 to the C-1 and R-3 zone, property located at 3300 S and 3500 W, Ogden. **I do so with the following findings:**

Example findings:

- The zone change is supported by the General Plan.
- [_____ add any other desired findings here _____].

Motion to **table:**

I move that we **table** action on File # ZMA 2023-07, an applicant driven rezone application to amend the zoning map on 7.44 acres from A-2 to the C-1 and R-3 zone, property located at 3300 S and 3500 W, Ogden, to [_____ state a date certain _____], so that:

Examples of reasons to table:

- We have more time to review the proposal.
- Staff can get us more information on [_____ specify what is needed from staff _____].
- The applicant can get us more information on [_____ specify what is needed from the applicant _____].
- More public noticing or outreach has occurred.
- [_____ add any other desired reason here _____].

Motion to recommend **denial:**

I move that we deny File # ZMA 2023-07, an applicant driven rezone application to amend the zoning map on 7.44 acres from A-2 to the C-1 and R-3 zone, property located at 3300 S and 3500 W, Ogden. **I do so with the following findings:**

Examples of findings for denial:

- The proposal is not adequately supported by the General Plan.
- The proposal is not supported by the general public.
- The proposal runs contrary to the health, safety, and welfare of the general public.
- The area is not yet ready for the proposed change to be implemented.
- [_____ add any other desired findings here _____].

Exhibits

Exhibit A – Draft Development Agreement (with developer revisions)

Exhibit B – Draft Rezoning Ordinance.

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH (COUNTY)

And

BLOX DEVELOPMENT, LLC

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DEVELOPMENT AGREEMENT

Kanesville Crossing

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("**County**") and Blox Development, LLC, a Utah limited liability company (known as "**Developer**") (County and Developer known herein as the "**Parties.**").

RECITALS

WHEREAS, The Developer desires and intends to develop a commercial and residential project (the "**Project**") in the unincorporated area of western Weber County. Key components of the Project include commercial street front buildings and townhomes;

WHEREAS, Developer is developing the Project on the real property more particularly described in Exhibit A-1 and depicted on Exhibit A-2 (the "**Property**"). The Property is owned by the Ronald & Glynis Hurst Trust, dated January 14, 2020 ("**Owner**"). By executing the consent and acknowledgment below, Owner agrees that the Property shall receive the entitlements and be subject to the rights, benefits, and obligations set forth in this Agreement;

WHEREAS, The Property is currently zoned A-2, but Developer has applied to rezone a portion of the Property to the C-1 zone ("**C-1 Zone**") and the remaining portion of the Property to the R-3 zone ("**R-3 Zone**"), as depicted in the plan attached hereto as Exhibit B; and

WHEREAS, By this Agreement, County and Developer confirm the Property's vested entitlements for development of the Project. The County has determined that entering into this Agreement furthers the purposes of the Utah County Land Use, Development, and Management Act, the County's general plan, and the County's land use ordinances. As a result of such determination, the County has elected to move forward with the approvals necessary to approve the development of the Project in accordance with the terms and provisions of this Agreement. This Agreement is a "development agreement" within the meaning of and entered into pursuant to the terms of Utah Code Ann. §17-27a-102(1)(b);

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 date upon which the County Commission (defined below) approves this Agreement.

1.2. Expiration. This Agreement shall commence on the Effective Date and be in full force and effect until the earlier of the following events: (i) three years from the Effective Date of this Agreement; provided, however, if Developer is not in breach of any material provisions of this Agreement when said 3-year period expires, and any portion of the Project have not been completely built-out, then this Agreement shall automatically be extended for an additional period of three (3) years; or (ii) certificates of occupancy have been issued for all Dwelling Units (defined below) and commercial development contemplated within the Project (as applicable, the “**Term**”).

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; or

1.3.2 Developer materially defaults on any provision of this Agreement and the default is not cured as specified in Section 10.1 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 their ordinary and common meaning. When not inconsistent 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 be applicable to all genders whenever the sense 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 County and Developer, approved by the County Commission, and executed by the undersigned.

2.2. Applicable Law. “Applicable Law” has the meaning set forth in Section 11.1 below.

2.3. Applicable Zoning. “Applicable Zoning” means the requirements of the R-3 Zone or C-1 Zone as applicable to the respective areas of the Property.

2.4. Concept Plan. “Concept Plan” means the concept plan for the Project that is attached hereto as Exhibit B.

2.5. Commercial Area. “Commercial Area” mean the development of the Project located in the C-1 Zone.

- 2.6. Commercial Development.** “Commercial Development” means development of commercial uses within the Commercial Area as permitted in the C-1 Zone.
- 2.7. Common Area.** “Common Area” means collectively the areas within the Residential Area identified as “Common Area” on the Concept Plan, the driveways and roadways that are not the Public Roadway, the parking areas in the Commercial Area, and the area outside the exterior of the buildings in the Commercial Area.
- 2.8. County.** "County" means Weber County, Utah.
- 2.9. County Code.** “County Code” means the Weber County Code in effect as of the Effective Date.
- 2.10. County Commission.** Means the county commission for the County.
- 2.11. Developer.** "Developer" means Blox Development, LLC, a Utah limited liability company or its assignees as provided in Section 8 of this Agreement.
- 2.12. Dwelling Unit.** “Dwelling Unit” means a permanent structure designed and capable of daily residential occupancy. A Dwelling Unit must contain at least one kitchen and one bathroom.
- 2.13. Effective Date.** "Effective Date" has the meaning set forth in Section 1 of this Agreement.
- 2.14. Future Law.** “Future Law” means the laws, ordinances, policies, standards, guidelines, directives, procedures and processing fee schedules of the County which are in effect after the Effective Date and may or may not be applicable as provided in Section 3.2 below.
- 2.15. Land Use Application.** “Land Use Application” means an application that is required to subdivide and develop land or construct improvements thereon.
- 2.16. Maximum Residential Density.** “Maximum Residential Density” means the 84 Dwelling Units that Developer may construct within the Project under the Applicable Zoning.
- 2.17. Moderate Income Housing.** “Moderate Income Housing” means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income.
- 2.18. Parties.** "Parties" means the Developer and the County.

- 2.19. Planning Director.** “Planning Director” means the person who is employed as the planning director for the County.
- 2.20. Project.** "Project" has the meaning provided in the first Recital above.
- 2.21. Property.** "Property" means the real property more particularly described in Exhibit A-1 and depicted on Exhibit A-2.
- 2.22. Public Roadway.** “Public Roadway” means the street, curb, and gutter improvements to be dedicated to the County as more particularly described in Section 5.5 below.
- 2.23. Residential Area.** “Residential Area” means the development of the Project located in the R-3 Zone.
- 2.24. System Improvement.** “System Improvement” means an improvement that is designed to serve areas within the community at large and which may serve the Project as a part of the community at large.
- 2.25. Transferee.** “Transferee” means a party to which the Project is transferred or assigned in part or in whole. “Assignee” shall also mean the same.
- 2.26. Term.** “Term” has the meaning provided in Section 1.2 below.

3. Vested Rights and Legislative Powers.

- 3.1. Vested Rights.** As of the Effective Date, Developer has the vested right to proceed with the development of the Property in accordance with this Agreement and Applicable Law. Specifically, Developer is vested with the right to: (i) to develop and construct the Project in accordance with this Agreement; (ii) develop Dwelling Units up to the Maximum Residential Density; (iii) develop Commercial Development; (iv) connect to existing public roads; and (v) connect to existing public infrastructure, upon the payment of generally applicable fees. The Parties specifically intend that this Agreement grants to Developer, and its permitted assigns, “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509. To the maximum extent permissible under the laws of Utah and at equity, the County and Developer intend that this Agreement be construed to grant Developer all vested rights to develop the Project in fulfillment of the terms and provisions of this Agreement and the laws and ordinances that apply to the Property as of the Effective Date of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are contractual and are in addition to those rights that exist under statute, common law and at equity.

- 3.2. Future Laws.** The County's Future Laws with respect to the Project or the Property shall not apply except as follows:
- 3.2.1 Developer Agreement.** Future Laws that Developer agrees in writing to the application thereof to the Project;
 - 3.2.2 Compliance with State and Federal Laws.** Future Laws which are generally applicable to all properties in the County and which are required to comply with state and federal laws and regulations affecting the Project and do not effect a taking of the right to develop the uses and the densities described in this Agreement;
 - 3.2.3 Safety Code Updates.** 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, or by the state or federal governments and are required to meet legitimate concerns related to public health, safety or welfare;
 - 3.2.4 Taxes.** Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the County to all properties, applications, persons and entities similarly situated;
 - 3.2.5 Fees.** Changes to the amounts of fees for the processing of Land Use Applications that are generally applicable to all development within the County and which are adopted pursuant to state law; and
 - 3.2.6 Impact Fees.** Impact fees or modifications thereto which are lawfully adopted, imposed and collected on all areas of the County subject to Utah's Impact Fee Act.
- 4. Zoning and Use.** Developer shall develop the Property in a manner that is consistent with the uses permitted in the Applicable Zoning and this Agreement. Developer may develop Dwelling Units up to, but shall not exceed, the Maximum Residential Density.
- 4.1. Phasing.** Nothing in this Agreement shall obligate Developer (or its successors), to develop the Project in any particular order or phase and Developer reserves all discretion to determine whether to develop a particular portion or phase of the Property based upon Developer's business judgment.
 - 4.2. Concept Plan.** The Concept Plan is conceptual in nature and sets forth only a potential layout and overall intensity for the Project, and Developer may reconfigure or modify the Project's layout, roadways, building location, intensity, number of buildings, and

uses depicted in the Concept Plan based on Developer's business judgment, provided that Developer does not introduce uses not permitted under Applicable Law.

- 4.3. **Use of Property.** The use of the Property shall be limited to any lawful use allowed within the Applicable Zoning.
- 4.4. **Site Development Standards.** The site development standards of this Agreement and the Applicable Zoning apply to the development of the Project. In the event of a conflict between the development standards of this Agreement and those in the Applicable Zoning, this Agreement controls.
- 4.5. **Common Area.** The Common Area will be owned and maintained by the Developer or one or more owner's associations. The Common Area is for the sole use of the owners, guests, invitees, or permittees of the Project and is not available to the public.

5. **Developer Obligations.**

- 5.1. **Project Improvements.** Developer shall construct and install the culinary water, secondary water, sewer, stormwater detention basin or storm drain distribution lines within the Project that are necessary to connect to existing public infrastructure (collectively, "**Project Improvements**"). The Project Improvements shall be constructed and completed in accordance with the County Code. Developer shall dedicate the Project Improvements to the applicable governmental entity.
- 5.2. **Park Donation.** At such time when Developer applies for a building permit for each Dwelling Unit within the Project, Developer shall donate \$5,000 per Dwelling Unit included in each building permit application to the Taylor West Weber Parks District. Alternatively, the Developer may provide park development services to the Taylor West Weber Parks District that, at fair market value, is equal to the donation. This donation will help the District provide parks and recreational services to the Project and surrounding communities. Provided that Developer makes the donations set forth in this Section 5.2, Developer shall not be required to pay any park impact fees that may be imposed by the County or the Taylor West Weber Parks District.
- 5.3. **Trail Improvement.** In addition to the improvement requirements in the County Code, Developer shall install a 10' wide asphalt trail parallel to and along the east side of the street identified as 3500 West Street.
- 5.4. **Trail Improvements.** Developer shall install trees within the Project along 3500 West Street and 3300 South Street, at an interval so that the specific tree species canopies touch at maturity.

5.5. **Roadway Improvements.** Developer shall construct ~~a Public Roadway within the Project that runs from 3300 South on the north end of the Project to the south end of the Property. The Public Roadway will be fifty feet (50') wide, including curb and gutter. Upon completion, Developer shall dedicate the Public Roadway to the County~~ public street improvements that comply with the county subdivision ordinance.

5.6. **Moderate Income Housing.** Developer shall deed restrict at least five percent (5%) of the Dwelling Units within the Project to be Moderate Income Housing for a period of 25-years. The long-term monitoring of this Moderate Income Housing requirement will be the responsibility of the Weber Housing Authority.

6. **County's Obligations.**

6.1. **Conditions of Approval.** The County shall (a) promptly review, consider and execute all consents, submittals or other documents as may be required in connection with any Land Use Application, or other required governmental approvals; (b) promptly meet and consider such actions as required by the Utah Code and applicable County ordinances to provide all appropriate consents, approvals and opinions as requested by Developer from time to time. The County shall cooperate with Developer and contractors working on the Project in their endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Property or portions thereof (such as, by way of example, public utilities or utility districts or agencies) and, at the request of Developer, in the execution of such permit applications and agreements as may be required to be entered into with such other agencies, which request shall not be unreasonably denied.

6.2. **System Improvements.** The County shall not require Developer to upsize any Project Improvements or the Public Roadway or install any System Improvements unless the County shall provide Developer with an impact fee credit for the costs of the Project Improvements or Public Roadway that is not attributable to the Project.

6.3. **Dedicated Improvements.** To the extent the County provides, and approves of construction drawings for the applicable utility services, the County shall accept dedication of the applicable Project Improvements and afterwards be responsible for the ongoing maintenance, repair and replacement of such dedicated Project Improvements. The County shall accept Developer's dedication of the Public Roadway and afterwards be responsible for the ongoing maintenance, repair and replacement of the Public Roadway.

7. **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**"). The

following sections specify what Project changes can be undertaken without the need for amendment of the Agreement, and what changes require Amendment to this Agreement.

- 7.1. 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, and County Code without amending the Agreement.
- 7.2. 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.
- 7.2.1 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.
- 7.2.2 De Minimis Changes.** Other de minimis changes requested by the Developer, which are reasonably consistent with: (i) the intent of this agreement; (ii) the Applicable Zoning; and (iii) are routine and uncontested.
- 8. Assignment.** The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer without the consent of the County where such assignment is to an entity controlled or owned by Developer, consistent with this Section 8. All other assignments shall require the consent of the County as provided herein.
- 8.1. Notice.** Developer shall give notice in accordance with Section 9 of this Agreement to the County of any proposed assignment and provide such information regarding the proposed assignee that the County may reasonably request in making the evaluation permitted under this Section 8. Such notice shall include providing the County with all necessary contact information for the proposed assignee.
- 8.2. Partial Assignment.** Except as described in Section 8 above, if any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those

obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

- 8.3. Grounds for Denying Assignment.** The County may only withhold its consent if the County is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- 8.4. Related Entities.** Developer may assign or transfer its rights and obligations under this Agreement to Developer's affiliates, subsidiaries, or related entities without the County's consent. Any of Developer's successor-in-interest shall be bound by the Agreement.
- 8.5. Assignee Bound by this Agreement.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.
- 8.6. End Users.** No rights or obligations established by this Agreement apply to residents or property owners who purchase or occupy developed lots or Dwelling Units within the Project, it being the intent of this Agreement that it governs the development of the Project, not the use by end users and residents.

9. Notices.

- 9.1. 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.
- 9.2. Addresses.** Notices shall be given to the Parties at their addresses set forth as follows:

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:

Blox Development, LLC
118 E. Lomond View
North Ogden, UT 84414
Attn: Rick Scadden

With copies to:

Snell & Wilmer LLP
15 W. South Temple Suite 1200
Salt Lake City, Utah 84101
Attn: Wade Budge

9.3. 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.

10. Default and Remedies.

10.1. 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. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights.

10.2. Remedies. Subject to Developer's cure rights in Section 10.1 above, the Developer's failure to comply with this agreement constitutes a violation of the land use provisions of the County Code, and is subject to the enforcement provisions and remedies thereof. In addition, the County may withhold any permits from the Project.

10.3. Dispute Resolution Process.

10.3.1 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.

10.3.2 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.

11. General Terms and Conditions.

- 11.1. Applicable Law.** This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the rules, regulations, official policies, standards and specifications applicable to the development of the Project in effect on the Effective Date, including the applicable County Code, resolutions, state law, and federal law (the "**Applicable Law**").
- 11.2. Binding Effect.** This Agreement or a notice thereof shall be recorded against the Property. 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, 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. Any action taken to enforce the provisions of this Agreement shall have exclusive venue in the Second Judicial District Court of the State of Utah.
- 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. Integration.** This Agreement, together with all exhibits 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.
- 11.8. 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.
- 11.9. Severability.** If any part or provision of the Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific part or provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- 11.10. Referendum or Challenge.** Both Parties understand that any legislative action by the County Commission is subject to referral or challenge by individuals or groups of citizens, including approval of development agreements and a rezone of the Property. If a referendum or challenge relates to the County Commission's approval of this Agreement, and the referendum or challenge is submitted to a vote of the people pursuant to Utah Code Ann. § 20A-7-601, then Developer may deliver a notice of rescission to the County to terminate this Agreement. Upon Developer's delivery of a notice of rescission pursuant to this Section 11.10, this Agreement shall automatically

- terminate whereupon the Parties shall have no further rights or obligations under this Agreement. If the referendum or a legal challenge is successful in overturning the approval of this Agreement, then either party may terminate this Agreement by delivery of notice of rescission, whereupon this Agreement shall automatically terminate, and the Parties shall have no further rights or obligations under this Agreement.
- 11.11. Third Party Rights.** The Parties to this Agreement are the Developer and County. There are no intended third-party beneficiaries of this Agreement. The Parties acknowledge that this Agreement refers to a private development and that the County has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property.
- 11.12. Further Documentation.** This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.
- 11.13. Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; pandemics; fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.
- 11.14. Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the County and the Developer.
- 11.15. Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

[Signatures on Following Pages]

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

SIGNATORIES

COUNTY:

Weber County,

a body corporate and politic of the State of Utah

By: _____
Chair, Weber County Commission

ATTEST: _____
Ricky D. Hatch, CPA
Weber County Clerk/Auditor

County Acknowledgment

STATE OF UTAH)
)SS.
COUNTY OF WEBER)

On this _____ day of _____, 2023, personally appeared before me _____, the authorized signer of Weber County, whose identity is personally known to me, to be the person who executed the Agreement on behalf of Weber County, and who duly acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

Approved as to Form:

County Attorney

DEVELOPER:

BLOX DEVELOPMENT, LLC,
a Utah limited liability company

By: _____

Print Name: Rick Scadden

Title: _____

Developer Acknowledgment

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On the _____ day of _____, 20__, personally appeared before me Rick Scadden, who being by me duly sworn, did say that he is the _____ of Blox Development, LLC, a Utah 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.

Notary Public

OWNER’S CONSENT:

The Owner of the Property consents to the Developer executing the foregoing Agreement, the Annexation, and subjecting the Property to the Project, approval, obligations and benefits described herein.

OWNER:

RONALD AND GLYNIS HURST TRUST,
dated January 13, 2020

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Owner Acknowledgment

STATE OF UTAH)
) ss
COUNTY OF WEBER)

On the ____ day of _____, 20__, personally appeared before me Rick Scadden, who being by me duly sworn, did say that he is the _____ of Blox Development, LLC, a Utah 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.

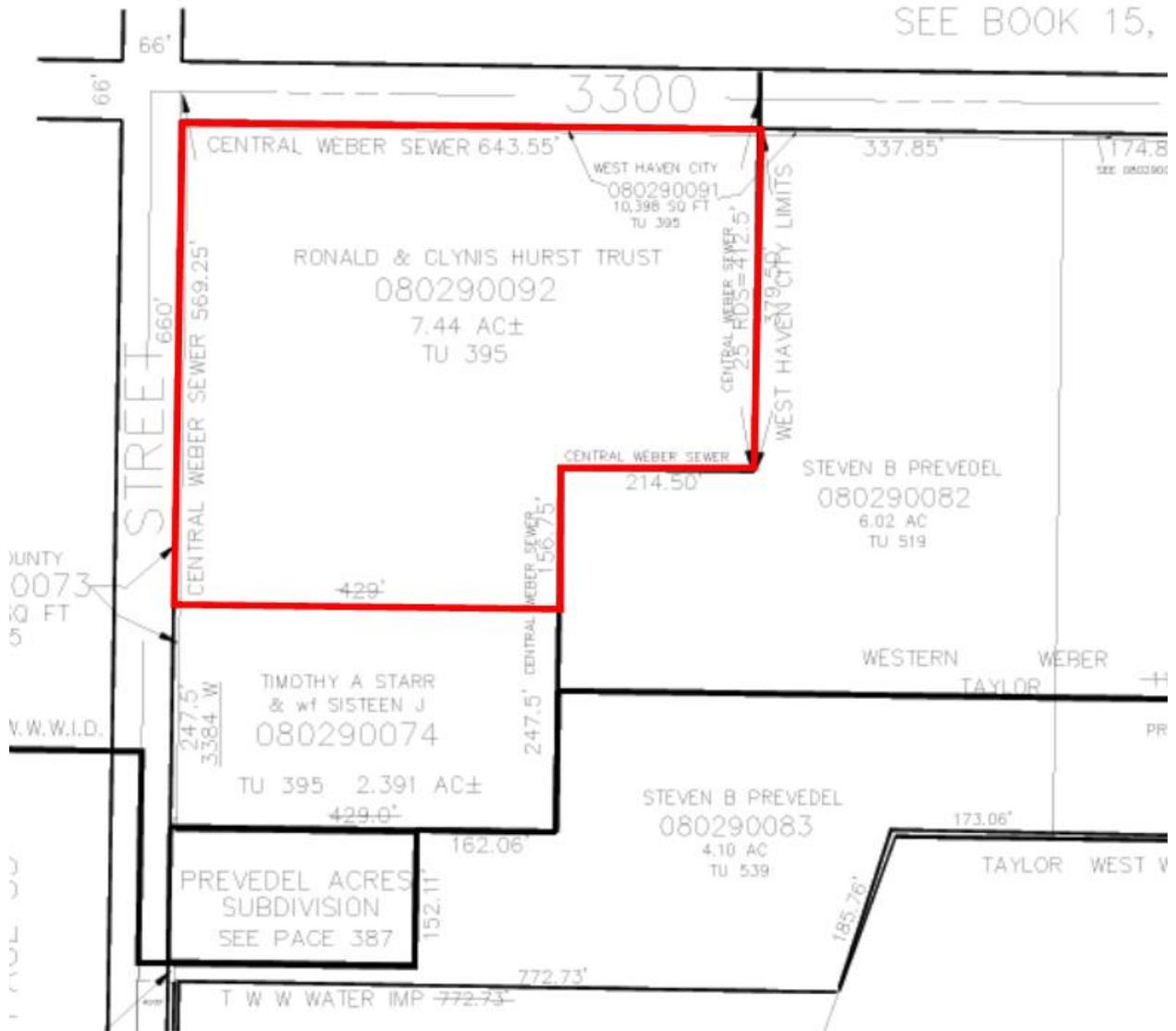
Notary Public

Exhibit A-1

Property Legal Description

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, US SURVEY: COMMENCING AT A POINT 2 RODS EAST OF THE NORTHWEST CORNER OF SAID QUARTER SECTION RUNNING THENCE EAST 643.5 FEET, THENCE SOUTH 412.5 FEET, THENCE WEST 214.5 FEET, THENCE SOUTH 156.75 FEET, THENCE WEST 429 FEET, THENCE NORTH 569.25 FEET TO THE PLACE OF BEGINNING. EXCEPTING THE NORTH 33 FEET THEREOF LYING WITHIN 3300 SOUTH STREET. ALSO EXCEPTING: A PARCEL OF LAND IN FEE FOR THE WIDENING OF EXISTING WEBER COUNTY 3500 WEST STREET BEING PART OF AN ENTIRE TRACT SITUATE IN THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS: BEGINNING IN THE EAST LINE OF EXISTING 3500 WEST STREET 33.00 FEET EAST AND 33.00 FEET SOUTH FROM THE NORTHWEST CORNER OF SAID SECTION 3, AND RUNNING THENCE EAST 7.00 FEET ALONG THE SOUTHERLY LINE OF 3300 SOUTH STREET TO A POINT 40.00 FEET PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID 3500 WEST STREET OPPOSITE APPROXIMATE ENGINEERS STATION 36+15.66, THENCE SOUTH 536.25 FEET, MORE OR LESS, PARALLEL WITH SAID CENTERLINE TO AN EXISTING FENCE LINE ON THE SOUTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT, THENCE WEST 7.00 FEET TO SAID EAST LINE OF EXISTING 3500 WEST STREET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 3754 SQUARE FEET IN AREA OR 0.086 ACRE. (NOTE: ROTATE ABOVE BEARINGS 0D53'10" CLOCKWISE TO EQUAL HIGHWAY BEARINGS.) (E# 2690890) LESS AND EXCEPTING: A PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS. BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF 3500 WEST STREET AND THE CURRENT SOUTH RIGHT OF WAY LINE OF 3300 SOUTH STREET BEING LOCATED SOUTH 89D13'27" EAST 32.38 FEET ALONG THE NORTH LINE OF SAID QUARTER AND SOUTH 0D00'00" EAST 33.00 FEET FROM THE NORTHWEST QUARTER CORNER OF SAID SECTION; RUNNING THENCE SOUTH 89D13'27" EAST 643.55 FEET ALONG SAID CURRENT SOUTH RIGHT OF WAY LINE TO THE GRANTOR'S EAST PROPERTY LINE; THENCE ALONG SAID EAST PROPERTY LINE SOUTH 0D53'07" WEST 7.00 FEET; THENCE NORTH 89D13'27" WEST 643.55 FEET TO SAID EAST RIGHT OF WAY LINE; THENCE NORTH 0D53'07" EAST 7.00 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE POINT OF BEGINNING. CONTAINING 4506.73 FEET MORE OR LESS. E#32682

Exhibit A-2
Depiction of Property



ORDINANCE NUMBER 2023-_____

AN ORDINANCE AMENDING THE WEBER COUNTY ZONING MAP FROM A-2 TO C-1 AND R-3, ON 7.44 ACRES OF PROPERTY LOCATED AT 3300 S 3500 W, OGDEN

WHEREAS, the Weber County Board of Commissioners have adopted a zoning map for the unincorporated areas of Weber County; and

WHEREAS, the Weber County Board of Commissioners has received an application from **Ronald and Glynis Hurst Trust**, to amend the zoning designation from A-2 to C-1 and R-3; and

WHEREAS, the Weber County Board of Commissioners and Ronald and Glynis Hurst Trust mutually agree to change the zoning designation from A-2 to C-1 and R-3; and

WHEREAS, the Weber County Board of Commissioners and Ronald and Glynis Hurst Trust mutually agree to execute a development agreement that specifies certain terms of development and establishes a concept plan of the subject property; and

WHEREAS, on November 7, 2023 the Western Weber Planning Commission held a duly noticed public hearing to consider the rezone application, and at the same meeting, forwarded a positive recommendation to the Board of County Commissioners;

NOW THEREFORE, the Weber County Board of Commissioners ordains an amendment to the Weber County Zoning Map to change the zoning designation, as more precisely described in the attached exhibits, from the A-2 zone to the C-1 and R-3 zone. The graphic representation of the rezone is included and incorporated herein as Exhibit A. A written description of the rezone is included as Exhibit B. In the event there is conflict between the two, the legal description shall prevail. In the event the legal description is found by a licensed surveyor to be invalid or incorrect, the corrected legal description shall prevail as the description herein, if recommended by the County Surveyor, provided that the corrected legal description appropriately bounds the subject property and fits within the correct legal description of surrounding properties.

This ordinance shall become effective fifteen (15) days after publication or on the day the development agreement between Ronald and Glynis Hurst Trust and Weber County is recorded, whichever is later.

Passed, adopted, and ordered published this _____ day of _____, 2023, by the Weber County Board of Commissioners.

BOARD OF COUNTY COMMISSIONERS OF WEBER COUNTY

By _____,
_____, Chair

Commissioner Froerer voted _____
Commissioner Bolos voted _____
Commissioner Harvey voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

Exhibit A

Graphic Representation

Ronald and Glynis Hurst Trust from A-2 Zone to C-1 and R-3 Zone

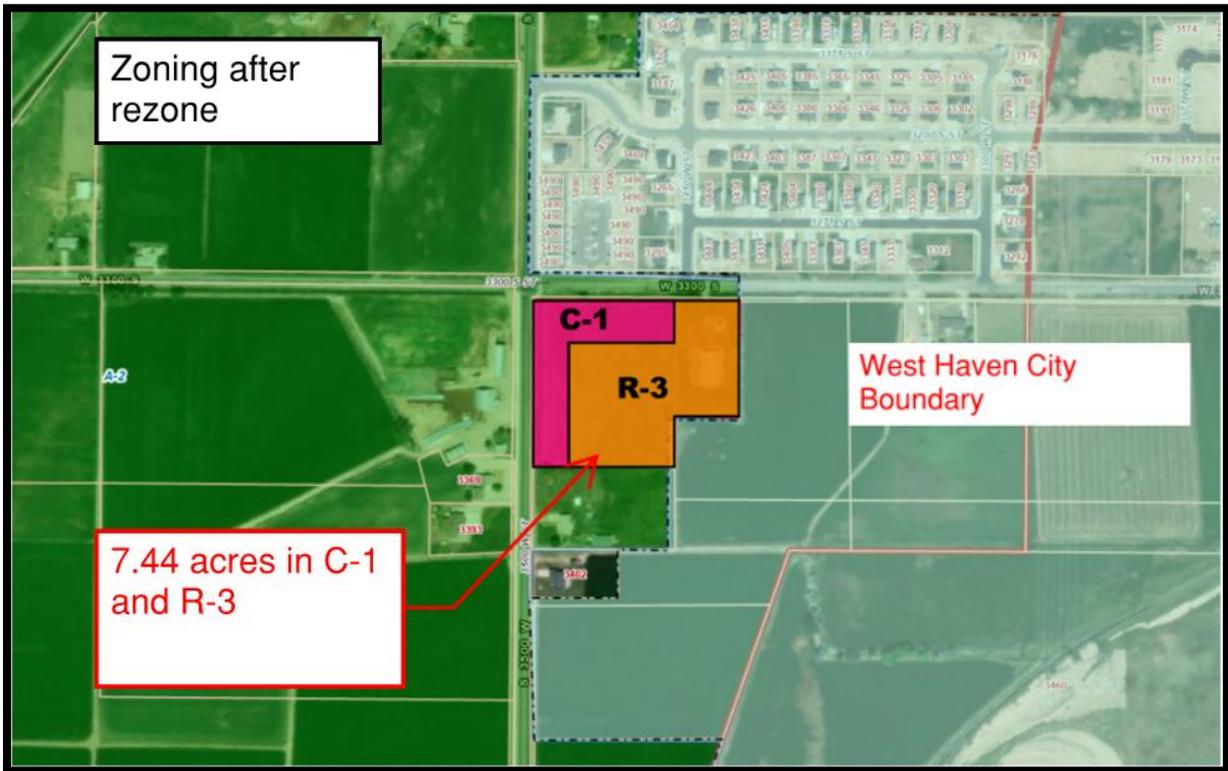


Exhibit B

Written Description

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, US SURVEY: COMMENCING AT A POINT 2 RODS EAST OF THE NORTHWEST CORNER OF SAID QUARTER SECTION RUNNING THENCE EAST 643.5 FEET, THENCE SOUTH 412.5 FEET, THENCE WEST 214.5 FEET, THENCE SOUTH 156.75 FEET, THENCE WEST 429 FEET, THENCE NORTH 569.25 FEET TO THE PLACE OF BEGINNING. EXCEPTING THE NORTH 33 FEET THEREOF LYING WITHIN 3300 SOUTH STREET. ALSO EXCEPTING: A PARCEL OF LAND IN FEE FOR THE WIDENING OF EXISTING WEBER COUNTY 3500 WEST STREET BEING PART OF AN ENTIRE TRACT SITUATE IN THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS: BEGINNING IN THE EAST LINE OF EXISTING 3500 WEST STREET 33.00 FEET EAST AND 33.00 FEET SOUTH FROM THE NORTHWEST CORNER OF SAID SECTION 3, AND RUNNING THENCE EAST 7.00 FEET ALONG THE SOUTHERLY LINE OF 3300 SOUTH STREET TO A POINT 40.00 FEET PERPENDICULARLY DISTANT EASTERLY FROM THE CENTERLINE OF SAID 3500 WEST STREET OPPOSITE APPROXIMATE ENGINEERS STATION 36+15.66, THENCE SOUTH 536.25 FEET, MORE OR LESS, PARALLEL WITH SAID CENTERLINE TO AN EXISTING FENCE LINE ON THE SOUTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT, THENCE WEST 7.00 FEET TO SAID EAST LINE OF EXISTING 3500 WEST STREET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 3754 SQUARE FEET IN AREA OR 0.086 ACRE. (NOTE: ROTATE ABOVE BEARINGS 0D53'10" CLOCKWISE TO EQUAL HIGHWAY BEARINGS,) (E# 2690890) LESS AND EXCEPTING: A PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF 3500 WEST STREET AND THE CURRENT SOUTH RIGHT OF WAY LINE OF 3300 SOUTH STREET BEING LOCATED SOUTH 89D13'27" EAST 32.38 FEET ALONG THE NORTH LINE OF SAID QUARTER AND SOUTH 0D00'00" EAST 33.00 FEET FROM THE NORTHWEST QUARTER CORNER OF SAID SECTION; RUNNING THENCE SOUTH 89D13'27" EAST 643.55 FEET ALONG SAID CURRENT SOUTH RIGHT OF WAY LINE TO THE GRANTOR'S EAST PROPERTY LINE; THENCE ALONG SAID EAST PROPERTY LINE SOUTH 0D53'07" WEST 7.00 FEET; THENCE NORTH 89D13'27" WEST 643.55 FEET TO SAID EAST RIGHT OF WAY LINE; THENCE NORTH 0D53'07" EAST 7.00 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE POINT OF BEGINNING. CONTAINING 4506.73 FEET MORE OR LESS. E#3268265