

WHEN RECORDED, RETURN TO:

Paxton R. Guymon, Esq.  
6405 South 3000 East #150  
Salt Lake City, Utah 84121

Ent 464795 Bk 1255 Pg 671-680  
Date: 18-JUN-2019 1:12:50PM  
Fee: \$40.00 Check Filed By: TC  
PEGGY FOY SULSER, Recorder  
WASATCH COUNTY CORPORATION  
For: HONEYCUTT STEPHEN K

## **DEVELOPMENT AGREEMENT** (*HEBER MEADOWS NORTH*)

Heber City, a Utah municipal corporation (the "City"), and Heber Meadows, LLC, a Utah limited liability company ("Developer"), enter into this Development Agreement (this "Agreement") this 19 day of March, 2019 ("Effective Date"), and agree as set forth below. The City and Developer are sometimes referred to as a "Party" or jointly as the "Parties."

### **RECITALS**

WHEREAS, Developer owns approximately 22.87 acres near 2700 South and Highway 40 in Heber, Utah, which property is described more specifically in the attached Exhibit "A" (the "Property").

WHEREAS, Developer desires to develop and improve the Property in a manner that requires the City to amend its General Plan and its Zoning Map to rezone approximately 19.14 acres of the Property from Corporate Medical Park zoning to R-1 residential zoning, and modify the existing boundary of the C-2 Commercial Zone boundary within the Property.

WHEREAS, if the City Council exercises its legislative discretion to amend the General Plan, and amend the Zoning Map to rezone the Property as desired by Developer, then the Property will be developed consistent with the Concept Plan and Layout (the "Map") attached hereto as Exhibit "B."

WHEREAS, the City, acting pursuant to (1) its authority under Utah Code Annotated 10-9a-102(2) *et seq.*, as amended, and (2) the Heber City Municipal Code (the "City Code"), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the proposed development of the Property and in exercise of its legislative discretion has elected to enter into this Agreement.

WHEREAS, the City has determined that the proposed development contains features which advance the policies, goals and objectives of the City, and will result in planning economic benefits to the City and its citizens.

WHEREAS, the City and Developer acknowledge that the terms of this Agreement shall be enforceable and the rights of Developer relative to the Property shall vest only if the Heber City Council, in its sole legislative discretion, approves an amendment to the General Plan and the desired zone change for the Property (the "Rezone").

**NOW THEREFORE**, based upon the foregoing recitals and in consideration of the mutual covenants and promises contained set forth herein, the Parties agree as follows:

### **TERMS**

1. **Recitals.** The recitals set forth above are incorporated herein by this reference.
2. **Conditions Precedent.** As conditions precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time as, and in the event that, the City Council in the independent exercise of its legislative discretion elects to approve an amendment to the General Plan and approve the requested Rezone of the Property to allow for the Property to be developed consistent with the uses, densities and layout shown in the Map attached hereto as Exhibit "B." This Agreement is not intended to and does not affect or any way bind or supersede the independent exercise of legislative discretion of the City Council in deciding whether to approve or deny the application(s) to amend the General Plan and approve the requested Rezone of the Property.
3. **Future Land Uses of the Property.** Subject to satisfaction of the conditions precedent in Section 2 above, Developer and successors and assigns in the ownership of the Property shall have the right to develop and improve the Property as shown in the Map attached hereto as Exhibit "B" with no more than fifty (50) single family residences in the R-1 zoned portion of the Property, and only permitted uses in the commercial-zoned portion of the Property. The Property may not be developed for any uses, densities, or layouts that are materially different from the Map in Exhibit "B" unless this Agreement is duly amended by written instrument approved by the City. In addition, Developer shall record CC&Rs against the Property to create an owners association, enforce architectural standards, and maintain the storm water detention area within the Property. The CC&Rs must be reviewed and approved by the City prior to recordation, provided that the City's approval will not be unreasonably withheld. The requirements of this Section 3 are material considerations on which the City is relying to approve and execute this Agreement.
4. **Developer Obligations.** In addition to Developer's other obligations under this Agreement, Developer shall satisfy the following requirements in developing the Property:
  - 4.1. Upsize offsite utilities as necessary to accommodate the development, specifically addressing downstream capacity issue in the sewer system and any water-looping across Highway 40 to Mill Road.
  - 4.2. Dedicate, at no cost to the City, the necessary property called for in the City's capital improvements and impact fees plan for a road and proper realignment of said road to the Highway 40 / Mill Road intersections and to accommodate the trail and turn lane. If required by the City Engineer build the Western portions of the Highway 40 / Mill Road intersection realignment as outlined on the City's Capital Facilities plan.
  - 4.3. Move all utilities from the back or western portion of the Property into the future road right of way.
  - 4.4. Provide an 8' decorative concrete fence / wall separating the commercial property from the residential lots.
  - 4.5. Developer will provide a right to farm notice on subdivision plats that notify future buyers about the right of neighboring properties to farm.
  - 4.6. Developer will provide a notice on the subdivision plats regarding the non-residential zoning of adjoining properties to the north and west of the subdivision.
  - 4.7. Developer will build a 6' privacy fence on the west side of the property adjoining Daniel Town residents.
  - 4.8. Final development plan to be submitted must be substantially similar to the concept plan illustrated in Exhibit A or the City may initiate proceedings to revert the zoning back to the previous zoning designation, CMP Corporate Medical Park.

4.9. Development will dedicate to the City, a minimum 50 foot width parcel to match the utility easement in the adjoining subdivision as illustrated on the concept plan.

4.10. Developer will satisfy the City's affordable housing ordinance on the homes to be built on Lots 40, 49, 50, 47, and 48, pursuant to and through the various options provided in said ordinance.

4.11. Developer will return at preliminary plat with timelines for affordable housing, park completion, road vacation and intersection realignment.

5. **City Obligations.** Heber City shall rezone the property to C-2 Commercial and R-1 Residential as illustrated in Exhibit C.

6. **Future Development Review and Standards.** The Property shall be developed in accordance with the terms of this Agreement and the requirements and benefits provided for in relation to the zone assigned to it under the City Code. Developer shall be responsible for upsizing and installing all offsite utilities and offsite improvements necessary to accommodate the proposed development of the Property. In the event of a discrepancy between the requirements of the City Code and this Agreement, this Agreement shall control. The City shall review applications for development of the Property in a timely manner consistent with the City's routine development and review practices and in accordance with all applicable laws and regulations.

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

7.1 Vested Rights. Consistent with and subject to the terms and conditions of this Agreement, Developer and its successors and assigns in the future ownership and development of the Property shall have the vested right to develop and construct improvements on the Property in accordance with the zoning designation assigned to the Property if and when the City approves the requested Rezone, providing for the uses and densities contemplated in Section 3 above, and the City Code as of the Effective Date.

7.2 Reserved Legislative Powers. The Parties acknowledge that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights granted under this Agreement and with respect to uses under the zoning designations as referenced in the Recitals and Section 3 above based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of the Property shall be of general application to all development activity in the City and Wasatch County (the "County"); and, unless in good faith the City declares an emergency, the owner or developer at that time shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Property under the compelling, countervailing public interest exception to the vested rights doctrine.

8. **Term.** This Agreement shall be effective as of the date of recordation, shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the Parties mutually agree to extend the term, this Agreement shall not extend further than a period of 10 years from its date of recordation in the records of the Wasatch County Recorder's Office.

## 9. General Provisions.

**9.1 Agreement to Run With the Land.** This Agreement shall be recorded in the office of the Wasatch County Recorder against the Property and it is intended to and shall be deemed to run with the land and shall be binding and all successors in the ownership and development of any portion of the Property.

**9.2 Notices.** All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to the following addresses, with a copy of the same also being sent via email to the email addresses shown below, or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least 10 days before the date on which the change is to become effective:

If to City:                   ATTN: City Recorder  
75 North Main Street  
Heber City, Utah 84032

If to Developer:           ATTN: Kyle Honeycutt  
1793 East 12600 South  
Draper, Utah 84020

With a copy to:           Paxton Guymon  
York Howell & Guymon  
6405 South 3000 East #150  
Salt Lake City, Utah 84121  
Email: [Paxton@yorkhowell.com](mailto:Paxton@yorkhowell.com)

**9.3 Mailing Effective.** Notices given by mail shall be deemed delivered 72 hours following deposit with the U.S. Postal Service in the manner set forth above.

**9.4 No Waiver.** Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

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

**9.6 Authority.** The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Parties on whose behalf each individual is signing.

**9.7 Entire Agreement.** This Agreement, together with the Exhibits attached hereto, documents referenced herein and all regulatory approvals given by the City for the

Property contain the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the Parties which are not contained in such agreements, regulatory approvals and related conditions.

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

**9.9 Severability.** If any of the provisions of this Agreement are declared void or unenforceable, such provision(s) shall be severed from this Agreement. This Agreement shall otherwise remain in full force and effect provided the fundamental purpose of this Agreement and the ability to complete the development of the Property as set forth in the Concept Plan is not defeated by such severance.

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

**9.11 Remedies.** If any Party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.

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

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

**9.14 No Third Party Rights.** The obligations of Developer and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or parties except to the extent otherwise provided herein.

**9.15 Assignment.** Either Party may freely assign this Agreement, in which case the assignor or successor-in-interest shall be fully liable under this Agreement and either Developer or the City, as applicable, shall be deemed released of its obligations in connection with this Agreement; provided, however, that Developer shall provide the City with notice of the assignment of this Agreement within a reasonable time after the occurrence of such assignment.

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

**9.17 Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer, in the event of any default or breach by the City, or for any amount which may become due to Developer at successors or assignee's for any obligation arising out of the terms of this Agreement.

9.18 Counterparts. This Agreement may be executed in multiple counterparts which shall constitute one and the same document.

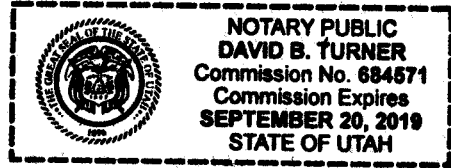
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

{Signatures follow on next pages}

DEVELOPER:

HEBER MEADOWS, LLC

By: Thone K. Heppler  
Its: Managing member



State of Utah )  
County of ~~Salt Lake~~ Wasatch :SS

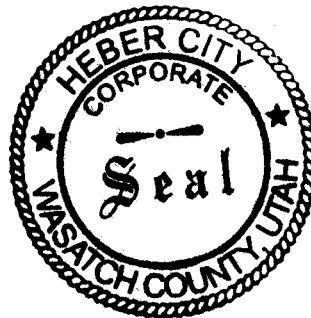
On this 25<sup>th</sup> day of March, 2019, personally appeared before me Thone K. Heppler, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the signer of the above instrument, and that he signed this instrument for and on behalf of Heber Meadows, LLC.

David B. Turner  
Notary Public

THE CITY:

HEBER CITY  
A Utah Municipal Corporation

Kelleen Potter  
Kelleen Potter, Heber City Mayor



State of Utah )  
County of Wasatch ) :SS

On this 16 day of April, 2019, personally appeared before me Kelleen Potter, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that she is the Mayor, of Heber City, a Utah municipal corporation, and said document was signed by her in behalf of said municipal corporation by authority of the Heber City Code, and she acknowledged to me that said municipal corporation executed the same.



Trina N Cooke  
Notary Public

**EXHIBIT A: Legal Description of the Property****Parcel: 00-0020-1134**

Beginning at a point that is South a distance of 538.36 feet and West a distance of 455.88 feet from the County Monument for the Northeast corner of Section 17, Township 4 South, Range 5 East, Salt Lake Base and Meridian (recorded as Entry No. 108808 of Book 109 Page 296-305); thence South 37°52'23" East along the Southwesterly right of way fence for U.S. Highway 40 a distance of 665.54 feet; thence South 00°20'45" East along an existing fence line a distance of 1240.69 feet; thence North 89°22'13" West along an existing fence line a distance of 555.27 feet; thence South 00°14'47" East along an existing fence line a distance of 127.31 feet; thence South 89°53'02" West along an existing fence line a distance of 241.46 feet; thence along the boundary of the Giles Subdivision the following six courses: North 00°28'05" West a distance of 495.41 feet; thence South 89°47'21" West a distance of 245.05 feet; 15.50 feet along a curve to the right with a radius of 20.00 feet and a chord that bears North 22°36'59" East a distance of 15.12 feet; 234.60 feet along a curve to the left with a radius of 50.00 feet and a chord that bears North 89°35'28" West a distance of 71.43 feet; 15.50 feet along a curve to the right with a radius of 20.00 feet and a chord that bears South 21°47'56" East a distance of 15.12 feet; South 89°47'21" West a distance of 262.35 feet to an existing fence line; thence along said fence line North 00°12'55" East a distance of 1307.50 feet; thence East along an existing fence line a distance of 836.17 feet; thence North 52°00'06" East along an existing fence line a distance of 140.15 feet to the point of beginning.

Tax ID No. OHE-1690



EXHIBIT B: Concept Plan/Map of Proposed Development



**EXHIBIT C: Proposed Zoning Map**

