



W3221099

ORDINANCE No. 22-3

AN ORDINANCE OF THE ROY CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT BETWEEN ROY CITY AND HAMLET DEVELOPMENT

WHEREAS, Hamlet Development Corporation (Hamlet) desires to develop approximately 4.47 acres of property located at 4840 South 3500 West into a residential community named Highgate Cove; and

WHEREAS, the zoning designation for the property would need to be changed to an R-3 zone as current the current zoning designation does not allow residential development; and

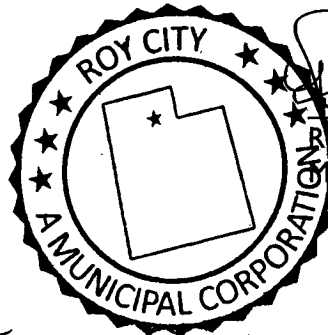
WHEREAS, Hamlet and Roy City desire to enter into a Development Agreement to set forth and clarify the parties' obligations for the development of the property.

NOW, THEREFORE, the Roy City Council hereby approves the Development Agreement as written and authorizes the Mayor of Roy City to execute this Agreement on behalf of the City.

This Ordinance has been approved by the following vote of the Roy City Council:

- Councilman Jackson Absent
- Councilman J. Paul Aye
- Councilman S. Paul Aye
- Councilman Scadden Aye
- Councilman Wilson Aye

This Ordinance shall become effective immediately upon passage, lawful posting, and recording. This Ordinance has been passed by the Roy City Council this 1 day of March, 2022.



Robert Dandoy
Robert Dandoy
Mayor

Attested and Recorded:

Brittany Fowers
Brittany Fowers
City Recorder

Parcel/Tax Identification #: 09-634-0002

Legal Description: ALL OF LOT 2, BRIDGE ACADEMY SUBDIVISION, ROY CITY, WEBER COUNTY, UTAH

WHEN RECORDED, RETURN TO:
Andy Blackburn, Esq.
City of Roy Attorney
5051 S. 1900 W.
Roy, Utah 84067

Affects Weber County Tax Parcel(s): 09-634-0002

**CITY OF ROY
DEVELOPMENT AGREEMENT
FOR
HIGHGATE COVE, A RESIDENTIAL COMMUNITY**

This Development Agreement for Highgate Cove, a residential community (this “**Agreement**”) is made and entered as of the 1 day of March, 2022, by and between the City of Roy, a municipal corporation of the State of Utah (the “**City**”) and Hamlet Development Corporation and or assigns, a Utah corporation (“**Developer**”).

RECITALS

- A. The capitalized terms used in this Agreement and in these Recitals are defined in Section 1.2, below. The Property governed by this Agreement is described in **Exhibit A** hereto.
- B. Developer owns (or is under contract to purchase) and is developing the Property as a residential community containing thirty-four (34) single-family dwellings (the “**Project**”).
- C. In order for the Property to be developed as intended, the zoning of the Property needs to be changed to the Residential High Density (R-3) zoning district (the “**Rezoning Request**”) as established in Section 10-6-1 et seq. of the Roy City Municipal Code (the “**City Code**”). In addition, certain flexibility is required for the development standards and requirements as allowed under Section 10-18-1 et seq. of the City Code for projects governed by a development agreement approved by the City Council.
- D. This Agreement, if and when it is approved by the City Council of Roy City, is intended to ensure that the Property will receive the necessary R-3 zoning and the flexibility of development standards in order for the Project to be developed and improved in accordance with the Conceptual Site Plan (the “**Concept Plan**”) attached hereto as **Exhibit B**. The provision of flexibility promotes the City’s interests by providing green space, diminishing water usage, and reducing commercial traffic in the adjoining residential neighborhoods and thereby increasing property values.
- E. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.
- F. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of and entered into pursuant to the terms of Utah Code Ann. §10-9a-101 et seq and pursuant to Section 10-18-1 et seq. of the City Code.

G. Pursuant to its legislative authority under Utah Code Annotated § 10-9a-101, et seq., and after all required public notice and hearings and execution of this Agreement by Developer, the City Council, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Use, Development, and Management Act, City's General Plan, and Section 10-18-1 et seq. of the City Code (collectively, the "**Public Purposes**"). As a result of such determination, City has elected to process and approve the Rezoning Request and authorize the subsequent development thereunder in accordance with the provisions of this Agreement. The City has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security, and general welfare of the residents and taxpayers of the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree to the following, incorporating by reference the above Recitals as if fully set forth herein:

TERMS

1. Definitions.

As used in this Agreement, the words and phrases specified below shall have the following meanings:

1.1. **Agreement** means this Development Agreement including all of its Exhibits and Addenda, including Addenda added after this Agreement is executed.

1.2. **Applicant** means a person or entity submitting a Development Application.

1.3. **Buildout** means the completion of development of the entire Project in accordance with this Agreement.

1.4. **City** means the City of Roy, a municipal corporation and political subdivision of the State of Utah.

1.5. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project, and which may or may not be applicable to the Development Application depending upon the provisions of this Agreement.

1.6. **Default** means a breach of this Agreement as specified herein.

1.7. **Developer** means Hamlet Development Corporation and its successors/assignees as permitted by this Agreement.

1.8. **Development** means the development of the Property pursuant to an approved Development Application.

1.9. **Development Application** means an application to the City for development of a portion or all of the Project or any other permit, certificate or other authorization from the City required for development of the Project.

1.10. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with Utah Code Ann. § 10-9a-603 (2019), and approved by the City, subdividing any portion of the Project.

1.11. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101 (2005), *et seq.*

1.12. **Maximum Residential Units** means the development on the Property of the maximum residential dwelling units which is 34 single-family residential dwellings.

1.13. **Notice** means any notice to or from any Party to this Agreement that is either required or permitted to be given to another party.

1.14. **Party/Parties** means, in the singular, Developer or the City; in the plural Developer and the City.

1.15. **Final Plat** means the final plat for the development of the Project (or any portion thereof), which has been approved by the City.

1.16. **Project** means the residential subdivision to be constructed on the Property pursuant to this Agreement with the associated Public Infrastructure and private facilities, and all of the other aspects approved as part of this Agreement. The Project is intended to be developed and improved in one (1) phase.

1.17. **Property** means the real property owned by (or under contract to be purchased by) and to be developed by Developer as more fully described in **Exhibit A**.

1.18. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City or other public entities as a condition of the approval of a Development Application.

1.19. **Residential Dwelling Unit** means a residential structure designed and intended for use as a single-family detached residential dwellings, as generally depicted on the Concept Plan attached hereto as **Exhibit B**.

2. **Development of the Project.**

2.1. **Zone Change.** Subject to the terms of this Agreement, development of the Project shall be subject to the provisions of the City's High Density (R-3) zone and the terms and provisions of this Agreement. In the event of a conflict between the provisions of the R-3 zone and this Agreement, the terms, provisions, and standards set forth in this Agreement shall govern.

2.2. **Compliance with Final Plat and this Agreement.** The Project shall be approved and developed in accordance with this Agreement, the City Code, the City's Future Laws (to the extent they are applicable as specified in this Agreement), and the Final Plat.

2.3. **Maximum Residential Units.** Developer shall be entitled to have developed the Maximum Residential Units of the type and in the general location as shown on the Final Plat, which shall be consistent with the Concept Plan attached hereto as **Exhibit B**.

2.4. **Flexible Development Standards.** Section 10-18-1 of the City Code allows the City, in development agreements such as this Agreement, to provide flexibility in the approval of development project by tailoring development standards and requirements to the unique features of a particular development site. Given the unique features and location of this

Project, and in order to achieve the Public Purposes and allow for the Project to be developed as desired by both the City and Developer, the City has determined that the High Density (R-3) zone is appropriate for this Project and that the single Family lot sizes, setbacks, open space and common areas depicted in the Concept Plan attached hereto as **Exhibit B** are approved and shall govern the development of the Project. The Parties also agree that the maximum permitted height for units in the Project is thirty-five (35) feet.

2.5. **Private Road.** The road running through the center of the Project, connecting to Midland Drive on the west side of the Project and 3500 West Street on the east side of the Project shall be a private road with the width and general layout depicted in the Concept Plan attached hereto as **Exhibit B and subject to engineering requirements as required by the City.** The Project shall have a homeowners association (“HOA”) that shall be responsible to maintain the private road in good condition.

2.6. **Stormwater System.** The Parties agree that the storm drain and stormwater system for the Project shall be private (i.e., not dedicated to the City) and that the HOA, not the City, shall be responsible to maintain, clean, repair and service the stormwater system.

2.7. **Dedication of Land.** In connection with the recordation of the Final Plat for the Project, Developer shall dedicate to the City for public use, without charge or compensation, the portion of land on the east side of the Project that is adjacent to 3500 West Street. The Parties agree that said dedication is not an unlawful exaction or a taking under State or Federal law but is part of a negotiated exchange between the Parties. Developer agrees that to the extent any form of “just compensation” for said dedication is required by law, the compensation requirements are satisfied by virtue of the benefits, vested rights, and approved grants in this Agreement such that no additional compensation of any kind is required.

2.8. **Other Conditions of Final Plat Approval.** During the development approval process, the City may identify and impose other reasonable conditions of approval for Final Plat approval of the Project in order to comply with engineering and life safety requirements so long as such conditions are not inconsistent with, and do not impair or prejudice, the rights and development standards approved in this Agreement.

3. **Vested Rights.**

3.1. **Vested Rights Granted by Approval of this Agreement.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants to Developer all vested rights to develop the Project in fulfillment of this Agreement, LUDMA, the City Code, and the Final Plat except as specifically provided herein. The Parties specifically intend that this Agreement grant to Developer the “vested rights” identified herein as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509 (2019).

3.2. **Exceptions.** The vested rights and the restrictions on the applicability of the City’s Future Laws to the Project as specified in Section 3.1 are subject to the following exceptions:

3.2.1. **Developer Agreement.** The City’s Future Laws or other regulations to which the Developer agrees in writing, but not otherwise;

3.2.2. **State and Federal Compliance.** The City’s Future Laws or other regulations which

are generally applicable to all properties in the City, and which are required to comply with State and Federal laws and regulations affecting the Project;

3.2.3. **Codes.** Any City's Future Laws that are updates or amendments to existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO 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;

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

3.2.5. **Impact Fees.** Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2011) *et seq.*

3.2.6. **Compelling, Countervailing Interest.** Laws, rules, or regulations that: (i) the City's land use authority finds on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2020), and (ii) are of general applicability to all development activity in the City.

4. **Term of Agreement.** Unless earlier terminated as provided for herein, the term of this Agreement shall be until December 31, 2028. This Agreement shall also terminate automatically at Buildout.

5. **Public Infrastructure.**

5.1. **Construction by Developer.** Developer, at Developer's cost and expense, shall have the right and the obligation to construct or cause to be constructed and install all Public Infrastructure reasonably and lawfully required as a condition of approval of its Development Application so long as such requirements and conditions are consistent with his Agreement. Such construction must meet all applicable standards and requirements and must be approved by the City's Engineer and Public Works Director.

5.2. **Responsibility Before Acceptance.** Developer shall be responsible for all Public Infrastructure covered by this Agreement until final inspection of the same has been performed by the City, and a final acceptance and release has been issued by the City. The City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the Public Infrastructure, nor shall any officer or employee thereof, be liable for any persons or property injured by reason of said Public Infrastructure; all of such liabilities shall be assumed by the Developer.

5.3. **Warranty.** Developer shall repair any defect in the design, workmanship or materials in all Public Infrastructure which becomes evident during a period of one (1) year following the acceptance of the improvements by the City Council or its designee (the warranty period). If during the warranty period, any Public Infrastructure shows unusual depreciation, or if it becomes evident that required work was not done, or that the material or

workmanship used does not comply with accepted standards, said condition shall, within a reasonable time, be corrected.

5.4. Timing of Completion of Public Infrastructure. In accordance with the diligence requirements for the various types of approvals as described in the City Code, construction of the required Public Infrastructure for each phase shall be completed within one year after the City Council grants final plat approval for that phase and prior to recordation of the mylar for that phase. Upon a showing of good and sufficient cause by Developer the City shall, in accordance with the provisions of the City Code, extend the time of performance if requested prior to expiration of the completion date.

5.5. Bonding. In connection with any Development Application, Developer shall provide bonds or other development security, including warranty bonds, to the extent required by the City Code, unless otherwise provided by Utah Code § 10-9a-101, *et seq.* (2005), as amended. The Applicant shall provide such bonds or security in a form acceptable to the City or as specified in the City Code. Partial releases of any such required security shall be made as work progresses based on the City Code.

6. Upsizing/Reimbursements to Developer.

6.1. Upsizing. The City shall not require Developer to “upsized” any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Developer are made to compensate Developer for the incremental or additive costs of such upsizing to the extent required by law.

7. Default.

7.1. Notice. If Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

7.2. Contents of the Notice of Default. The Notice of Default shall:

7.2.1. Specific Claim. Specify the claimed event of Default;

7.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; and

7.2.3. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be of no less than thirty (30) days duration, if weather conditions permit.

7.3. Remedies. Upon the occurrence of any Default, subject to the provisions of Section 7.4 below, and after notice as required above, then the Parties may have the following remedies:

7.3.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

7.3.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

7.3.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a

default by Developer until the Default has been cured.

7.4. Public Meeting; Meet and Confer. Before any remedy in Section 7.3 may be imposed by the City, the Party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default. Thereafter, the City and Developer shall meet within fifteen (15) business days and engage in good-faith efforts to settle and resolve any dispute under this Agreement or alleged default hereunder. Neither Party shall pursue any remedy against the other unless and until this “meet and confer” process has been satisfied.

8. Notices.

All notices required or permitted under this Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Developer:

Hamlet Development
Attn: Michael Brodsky
Email: michael@hamletdev.com
84 West 4800 South, Suite 300
Murray, Utah 84107

To the City:

Roy City
Attn: Mayor Robert Dandoy
Email: rdandoy@royutah.org
5051 South 1900 West
Roy, Utah 84067

9. Incorporation of Recitals and Exhibits.

All Recitals and Exhibits are hereby incorporated into this Agreement.

10. No Third-Party Rights/No Joint Venture.

This Agreement does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Except as specifically set forth herein, the Parties do not intend this Agreement to create any third-party beneficiary rights.

11. Successors and Assigns.

11.1. Change in Developer. This Agreement shall be binding on the successors and assigns of Developer. If the Property is transferred (“**Transfer**”) to a third party (“**Transferee**”), Developer and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to such Transfer, Developer provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as Developer under this Agreement and the persons and/or entities originally executing this Agreement as Developer shall be released from any further obligations under this Agreement as to the transferred Property.

11.2. Individual Lot or Unit Sales. Notwithstanding the provisions of Section 11.1 above, a transfer by Developer of a lot or residential unit located on the Property within a City approved and recorded plat shall not be deemed a Transfer as set forth above so long as Developer’s obligations with respect to such lot or dwelling unit have been completed. In such event, Developer shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

12. **No Waiver.**

Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.

13. **Severability.**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

14. **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 therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, 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.

15. **Applicable Law.**

This Agreement shall be construed in accordance with the laws of the State of Utah.

16. **Venue.**

Any action to enforce this Agreement shall be brought only in the District Court of Davis County, State of Utah.

17. **Entire Agreement.**

This Agreement and the Exhibits hereto constitute the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

18. **Amendment.**

This Agreement may be amended only in writing signed by the Parties hereto.

19. **Recordation and Running with the Land.**

This Agreement shall be recorded in the chain of title for the Project. This Agreement shall be deemed to run with the land.

20. **Authority.**


The Parties to this Agreement each warrant that they have all of the necessary authority and approvals to execute this Agreement.

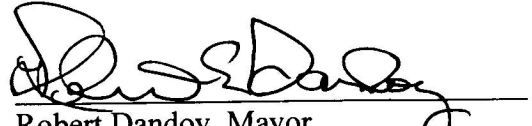
(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

DEVELOPER:
Hamlet Development Corporation

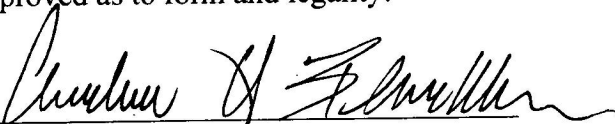
CITY:
City of Roy


Michael Brodsky, President


Robert Dandoy, Mayor

Approved as to form and legality:

Attest:


City Attorney


City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On the 1 day of March, 2022 personally appeared before me Robert Dandoy who being by me duly sworn, did say that he is the Mayor of Roy City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Mayor acknowledged to me that the City executed the same.




NOTARY PUBLIC

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

On the 1ST day of MARCH, 2022, personally appeared before me Michael Brodsky, who being by me duly sworn, did say that he is the President of Hamlet Development Corporation, a Utah corporation, and that the foregoing instrument was duly authorized by the company at a lawful

meeting held by authority of its operating agreement and signed in behalf of said company.

Holly A. Franklin
NOTARY PUBLIC



TABLE OF EXHIBITS

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Concept Plan of the Project

Exhibit "A"
Legal Description of Property

ALL OF LOT 2, BRIDGE ACADEMY SUBDIVISION, ROY CITY, WEBER COUNTY, UTAH

Exhibit "B"
Concept Plan of the Project

