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Hurricane, UT. 84737

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Gary Christensen Washington County Recorder
01/11/2023 11:38:04 AM Fee \$ 0.00
By HURRICANE CITY



**DEVELOPMENT AGREEMENT
FOR
STOUT PDO ZONE CHANGE**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 7 day of December, 2022 (the "Effective Date"), by and between the CITY OF HURRICANE, a Utah municipal corporation, hereinafter referred to as "City," and LaRae Ellsworth Stout, Trustee, or successor trustee, of the LaRae Ellsworth Stout Revocable Trust dated June 13, 2019 _____, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as the "Parties."

RECITALS

A. Developer is the owner of approximately 38.64 acres of land located within the City of Hurricane, designated as Parcel H-3350-A in the records of the Washington County Recorder in St. George, Utah and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property").

B. On the 7 day of December 2022, the City approved a zone change for the Property shown in Exhibit B, attached hereto and incorporated herein by this reference, with the adoption of this Agreement being a condition of the zone change approval.

C. The Parties anticipate that in the future the Developer will request a division of property by applying for preliminary plat approval and that the division of property will be in accordance with the different areas shown on Exhibit C attached hereto (the "Project").

D. Developer is willing to design and construct the Project in accordance with the preliminary site plan as approved by City (EXHIBIT C) and in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

E. Developer has previously dedicated to the City approximately ___ acres of roadway for the construction of master-planned roadways at 2300 South and 1500 West.

F. The City and Developer desire to enter into this Agreement stating the terms and conditions for development of the Property.

G. The Mayor of City is authorized to execute and deliver this Agreement on behalf of the City.

H. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

I. This Agreement is generally consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

J. 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.

K. 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-102.

L. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

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 the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement by reference and are hereby made a part of this Agreement.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of an underlying zone of shown on EXHIBIT B, (ii) all other features as generally shown on the Preliminary Site Plan as shown on EXHIBIT C, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the attached Preliminary Site Plan in EXHIBIT C as permitted by the aforementioned zoning designations for the Property. Except as otherwise approved in writing by City.

3. Governing Standards. The Preliminary Site Plan, the record of the City Council meeting, and this Agreement (together the "Approval Documents") establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Approval Documents. All Developer submittals must comply generally with the Approval Documents. Non-material variations to the Preliminary Site Plan, as defined and approved by the City's Zoning Administrator, such as exact building locations, location of local roadways, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

- a. The City acknowledges the developer shall have the right to develop a total of 20 lots as part of the development. These lots may vary in size and many of

the lots shall be clustered to allow for larger areas to remain open and in continued agriculture use.

4. Terms and Conditions:
 - a. Construction of Improvements
 - i. Except as otherwise stated in this Agreement, the Developer shall be required to construct all improvements required by Hurricane City Code at the time any of the following take place.
 1. Subdivision of the property.
 2. Any residential development within the Project in addition to the Stuart & Heidi Stout Property.
 3. Expansion of any recreational, commercial, or industrial uses.
 - ii. Commercial, Industrial, and Recreation Facilities. All improvements shall be installed to Hurricane City Standards at the time of expansion of any of the existing uses for commercial, industrial, or public recreational facilities.
 - b. Stuart & Heidi Stout Property. In the area labeled as Stuart & Heidi Stout Property on Exhibit C, the Developer may build no more than one single-family home and the number of associated accessory dwelling units permitted by the Hurricane City Code at the time of application . The City shall not require improvements to 1500 W or 2300 S as a condition of the issuance of a building permit or approval of a site plan. The applicant shall locate the building, and any other accessory buildings, structures, or outbuildings on the property outside future dedication and setbacks of any master plan roadways.
 - i. Prior to the construction of said home, the property owner must secure approval of a site plan by Hurricane City's Joint Utility Committee and secure a building permit by Hurricane City's building department.
 - c. Operation of Business. The developer has been operating a roofing business on the subject property which was approved in a 2018 zone change and development agreement. The rezone was granted subject to a development agreement that limits the industrial use to a roofing business. The business shall be permitted to continue within the area labeled as Shop/Red Angus Ranch with EXHIBIT C in accordance with, and limited by, the prior development agreement, attached hereto as Exhibit D.
 - d. 2300 South Improvements.
 - i. The City shall not require improvements to 2300 South or 1500 West for development of a single-family home in the Stuart & Heidi Stout Property.
 - ii. When the portion of 2300 South adjacent to the Project is constructed in the future, if the property north of 2300 South is still being utilized by Developer for the grazing of cattle, the City shall construct a box culvert under 2300 South for drainage and of sufficient size the Developer may use such culvert to herd cattle under 2300 South from the Development to the adjacent northern property. The location of such culvert shall be agreed to in the future by the Developer and the City.
 - iii. Prior to the installation of any improvements identified in Section 4(a)(i) of this Agreement to the areas identified as the Stuart & Heidi Stout

Property, Agricultural Stuart & Heidi Stout Property, or the Shop/Red Angus Ranch, the Developer shall either (1) dedicate ½ of the cross-section of 2300 South to the City, excluding any portion previously dedicated to the City or (2) reach an agreement with the City whereby the City purchases all or some of the undedicated south ½ of 2300 South from the Developer. Furthermore, the Parties agree to reasonably cooperate to allow the City to obtain from Developer ½ of the cross-section of 2300 South at such time as the City deems it necessary to construct 2300 South. Developer's obligations to dedicate and/or sell portions of 2300 South to the City shall be roughly proportionate, both in nature and extent, to the impact of the proposed improvements and development.

- e. All improvements installed shall meet Hurricane City Code and Standards at time of the land use application.
- f. Recreation/Reception Facilities
 - i. The applicant has been approved and constructed a building for personal enjoyment consisting of a family gym and activity center subject to no membership being charged for the gym and no revenue being generated.
 - ii. Expansion. Any expansion of buildings or amenities in the area identified in Exhibit C as Recreation/Reception Facilities must be approved and built to commercial standards. No commercial activity may take place on the site until such improvements have been made.
- g. Agriculture Areas. The following section shall apply to the areas identified on Exhibit C as (1) Agriculture Stuart & Heidi Stout Property and (2) Agriculture: Red Angus Ranch.
 - i. Except for any required road dedication each Agriculture Area shown on EXHIBIT C shall remain in agriculture use. Uses shall comply with the Use Table shown in EXHIBIT D.
 - ii. A total of 14.47 Acres within the two agricultural areas identified in Exhibit C shall remain as agricultural use as listed within this Agreement.
 - iii. All other areas not listed as agriculture use may also be used for agricultural use.

5. Applicable Regulations. Nothing in this Agreement shall amend or replace any requirements by City, State, Federal, Fire, other local development agreements or restrictions, or other applicable regulations.

6. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: LaRae Ellsworth Stout, Trustee, or successor trustee, of the
LaRae Ellsworth Stout Revocable Trust dated June 13, 2019
2350 South 1500 West
Hurricane, UT 84737

To the City: City of Hurricane

Attention: Dayton Hall, City Attorney
147 N 870 W
Hurricane, UT 84737

7. General Term and Conditions.

a. 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.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. 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.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Washington County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

1. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

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

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 hereinabove written.

CITY:

CITY OF HURRICANE



ATTEST:

By: Cindy [Signature]
City Recorder

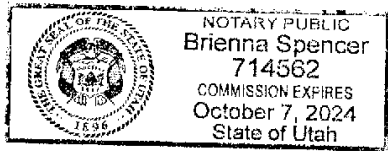
By: Nanette Billings
Mayor

DEVELOPER:

By: LaRae Ellsworth Stout
Name: LaRae Ellsworth Stout
Title: Trustee

STATE OF UTAH)
)SS
COUNTY OF UTAH)

On the 7 day of December, 2022 personally appeared before me LaRae Stout who being by me duly sworn, did say that he is the trustee of LaRae Ellsworth Stout Revocable Trust a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability trust company with proper authority and duly acknowledged to me that he executed the same.



Brienna Spencer
Notary Public
Residing at: Hurricane City

EXHIBIT A
Legal Description Parcel:

COMMENCING AT THE NORTH CENTER CORNER OF SECTION 16, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N89°48'40"W ALONG THE NORTH SECTION LINE OF SAID SECTION 16, 30.00 FEET; THENCE S00°16'38"W 16.50 FEET TO THE POINT OF BEGINNING; RUNNING THENCE S00°16'11"W 1304.17 FEET TO THE NORTH 1/16TH SECTION LINE OF SAID SECTION 16; THENCE N89°49'15"W ALONG SAID LINE, 1291.96 FEET TO THE WEST 1/16TH SECTION LINE OF SAID SECTION 16; THENCE N00°13'49"E ALONG SAID LINE, 1304.39 FEET; THENCE S89°48'40"E 1292.86 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 1685660 SQUARE FEET OR 38.697 ACRES.

EXHIBIT B

Zoning Map

EXHIBIT C
Site Plan

EXHIBIT D

Allowed Agriculture Uses

P: Permitted

Agricultural uses:	
Accessory building	P
Agricultural business	P
Agricultural industry	P
Agriculture	P
Agritourism	P
Animal specialties	P
Animals and fowl for recreation and family food production	P
Stable, private	P
Residential uses:	
Assisted living facility	P
Building, accessory	P
Dwelling, earth sheltered	P
Dwelling, single-family	P
Dwelling, single-family with single accessory dwelling unit	P
Dwelling, temporary	P
Guesthouse for family members and non-paying guests	P
Home base business	P
Manufactured home	P
Residential facility for elderly persons 1	P
Residential facility for persons with a disability 1	P
Public and civic uses:	
Auditorium or stadium	N

Cemetery	P
Church or place of worship	P
Club or service organization	P
Cultural service	P
Park	P
Protective service	P
Stable, public	P
Utility, minor	P
Utility substation	P
Commercial uses:	
Agricultural sales and service	C
Agritourism activities	P
Animal hospital	P
Bed and breakfast, home	P
Garden center	P
Kennel, residential	P
Licensed family child care 2	P
Personal care service, home based 2	P
Personal instruction service, home based 2	P
Produce stand	P
Recreation and entertainment, outdoor	C
Residential certificate child care facility 2	P
Veterinary service	P