

When Recorded Return to:
10 Hurricane City
147 N. 870 W.
Hurricane, UT. 84737

DOC # 20230000910

Agreement Page 1 of 10
Gary Christensen Washington County Recorder
01/11/2023 11:38:04 AM Fee \$ 0.00
By HURRICANE CITY



**DEVELOPMENT AGREEMENT
FOR
STEWARD LAND HOLDINGS**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 2nd day of December, 2022 (the "Effective Date"), by and between HURRICANE CITY, a Utah municipal corporation, hereinafter referred to as "City," and Steward Land Holdings LLC, a Utah Limited Liability Company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately 38.14 acres of land located within the City of Hurricane as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On Dec. 1 2022, the City Council approved a zone change of the entire property to the Planned Commercial (PC) Zone subject to and conditioned upon the terms and conditions of the Development Agreement. See City Council Minutes, attached as Exhibit B.

C. Developer has proposed, and City has approved, a Preliminary Site Plan attached hereto and incorporated herein as EXHIBIT C.

D. Developer is willing to design and construct the Project in accordance with the preliminary site plan 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. The City Council have further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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, as a substantive part hereof.
2. Development Terms:
 - a. Ten Percent (10%) of the total units in residential areas shall be designated as Affordable housing as defined in Hurricane City Code section 10-15-8(E)(2)(a) and shall satisfy all of the requirements for Affordable housing as set forth in Hurricane City Code section 10-15-8(E)(2). A copy of the applicable sections of the Hurricane City Code is attached as Exhibit D.
 - b. The total residential area shall not exceed 17 units per residential acre, which equates to approximately 519 units. If the project is developed in phases, Developer shall place a note on the preliminary plat or site plan of each phase showing the total number of units approved out of the total unit allowed.
 - c. The applicant shall provide a mixture of townhomes and single-family homes within the “Medium Density” Area.
 - d. The height of buildings shall not exceed three stories in height above grade.
3. Except as expressly stated herein, 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.
4. 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: Steward Land Company
Attention: Brad Brown, Managing Partner
1708 E. 5550 S. Ste. 18
Ogden, UT 84403

To the City: City of Hurricane
Attention: Dayton Hall, City Attorney
147 N 870 W.
Hurricane, UT 84737

5. General Term and Conditions.

a. Adequate Public Facilities.

- i. Developer understands, acknowledges and specifically agrees that: (a) power, water, and other utility services to the Property may not be currently available in sufficient capacity to serve some or all of the Property, and may not have been extended to the Property; (b) the granting of this zone change, approval of a preliminary plat, or review of construction drawings, does not in any way guarantee or warrant the availability and extension of power, water, or other utility services to the Property; (c) no application for any building permit requiring the availability and extension of power, water, or other utility service for the specific property identified in the permit application, shall be filed, made, or approved until such time that such utilities or services are available and have been extended to the applicable property, as determined by City staff; and (d) Developer assumes all risk and liability associated with any development activity on the Property, including but not limited to all costs incurred for engineering, feasibility studies, etc., in the event that such services do not become available and are not extended to the Property.
- ii. As part of any preliminary plat or site plan application, Developer shall identify needed utilities and roadways and provide a plan on how the Developer shall provide each of the required services to the site, including plans on providing off-site improvements.
- iii. Developer understands offsite improvements will likely be necessary for development and will be responsible for any required offsite improvements. These improvements may require the property owner to install utility lines and secure rights-of-way or easements for needed infrastructure. All offsite improvement plans and construction will be subject to review and approval by the Hurricane City Joint Utility Committee.

b. 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.

c. 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.

d. 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.

e. 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

f. 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.

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

h. 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.

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.

6. 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: Andy Boteng
City Recorder

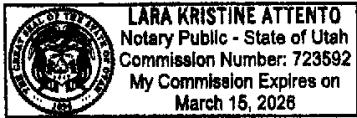
By: Nanette Billings
Mayor

DEVELOPER:

By: [Signature]
Name: Bradley John Brown
Title: Managing Partner

STATE OF UTAH)
):SS
COUNTY OF UTAH)

On the 2nd day of December, 2023, personally appeared before me Bradley John Brown, who being by me duly sworn, did say that he is the Managing Partner of Steward Land, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.



[Signature]
Notary Public
Residing at:

EXHIBIT A
Legal Description Parcel:



Parcel #H-3-1-31-3009

Zoning Boundary Description

PART OF THE SOUTHWEST QUARTER OF SECTION 31 TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING N88°52'58"W 751.16 FEET AND NORTH 452.94 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 31; THENCE S74°50'08"W 765.51 FEET; THENCE N01°42'49"E 1399.98 FEET; THENCE N67°32'27"E 327.32 FEET; THENCE S57°30'11"E 335.71 FEET; THENCE N63°09'32"E 269.71 FEET; THENCE N83°12'08"E 265.91 FEET; THENCE N40°40'01"E 312.94 FEET; THENCE S88°58'18"E 189.64 FEET TO A POINT ON THE CENTER SECTION LINE OF SAID SECTION 31; THENCE S01°01'42"W 1070.46 FEET; THENCE S89°46'38"W 131.69 FEET; THENCE S85°13'16"W 211.19 FEET; THENCE S68°02'47"W 332.30 FEET; THENCE N88°52'58"W 111.09 FEET; THENCE S01°07'02"W 320.61 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 31, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN: THENCE S89°58'47"W 511.39 FEET; THENCE N00°01'13"W 1040.89 FEET TO THE SOUTHWEST CORNER OF AN EXISTING 1 ACRE WELL SITE PARCEL AND TO THE POINT OF BEGINNING; THENCE N00°01'13"W 208.71 FEET; THENCE N89°58'47"E 208.81 FEET; THENCE S00°01'13"E 208.71 FEET; THENCE S89°58'47"W 208.71 FEET TO THE POINT OF BEGINNING.

CONTAINING A REMAINDER OF 38.14 ACRES, MORE OR LESS.

Solutions You Can Build On™

Civil Engineering • Land Planning • Structural Engineering • Landscape Architecture • Land Surveying • Construction Surveying
5160 S 1500 W • Riverdale, Utah 84405 • Tel: 801-621-3100 • Fax: 801-621-2666
ogden@reeve-assoc.com • reeve-assoc.com

Exhibit B

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reiterated that the wreaths are funded this year, and he sees no need to put more funds in their account.

Mayor Billings suggested adding funds to honor the veterans in the annual budget moving forward. Councilman Hirschi feels the funding should go towards Veterans Memorial Park. Councilman Thomas also feels it was insulting when it was insinuated that the Council loves Veterans less because they wanted to use artificial wreaths.

David Hirschi motioned to deny funding an additional \$2,000 for Wreaths Across America to put in their fund for next year for the reasons discussed. Seconded by Kevin Thomas. Joseph Prete, David Hirschi, and Kevin Thomas, aye. Dave Sanders, nay. Doug Heideman abstained. Motion carried.

Mayor Billings reported that the public is invited to attend the Wreaths Across America event at the cemetery on December 17th at 8:00 a.m.

- 3. Ordinance 2022-54 Consideration and possible approval of A Zone Change Amendment request for Steward Land Holdings located at approx. 3112 West State Street from HC, highway commercial, to planned commercial. Parcel number H-3-1-31-3009. Steward Land Holdings Applicant. Brad Brown Agent.**

Stephen Nelson explained the City Council directed staff to prepare a development agreement that obligated affordable housing, limited the height, and clarified that the medium-density area is mixed-use. They did include an adequate public facilities clause. The City Attorney and applicant have reviewed the development agreement. Brad Brown is comfortable with the terms and thanked the staff for all their work.

Councilman Prete voiced appreciation for the proposed plan. He asked if there was any way to safeguard this area from becoming dilapidated. Mr. Nelson stated that good management is the best way to prevent the deterioration of the property. Mr. Brown explained that the applicant sees this as a legacy project. He reviewed the amenities within the project. Mr. Nelson reported that having an active HOA helps maintain properties. Having a variety of housing options in each building will also help. Mr. Brown reported that they are contemplating having affordable units in each building. They will have CCRs and onsite management. Mayor Billings struggles with the reduction of highway commercial. Councilman Hirschi is concerned that this will set a precedent for high density. Councilman Sanders pointed out it would be difficult to access commercial in this area due to topography. He asked if the project is strictly rentals. Mr. Brown reported that the project is a mix of rentals and units available to purchase.

Kevin Thomas motioned to approve the Zone Change Amendment request for Steward Land Holdings located at approx. 3112 West State Street from HC, highway commercial, to planned commercial based on topography and proximity to commercial, this project is the best-suited

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project for the property, there are adequate facilities, this matches the General Plan Map, and there is a need for affordable housing. Approval is subject to the development agreement. Seconded by Dave Sanders. Joseph Prete, Kevin Thomas, and Dave Sanders, aye. David Hirschi and Doug Heideman nay. Motion carried.

4. Ordinance 2022-61 Consideration and possible approval of an **amendment to Hurricane City Code Title 10 Chapter 7 Section 9 Conditional Use Permit Standards, Title 10 Chapter 12 Agriculture Zoning Standards and Title 10 Chapter 14 Residential Agriculture Standards to amend the code to allow Reception Centers as a conditional use within Agriculture and Residential Agriculture Zones.**

Stephen Nelson reported that the City Council expressed hesitancy to this amendment at the last meeting. The Council was concerned about the parking and fire code requirements. This change will allow reception centers as a conditional use in RA zones. Per State law, the conditions for conditional use must be listed in the code. Mr. Nelson contacted the fire district for code requirements, but he does not have a clear answer yet. The Planning Commission recommended keeping the parking requirements vague to ensure a property owner can utilize a field for parking. Mayor Billings reported that there are no reception venues in Hurricane City. Chief Excell does not think wedding receptions will greatly impact their department.

Councilman Prete stated that ordinances already exist that allow this use in residential areas. He feels that reception centers have a larger impact and thinks there are more implications for public safety. He is also concerned about the definition of reception centers as a secondary use. He prefers that this is not allowed on properties that are less than five acres. Mr. Nelson explained that the minimum acreage could be set in the conditional use. He cited the code's definition of a reception center. Chief Excell requested to continue the item to allow him time to review the public safety component.

Doug Heideman motioned to continue Consideration and possible approval of an amendment to Hurricane City Code Title 10 Chapter 7 Section 9 Conditional Use Permit Standards, Title 10 Chapter 12 Agriculture Zoning Standards, and Title 10 Chapter 14 Residential Agriculture Standards to amend the code to allow Reception Centers as a conditional use within Agriculture and Residential Agriculture Zones to the next meeting. Seconded by Joseph Prete. Kevin Thomas, Dave Sanders, Doug Heideman, David Hirschi, and Joseph Prete voting aye. Motion carried unanimously.

NEW BUSINESS

1. Ordinance 2022-62 Consideration and possible approval on a **Land Use Code Amendment Request to Title 10-Chapter 3-Subsection 4 and 10, Title 10-Chapter 15-Subsection 3, Title 10-Chapter 41, and Title 10-Chapter 51; and Title 3 Chapter 10 to make changes regarding short-term rental standards within residential areas,**

EXHIBIT C
Site Plan

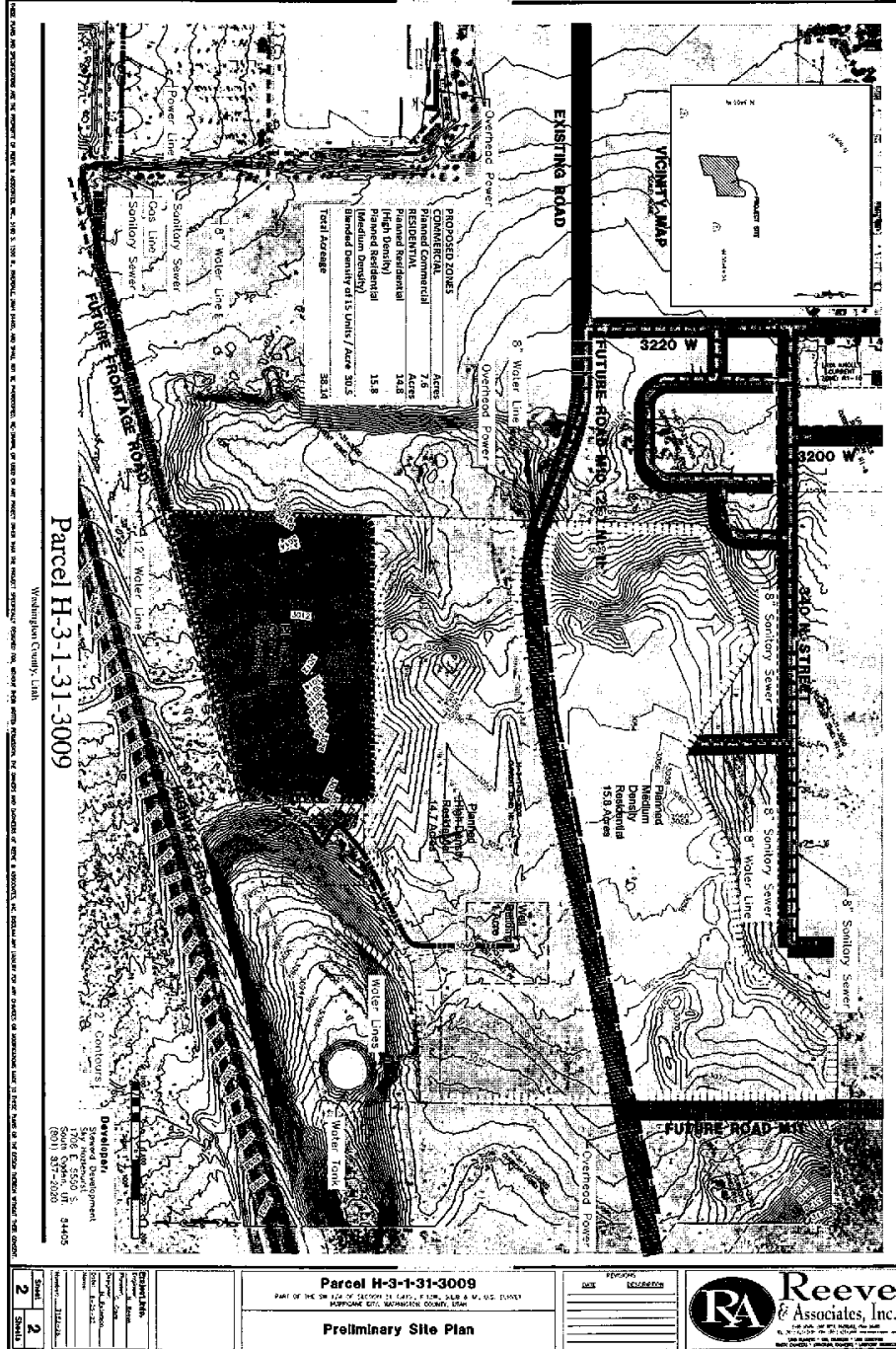


EXHIBIT D

Affordable Housing Requirements

HCC 10-15-8 (E)

2. *Affordable housing.* Projects shall not exceed 17 units an acre for residential areas that reserve ten percent of given units as affordable housing.

a. *Defined.* "Affordable housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80 percent of the median gross income for households in the county. Housing costs must be affordable based on housing and urban development standards.

b. *Duration and requirements of affordability.*

(1) *Affordable rental unit.* An affordable rental unit shall remain affordable for a period of 25 years from the time a certificate of occupancy is issued. Prior to or as a condition of approval of a final site plan, a deed restriction requiring compliance with this section shall be recorded with the county recorder, which deed restriction shall run with the land and bind all assigns, heirs, and successors of the applicant.

(2) *Affordable ownership unit.* An affordable ownership unit shall be sold only to income-qualified households for a period of 25 years from the time a certificate of occupancy is issued. Prior to or as a condition of approval of a final site plan, a deed restriction requiring compliance with this section shall be recorded with the county recorder, which deed restriction shall run with the land and bind all assigns, heirs, and successors of the applicant.