



Memorandum

To: Planning Commission
From: Thomas Dansie, Director of Community Development
Date: August 16, 2024
Re: Workforce Housing Overlay Zone Change Approval - Development Agreement

Executive Summary

The Town Council approved the Workforce Housing Overlay Zone (WFOZ) on parcel S-161-8 on July 10. Section 10-13G-2 of the Town Code requires the developer of a WFOZ project to enter into a development agreement with the Town that memorializes the conditions of the zone change approval. The attached development agreement between Bean, Cotting, Munson, LLC and the Town of Springdale fulfills this requirement.

The Commission should review the attached development agreement and make a recommendation to the Town Council whether or not to approve the agreement.

Background

Bean, Cotting, Munson, LLC, represented by Andy Green, applied for a zone change to apply the WFOZ to parcel S-161-8, located behind the Bit and Spur restaurant. The proposed zone change would allow the development of six multi-family units, all of which would be rented to households meeting the “active employment” criterion in section 10-13G-4 of the Town Code.

The Town Council approved the requested zone change on July 10, 2024. The Council attached a number of conditions to the zone change approval. The Town Code requires the property owner to enter into a development agreement with the Town to ensure the conditions of the zone change are memorialized and are binding on current and future owners of the property.

The Town Council’s motion of approval, including all the imposed conditions, is reproduced below. The Commission should review this motion of approval and then make sure each of the conditions is included in the development agreement document.

A motion was made by Pat Campbell to approve the zone change request to apply the Workforce Housing Overlay Zone to parcel S-161-8 located behind the Bit and Spur restaurant as presented in the meeting July 10, 2024, based on the following findings:

- 1. The application meets the general criteria set forth in Section 10-13G-9 of the overlay ordinance.**
- 2. The application meets the Land Use and Town Appearance Sub-Goal C and C2 as outlined in the staff report.**
- 3. The application meets the Housing General Goal and Housing Sub-Goal B as outlined in the staff report.**

4. The application meets the General Plan Housing Goal Overview due to the fact that the density is low and the setbacks to residential areas are high.

The approval includes the following conditions:

- 1. The development must be within the developable area shown on the map provided by the applicant.**
 - 2. All units must be workforce housing, and there may be up to six units as defined in Town Code and all must be within the footprint described.**
 - 3. The buildings must be no more than seventeen feet in height.**
 - 4. The parking and drive isles and driveways must all be paved.**
 - 5. Construction of the entire project must be finished within two years of approval of the development agreement, with a possible extension to three years with Town Council approval, and as such the Council authorizes the Mayor to sign the approval.**
- The motion was seconded by Jack Burns.**

Burns: Aye

Aton: Aye

Bruno: Aye

Campbell: Aye

Topham: Aye

The motion passed unanimously.

Staff and the applicant have worked together to draft the attached development agreement. The agreement includes all the conditions associated with the Town Council's zone change approval. The Town Attorney has reviewed the agreement and has approved the language for form.

The following table may be useful for the Commission to identify where each of the conditions of the zone change approval is addressed in the development agreement document.

Condition from the Council's Zone Change Approval	Section of the Development Agreement that Addresses the Condition
The development must be within the developable area shown on the map provided by the applicant.	Paragraph 5(b)(i): <i>All buildings and structures on the Property must be contained within the developable area identified on Bean's conceptual site plan ("Concept Plan"), which is included as Exhibit A.</i>
All units must be workforce housing, and there may be up to six units as defined in Town Code and all must be within the footprint described.	Paragraph 5(b)(ii): <i>There will be no more than six (6) dwelling units on the Property.</i> Paragraph 5(b)(iii): <i>All of the dwelling units on the Property must be used as Workforce Housing Units, as defined in the Workforce Housing Overlay Zone (Chapter 10-13G of the Town Code).</i>

	<p>Paragraph 5(b)(iv): <i>The maximum six (6) dwelling units shall be contained in a multi-family structure which shall be arranged and configured in the approximate footprint of the structure shown on the applicant's Concept Plan (Exhibit A). The Parties agree the location and layout of the structure may vary from that shown on the Concept Plan to allow development of the structure to preserve the natural topography of the Property as much as possible. However, the overall size and scale of the structure will remain consistent with what is shown on the Concept Plan.</i></p>
The buildings must be no more than seventeen feet in height.	<p>Paragraph 5(b)(v): <i>All structures on the Property shall be seventeen feet (17') or less in height.</i></p>
The parking and drive isles and driveways must all be paved.	<p>Paragraph 5(b)(vi): <i>All parking areas on the Property and all driveways from SR9 to the Property shall be improved and constructed with a hard surface such as asphalt or concrete. The parking areas and driveways must not be surfaced with gravel, dirt, or road base.</i></p>
Construction of the entire project must be finished within two years of approval of the development agreement, with a possible extension to three years with Town Council approval.	<p>Paragraph 5(c): Project Timeline. <i>Bean shall complete the Project within two (2) years from the Effective Date of this Agreement. To complete the Project means the proposed Workforce Housing Units have been constructed and the Town has issued a certificate of occupancy for the dwelling units. Bean may request a one (1) year extension of this timeline if, for factors beyond Bean's control, the Project has been unavoidably delayed. The Town will not withhold approval of a one (1) year extension if good cause is shown. If the Project is not complete within the timeline: (1) the zone change approval will be void, (2) the Property will revert to the Valley Residential - Standard zone under the same restrictions associated with the 2022 restrictive covenant, and (3) Bean will remove any partially constructed structures on the Property built in furtherance of this Agreement.</i></p>

The applicant has requested a change to Paragraph 5(c) which establishes the project timeline. For reasons the applicant will be prepared to detail at the meeting, there is concern the project may not be able to begin for another 12 to 18 months. This would create a much reduced timeline for construction, as little as six months, which would be difficult for the applicant to meet.

The applicant is requesting the same timeline allowances as found in the Transient Lodging Overlay zone (TLO) be applied to this project. The TLO requires projects to begin construction within 18 months of approval, and then to be complete in another two years, with a possible one year extension (see section 10-13F-5(F)). The applicant has requested this same timeline be applied to the WFOZ approval. Because this is a change from the Town Council's original approval (two year total timeline, with a possible one year extension) the Commission should determine whether or not it is in keeping with the spirit and intent of the zone change.

If the Commission wishes to allow a modification to the timeline, the TLO language could be used with modification to fit the WFOZ approval. In this case the following language could be used to replace Paragraph 5(c) in the agreement:

Bean shall have eighteen months from the Effective Date in which to begin development of the Project. Bean shall have two years after development begins to complete the Project and have a Certificate of Occupancy issued. If development of the Project is not initiated and pursued to completion in accordance with these timelines the WFOZ approval will be rescinded and the property will revert back to the Valley Residential zone with no WFOZ.

- 1. To begin development of the Project means to have all necessary permits issued and to have started the actual process of construction.*
- 2. The Town Council may grant one extension of up to one year to complete development of the Project if:*
 - a. The development of the Project is in at least the framing stage;*
 - b. Bean demonstrates that factors beyond its control have prevented timely completion of the Project; and*
 - c. Bean presents a feasible plan and schedule demonstrating how the Project will be able to be completed within the one-year extension period.*

Planning Commission Action

The Planning Commission should review the development agreement to ensure it is consistent with the Town Council's zone change approval and includes all the conditions and other requirements of the Council's approval. The Commission is reviewing the document for consistency with the zone change approval only. Because the legislative decision to grant the zone change has already been made, the Commission is not reviewing the merits of the zone change. That review and decision has already been made. The Commission is only reviewing the proposed development agreement document for consistency with the Council's approval.

The Commission may wish to use the following sample motion language when making a motion on this item:

*The Planning Commission recommends **approval / denial** of the proposed WFOZ development agreement between the Town and Bean, Cotting, Munson, LLC associated with the WFOZ zone change approval on parcel S-161-8, as presented in the August 21, 2024 Planning Commission meeting. This approval is based on the following findings:*

[LIST FINDINGS]

Note: If the Commission wishes to recommend approval of the applicant's requested modifications to the project timeline condition, the sample motion could be altered to read:

*The Planning Commission recommends **approval / denial** of the proposed WFOZ development agreement between the Town and Bean, Cotting, Munson, LLC associated with the WFOZ zone change approval on parcel S-161-8. The Commission recommends paragraph 5(c) be altered to reflect a project timeline consistent with the TLO zone change approval timeline. The proposed alternative language in the staff report is included to replace existing paragraph 5(c). This approval is based on the following findings:*

WHEN RECORDED, MAIL TO:

Town of Springdale
118 Lion Boulevard
P.O. Box 187
Springdale, UT 84767
Attn: Town Manager

Serial/Tax ID #S-161-8

DEVELOPMENT AGREEMENT

This Development Agreement (“***Agreement***”) is entered into as of the ____ day of _____, 2024 (the “***Effective Date***”), by and between the **TOWN OF SPRINGDALE**, a Utah municipal corporation (the “***Town***”), and **BEAN, COTTING, MUNSON, L.L.C., a Utah limited liability company** (“***Bean***”). The Town and Bean may sometimes be collectively referred to as the “Parties” or singly as a “Party.”

RECITALS OF FACTS

1. Bean owns parcel S-161-8 in Springdale, Utah (the “***Property***”).
2. In 2022, the Springdale town council granted approval to change the zoning on the Property from Foothill Residential to Valley Residential - Standard, subject to a restrictive covenant that requires all dwelling units on the property to be used as workforce housing.
3. In June of 2023, the Springdale town council created the Workforce Housing Overlay Zone (“***WFOZ***”).
4. In May of 2024, Bean applied for a zone change on the Property from Valley Residential - Standard to Valley Residential - Workforce Housing.
5. Bean’s requested zone change would allow the development of up to six Workforce Housing Units on the Property (the “***Project***”).
6. On July 10, 2024, the town council considered and approved the zone change, with various conditions stated in the record of the public meeting.
7. Section 10-13G-12 of the town code requires the developer of a WFOZ project to enter into a development agreement with the Town, the purpose of which is to document the terms and conditions of the WFOZ approval applied specifically to the project.
8. The Town wishes to enter into this Agreement to require Bean, as the developer of the Property, to follow the requirements imposed by the town council in connection with its approval of the zone change, pursuant to section 10-13G-12.

9. Bean wishes to enter into this Agreement to finalize the zone change on the Property in order to construct the Project.

NOW THEREFORE, in consideration of their mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENTS

1. Accuracy and Incorporation of the Recitals. The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.

2. Term. This Agreement will commence on the Effective Date and will continue for so long as the Project remains in existence as set forth herein.

3. Property Legally Described; Agreement Constitutes an Encumbrance and Equitable Servitude on the Property. The Property is presently unimproved and is identified by Serial/Tax ID S-161-8, located to the rear of property at 1212 Zion Park Boulevard, Town of Springdale, Washington County, State of Utah, and is more particularly described as follows:

SECTION: 32 TOWNSHIP: 41S RANGE: 10W BEGINNING AT THE MOST NORTHERLY CORNER OF BIT AND SPUR SUBDIVISION AMENDED 2, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY, SAID POINT BEING ALSO SOUTH 0°24'00" WEST 406.86 FEET ALONG THE CENTER SECTION LINE AND EAST 735.59 FEET FROM THE NORTH QUARTER CORNER OF SECTION 32, TOWNSHIP 41 SOUTH, RANGE 10 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE ALONG THE WESTERLY BOUNDARY OF SAID SUBDIVISION THE FOLLOWING FIVE COURSES: SOUTH 32°40'18" WEST 55.02 FEET; THENCE SOUTH 23°20'00" EAST 397.98 FEET; THENCE SOUTH 22°30'00" WEST 124.66 FEET; THENCE NORTH 54°42'57" WEST 112.62 FEET; THENCE SOUTH 82°13'32" WEST 39.87 FEET; THENCE NORTH 2°02'32" WEST 473.89 FEET; THENCE SOUTH 84°41'32" EAST 68.39 FEET TO THE POINT OF BEGINNING.

(a) The Parties acknowledge that this Agreement will be recorded in the Office of the Washington County Recorder. The Town will not be required to issue any land use approvals or building permits until after the date this Agreement is recorded in the Office of the Washington County Recorder.

(b) This Agreement will be construed as covenants of equitable servitude that will run with the land and will be binding on Bean and its successors, assigns, or

others acquiring or having any right, title or interest in the Property or any part thereof, which covenants shall inure to the benefit of the Town.

4. Commercial Uses Prohibited. The Property may not be used for any commercial purpose, including but not limited to transient lodging, which is defined as a transaction in which payment in any form is received in exchange for the use of any dwelling for thirty (30) consecutive days or less, including any hotel, motel, bed and breakfast, short-term rental, hostel, or similar uses.

5. Restrictions on Development and Operation. Bean shall comply with the requirements of this Section (collectively the “*Development Criteria*”) in all development of the Property and related efforts:

(a) *Ordinances.* Except as specifically identified in paragraphs (b) and (d) below, the development of the Property is governed by the Town’s ordinances that are in effect as of the Effective Date and as may be amended and revised in the future.

(b) *Development Standards.* Bean shall ensure development of the Property complies with the following standards:

i. All buildings and structures on the Property must be contained within the developable area identified on Bean’s conceptual site plan (“*Concept Plan*”), which is included as Exhibit A.

ii. There will be no more than six (6) dwelling units on the Property.

iii. All of the dwelling units on the Property must be used as Workforce Housing Units, as defined in the Workforce Housing Overlay Zone (Chapter 10-13G of the Town Code).

iv. The maximum six (6) dwelling units shall be contained in a multi-family structure which shall be arranged and configured in the approximate footprint of the structure shown on the applicant’s Concept Plan (Exhibit A). The Parties agree the location and layout of the structure may vary from that shown on the Concept Plan to allow development of the structure to preserve the natural topography of the Property as much as possible. However, the overall size and scale of the structure will remain consistent with what is shown on the Concept Plan.

v. All structures on the Property shall be seventeen feet (17’) or less in height.

vi. All parking areas on the Property and all driveways from SR9 to the Property shall be improved and constructed with a hard surface such as asphalt or concrete. The parking areas and driveways must not be surfaced with gravel, dirt, or road base.

(c) *Project Timeline.* Bean shall complete the Project within two (2) years from the Effective Date of this Agreement. To complete the Project means the proposed Workforce Housing Units have been constructed and the Town has issued a certificate of

occupancy for the dwelling units. Bean may request a one (1) year extension of this timeline if, for factors beyond Bean's control, the Project has been unavoidably delayed. The Town will not withhold approval of a one (1) year extension if good cause is shown. If the Project is not complete within the timeline: (1) the zone change approval will be void, (2) the Property will revert to the Valley Residential - Standard zone under the same restrictions associated with the 2022 restrictive covenant, and (3) Bean will remove any partially constructed structures on the Property built in furtherance of this Agreement.

(d) *Compliance with Workforce Housing Overlay Zone and Town Council Zone Change Approval.* Bean will comply with the requirements of the Workforce Housing Overlay zone (Chapter 10-13G of the Town Code), as refined through the Town Council's approval of the WFOZ zone change, which include and are not limited to the following requirements:

(i) All of the dwelling units on the Property must be Workforce Housing Units, meaning they are occupied by Qualified Households where at least one (1) adult in the household is Actively Employed. The terms "**Workforce Housing Unit**," "**Qualified Household**," and "**Actively Employed**" have the same meanings in this Agreement as they do in Chapter 10-13G of the Town Code.

(ii) Bean must record a restrictive covenant against the Property which includes all the stipulations and requirements of sections 10-13G-7(B) and 10-13G-7(C) of the Town Code.

(iii) Bean must ensure all the Workforce Housing Units are occupied as the Qualified Household's primary residence, and not as a part-time residence.

(iv) Bean must ensure that no portion of a Workforce Housing Unit is subleased. Only members of the Qualified Household may occupy the Workforce Housing Unit.

(v) The Workforce Housing Units must be available for rent to any member of the general public meeting the Qualified Household standard. The housing may not be contingent in any way on a member of a Qualified Household's employment or continued employment at any of Bean's businesses or businesses related to Bean. Bean may give preference to its own employees to occupy the Workforce Housing Units. However, in no case shall continuing occupancy of the Workforce Housing Units be contingent in any way on continued employment with Bean's businesses or organizations.

(vi) The maximum number of people that may occupy a Workforce Housing Unit is two (2), if the unit is a studio or one bedroom unit, or two (2) per bedroom if the unit contains multiple bedrooms. Additionally, each Workforce Housing Unit may be occupied by not more than one (1) Family (as "**Family**" is defined in section 10-2-2 of the Town Code).

(e) *Design/Development Review.* Bean will promptly apply for design/development review (DDR) approval for the Project. The DDR application must be substantially similar to the design and layout of the Project shown on the Concept Plan and other materials included in Bean's WFOZ zone change application.

6. Development and Operation.

(a) On and after the Effective Date, Bean shall have the vested right to develop the Property in conformance with the Concept Plan, the Development Criteria, and this Agreement, provided as follows: Bean is still required to comply with the DDR process and other applicable processes under the Town's ordinances. While the Town has reviewed and approved the Concept Plan for compliance with the WFOZ, the Town has not reviewed the Concept Plan for DDR or building permit approval. If the Concept Plan requires modification in order to comply with any further processes, the town council will need to approve any modification in the Concept Plan.

(b) At the request of Bean, the Town will accept applications for and process in compliance with the Town's standard practices and procedures as modified by the Development Criteria and this Agreement, any discretionary and non-discretionary approvals or permits which Bean may require from time to time with regard to the development or operation of the Property, including without limitation any construction permits, inspections, and certificates of occupancy. Without limiting the generality of the foregoing, the Town will use its best efforts to promptly issue each construction permit and other authorization necessary for the development and operation of the Property.

7. Indemnification.

(a) Hold Harmless. Bean agrees to hold harmless and defend the Town, inclusive of its elected and appointed officials, employees and attorneys (collectively, the "Town Indemnitees") from any and all claims, damages, losses, liabilities, and expenses, including attorney's fees, arising out of or resulting from any act or omission of Bean, its agents, employees, or contractors in connection with the property subject to this transaction. This includes, but is not limited to, any damages or losses caused by Bean's development, design, or construction at the Property.

(b) Indemnity. Bean agrees to indemnify and hold harmless the Town from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, brought against the Town arising out of or relating to:

i. Any breach by Bean of any term, condition, or covenant of this Agreement.

ii. Any personal injury, death, or property damage caused by Bean or its agents, employees, or contractors in connection with the Property.

iii. Any violation of local, state, or federal law by Bean in connection with the Property.

(c) Survival of Indemnity. The obligations of Bean under this indemnity clause shall survive the approval of the WFOZ and shall remain in full force and effect for the duration of Bean's ownership of the Property, inclusive of all successors and assigns of Bean.

(d) Limitation. Notwithstanding the foregoing, Bean shall not be responsible for any indemnification to the extent such claims, damages, losses, or liabilities arise from the gross negligence or willful misconduct of the "Town Indemnities".

(e) Notification and Defense of Claims. In the event any claim, action, or proceeding is brought against the Town, the Town shall promptly notify Bean of such claim, action, or proceeding. Bean shall assume the defense thereof with counsel reasonably satisfactory to the Town, provided that the Town shall have the right to participate in such defense at its own expense.

(f) Other Rights and Remedies Not Affected. The indemnification rights of the Town are independent of, and in addition to, such rights and remedies as the Town may have at law or in equity or otherwise for any misrepresentation, breach of warranty, or failure by Bean to fulfill any covenant, agreement, or obligation hereunder, including the right to seek specific performance, rescission or restitution, none of which rights or remedies shall be affected or diminished hereby.

8. Town Representations and Warranties. The Town represents, warrants and covenants to Bean as follows:

(a) The Property is located within the municipal limits of the Town. The Property is, as of the Effective Date, zoned Valley Residential – Workforce Housing Overlay Zone, which generally allows the development of the Property in accordance with the Concept Plan, subject to Bean complying with future entitlement processes such as design/development review and the building permit process.

(b) The Town is a duly organized, validly existing municipal corporation and political subdivision of the State of Utah. The transactions contemplated by this Agreement, the execution of this Agreement and the Town's performance hereunder have been duly authorized by all requisite action of the Town and no other approval or consent is required for this Agreement to be binding upon the Town. The individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind the Town. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, regulation or official policy to which the Town is a party or by which the Town is bound.

(c) There is no litigation, referendum, investigation, initiative or proceeding pending or, to the knowledge of the Town, contemplated or threatened against the

Town, the Property, this Agreement or the zoning of the Property (collectively, “Actions,” and each individually an “Action”) that would impair or adversely affect the Town’s ability to perform its obligations under this Agreement or under any instrument or document related hereto or which would impair or adversely affect Bean’s ability to develop the Property. In the event any Action is initiated after the date of this Agreement that could impact or prevent the Project as contemplated under the Concept Plan, the Town shall notify Bean of the same.

9. Bean Representations and Warranties. Bean represents, warrants and covenants to the Town that all of Bean’s representations, warranties and covenants set forth in this Agreement are true in all material respects as of the date of this Agreement. Bean represents, warrants and covenants to the Town as follows:

(a) The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, or regulation to which Bean is a party or by which Bean is bound.

10. Appointment of Representatives. The Town (through its Town Manager) and Bean will be available at all reasonable times to discuss and review the performance of the Parties’ respective obligations under this Agreement.

11. Default. Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of sixty (60) days (the “**Cure Period**”) after written notice thereof from the other party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. If any party to this Agreement is in default under any provision of this Agreement, the non-defaulting party shall be entitled, without prejudice to any other right or remedy that it may have under this Agreement, at law or in equity, to specific performance by the defaulting party of this Agreement (and each party hereby waives the defense that the other party has an adequate remedy at law) and to receive reasonable attorney’s fees incurred in enforcing the terms of this Agreement. In the alternative, the non-defaulting party may terminate this Agreement and exercise any or all other remedies available to it at law or in equity.

12. Notices and Filings.

(a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, by commercial courier (e.g., UPS or Fed Ex), or sent by registered or certified United States Mail, postage prepaid, if to:

The Town:

Town of Springdale
118 Lion Boulevard
P.O. Box 187
Springdale, UT 84767

Attn: Town Manager

And to:

J. Gregory Hardman
Town of Springdale Attorney
Snow Jensen & Reece, P.C.
Tonaquint Business Park
912 West 1600 South, Suite B-200
St. George, UT 84770

Bean:

Andrew Green
Bean, Cotting, Munson, L.L.C.
Post Office Box 130
Springdale, UT 84767

Or to such other persons and addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

(b) Notices Effective. Notice under this Section by certified United States Mail is effective two (2) business days after mailing. Notice by commercial courier is effective upon date of delivery.

13. General.

(a) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or Bean of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

(b) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

(c) 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 of the provisions hereof.

(d) Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(e) Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry

out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, the Town shall cooperate in good faith and process promptly any requests and applications for plans and specifications, or permit approvals or revisions, and other necessary approvals relating to the development of the Property by Bean and its successors.

(f) Time of the Essence. Time is of the essence in the performance of this Agreement.

(g) Successors. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereof. The Town may not assign any of its rights or obligations hereunder. Bean may assign, transfer and convey the Property only if the assignee, transferee, or grantee executes a written instrument acknowledging and assuming all of the obligations under this Agreement, including but not limited to its obligation to indemnify, defend and hold harmless the Town as set forth above.

(h) No Partnership and Third Parties. The Parties do not intend by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture or other similar arrangement between Bean and the Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(i) Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. Any modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by both Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

(j) Names and Plans. Bean shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs, and work products of every nature at any time developed, formulated or prepared by or at the instance of Bean in connection with the Property.

(k) Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of the State of Utah.

(l) Reformation. If any term, provision, covenant or condition of this Agreement be held by a court to be void or invalid, the Parties shall reform this Agreement to conform as closely as possible to the original intent hereof.

(m) Excused Delay in Performance. In addition to specific provisions of this Agreement, for a period of time equal to the period of the force majeure delay, untimely

performance by a party hereto shall not be deemed to be a default where delays or inability to perform are due to war, insurrection, strikes, slowdowns, lockouts, riots, floods, earthquake, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restriction, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, severe weather, inability (when the party which is unable to perform is substantially without fault) of any contractor, subcontractor or supplier to perform acts of the other party, acts or the failure to act of any utility, public or governmental agent or entity and/or other causes beyond the reasonable control of said party. In the event that a party hereto is unable to perform due to an event constituting force majeure as provided for above, then the time for performance by said party shall be extended as necessary for a period of time up to the period of the force majeure delay.

(n) Attorney's Fees, Jurisdiction, and Venue. The prevailing party in any dispute (whether or not such dispute is resolved formally or informally, or by trial or alternative dispute resolution) will be awarded all of its costs and attorneys' fees. The Parties agree that the Fifth Judicial District Court for Washington County, Utah shall have jurisdiction to resolve all legal disputes; and the proper venue for any and all dispute resolution shall be in Washington County, Utah.

(o) Dispute Resolution. The Parties agree to submit to formal, non-binding mediation before pursuing any other legal means of resolving any disputes over the interpretation and enforcement of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

BEAN, COTTING, MUNSON, L.L.C.

By:
Its:

TOWN OF SPRINGDALE,
a Utah municipal corporation

By: Barbara Bruno
Its: Mayor

ATTEST:

Aren Emmerson, Town Clerk

APPROVED AS TO FORM:

Town Attorney

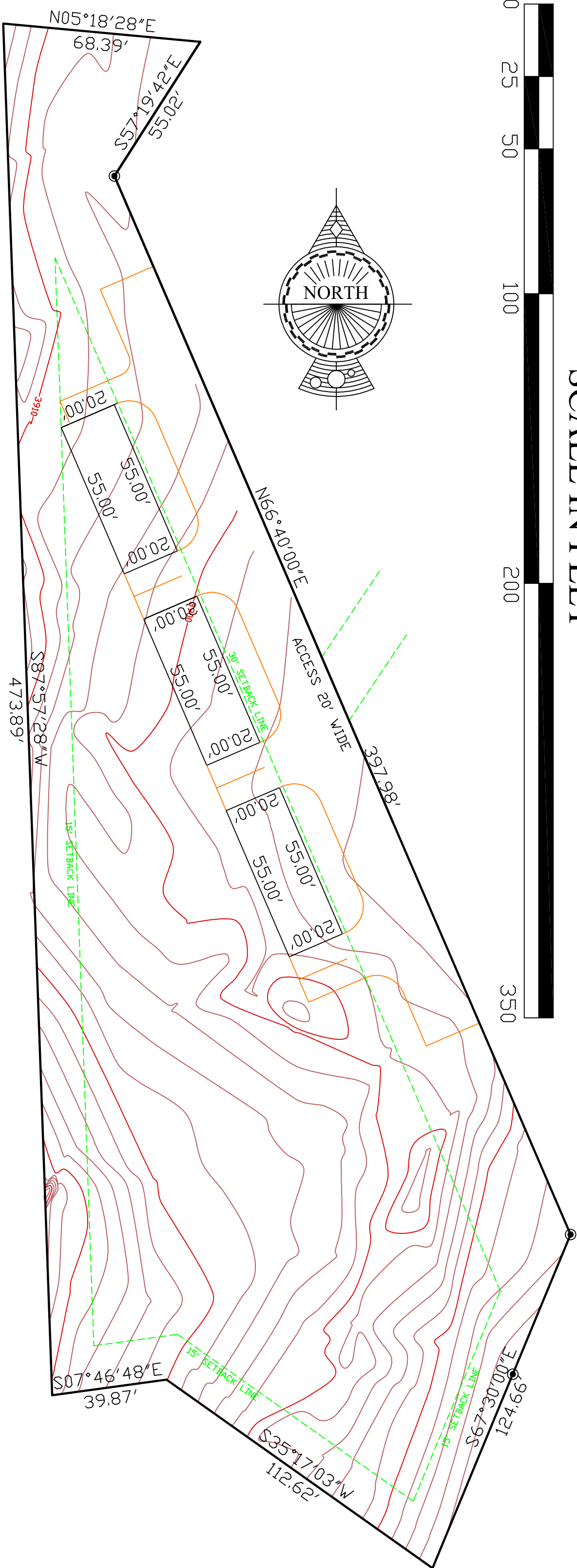
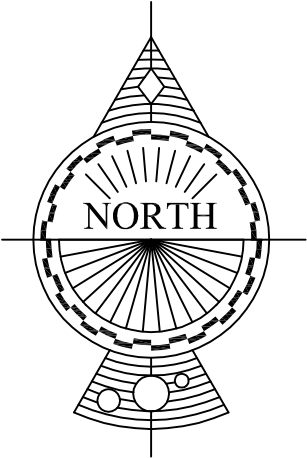
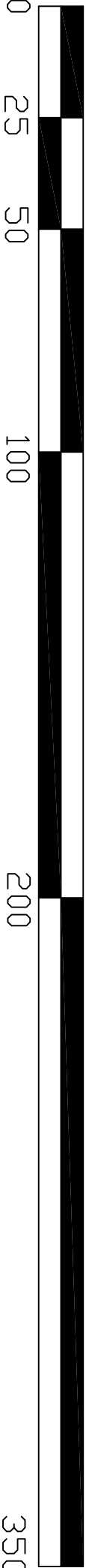
SS.

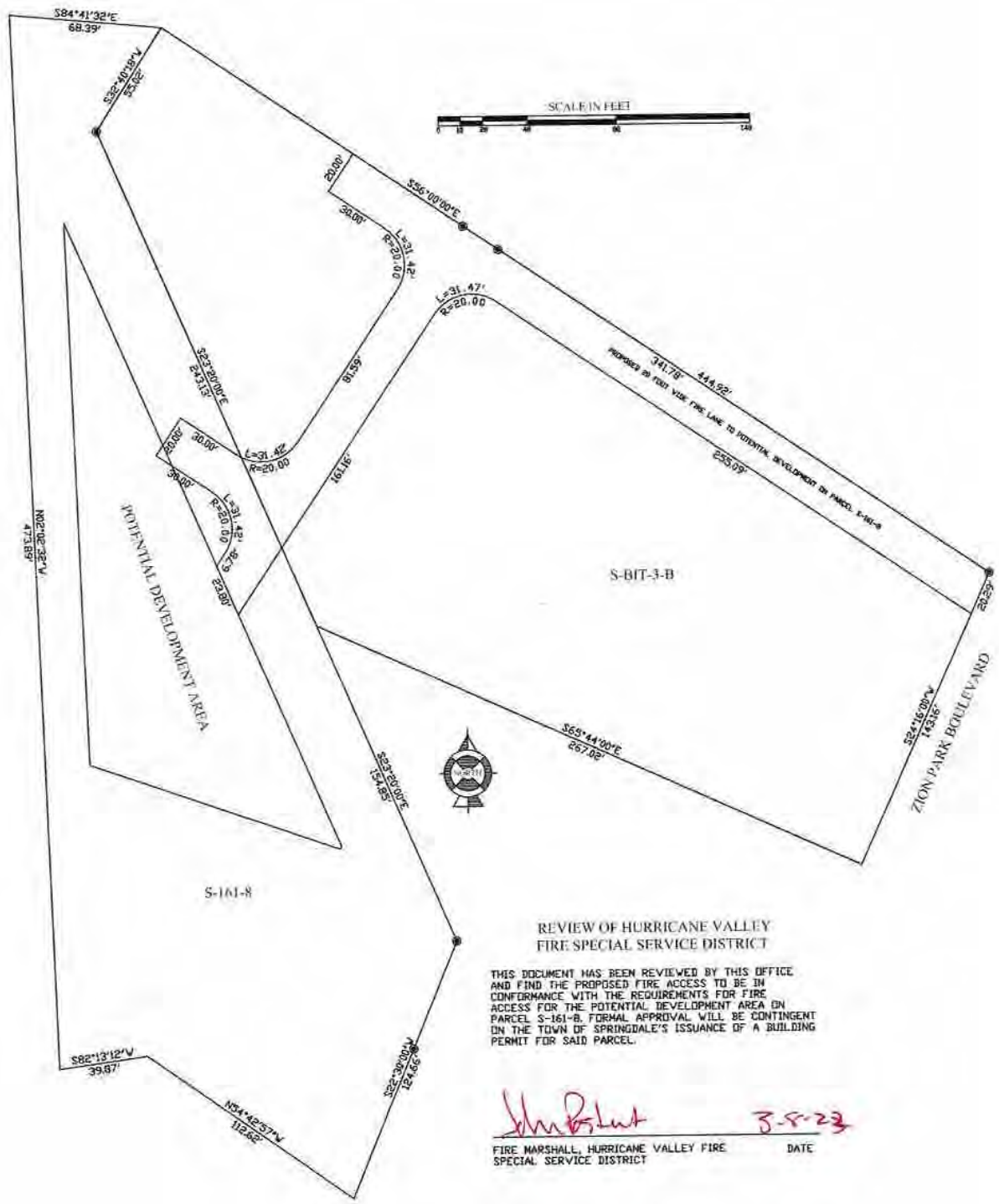
The foregoing Development Agreement was acknowledged before me this ____ day of _____, 2024, by _____.

Development Agreement
Bean, Cotting, Munson, .LL.C. WFOZ
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**EXHIBIT “A”
(Concept Plan)**

SCALE IN FEET





REVIEW OF HURRICANE VALLEY
FIRE SPECIAL SERVICE DISTRICT

THIS DOCUMENT HAS BEEN REVIEWED BY THIS OFFICE
AND FIND THE PROPOSED FIRE ACCESS TO BE IN
CONFORMANCE WITH THE REQUIREMENTS FOR FIRE
ACCESS FOR THE POTENTIAL DEVELOPMENT AREA ON
PARCEL S-161-B. FORMAL APPROVAL WILL BE CONTINGENT
ON THE TOWN OF SPRINGDALE'S ISSUANCE OF A BUILDING
PERMIT FOR SAID PARCEL.

[Signature] 3-5-23
FIRE MARSHALL, HURRICANE VALLEY FIRE
SPECIAL SERVICE DISTRICT DATE