

WHEN RECORDED RETURN TO:

South Salt Lake City
Attn: Craig Burton, City Recorder
220 East Morris Avenue
South Salt Lake, UT 84115

**DEVELOPMENT AGREEMENT
FOR THE HERMANSEN SUBDIVISION LOT 7 AMENDED PROJECT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2017, by and among R&L Holdings, LLC, a Utah Limited Liability Company ("Developer") and SOUTH SALT LAKE CITY, a municipality and political subdivision of the State of Utah (the "City"). Developer the City are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. Developer is the owner of that certain parcel of property located at 166 East Hermansen Circle located within the boundaries of the City as more particularly described in Exhibit "A" (the "Property").

B. An amended subdivision plat has been approved by the City dividing the Property into two parcels as more fully described in the amended subdivision plat attached hereto as Exhibit "B" and incorporated by this reference.

C. Developer has applied for a general plan amendment and zoning map amendment to change the zone of the west half of what was previously lot 7 of the Hermansen subdivision and, pursuant to the amended subdivision plat, is now a separate legal parcel as more fully described in Exhibit "B".

D. The Project is intended to provide for the potential redevelopment of the Property to make it compatible with surrounding uses, bring a nonconforming structure and use to the compliance with current code requirements, and enhance the commercial corridor while creating a new, buildable single family residential lot.

E. The City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.*, has made certain determinations with respect to the Project and in the exercise of legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.

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 Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Agreement.

2. **Condition Precedent.** As a condition precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time, and in the event that, the City Council, in the independent exercise of its legislative discretion, elects to approve the proposed general plan amendment and zoning map amendment. This agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the City Council in deciding whether to approve or deny the general plan amendment and zoning map amendment.

3. **Conditions of Approval to Assure Implementation of Project Objectives.** As part of this Agreement, Developer agrees to the following conditions with respect to the project:

A. Demolish the existing building located on the property.

B. Prepare the site for construction of a new commercial building on the newly created parcel that has been rezoned to the commercial corridor designation.

C. Prepare amended lot 7 of the Hermansen subdivision for construction of a single family dwelling.

4. **Successors and Assigns.**

4.1. **Binding Effect.** This Agreement shall be binding upon all successors and assigns of Developer in the ownership or development of any portion of the Project.

4.2. **Assignment.** Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any such request for assignment may be made by letter addressed to the City as provided herein and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns. The assignment of the Project shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Agreement.

5. **Default.**

5.1. **Notice.** If Developer or the City fail 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 as provided herein. If the City believes that the default has been committed by Developer, then the City shall also provide a courtesy copy of the notice to Developer.

5.2. **Contents of the Notice of Default.** The Notice of Default shall:

5.2.1. Claim of Default. Specify the claimed event of default;

5.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

5.2.3. Specify Materiality. Identify why the default is claimed to be material; and

5.2.4. Optional Proposed Cure. If the City chooses, in its discretion, propose a method and time for curing the default which shall be of no less than sixty (60) days duration.

5.3. Meet and Confer. Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

5.4. Remedies. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may have the following remedies:

5.4.1. Legal Remedies. The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance and termination, but not including damages or attorney's fees.

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

5.4.3. Withholding Further Development Approvals and Suspending Business License. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for future development on the Property.

5.5. Public Meeting. Before any remedy in Section 5.4 may be imposed by the City, the party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

5.6. Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 5.4 without meeting the requirements of Section 5.5. The City shall give Notice to Developer and/or any applicable successor or assign of any public meeting at which an emergency default is to be considered and the allegedly defaulting party shall be allowed to address the Council at that meeting regarding the claimed emergency default.

5.7. Extended Cure Period. If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

5.8. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

5.9. Force Majeure. All time period imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Project; or (b) by events reasonably beyond the control of Developer including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of the Developer or its successors.

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 be by certified mail, return receipt requested, postage prepaid to such Party at its address shown below:

To:

Rick Luckling
139 E. 3900 S.
South Salt Lake City, UT
84107

To City:

South Salt Lake City
Attn:
Mayor
220 East Morris Avenue
South Salt Lake, Utah 84115

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

GENERAL TERMS AND CONDITIONS

1. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Property.

2. **Entire Agreement.** This Agreement, together with the Exhibits hereto, integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective Parties hereto.
3. **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.
4. **Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer, in the event of any default or breach by the City or for any amount which may become due to Developer, or its successors or assignees, for any obligation arising out of the terms of this Agreement.
5. **No Third-Party Rights.** The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City, Developer. The City, Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.
6. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.
7. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
8. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
9. **Public Information.** The Parties understand and agree that all documents related to this agreement will be public documents, as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*
10. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
11. **Counterparts.** This Agreement may be executed in multiple counter-parts which shall constitute one and the same document.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Agreement has been executed by South Salt Lake City, acting by and through the South Salt Lake City Council, Salt Lake County, State of Utah, pursuant to Resolution No. _____, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

SOUTH SALT LAKE CITY, a Utah municipality and political subdivision of the State of Utah.

By: _____

Mayor, Cherie Wood

ATTEST:

Craig Burton, South Salt Lake City Recorder

APPROVED AS TO FORM

Lyn Creswell, City Attorney

