

ORDINANCE #30-2021

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR THE
HOLDAWAY SOUTH NEW NEIGHBORHOOD PLAN.**

WHEREAS, Johnston & Phillips, is developing the Holdaway South Neighborhood Plan (the “Project”), which consists of approximately 0.90 acres located at 641 East 200 North; and

WHEREAS, the Project is being developed under the Traditional Neighborhood Development Overlay Zone (the “TND Overlay Zone”), which requires a development agreement to be approved before the neighborhood plan becomes effective; and

WHEREAS, the Springville City Council finds that the attached development agreement meets the requirements of the TND Overlay Zone, complies with the law and is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE SPRINGVILLE CITY COUNCIL:

SECTION 1. Approval. The Development Agreement, substantially in the form attached as Exhibits A, is approved and shall be executed by Springville City. Springville’s staff is directed to review and attach exhibits as required by the Agreement.

SECTION 2. Effective Date. This resolution shall become effective immediately upon passage.

PASSED AND APPROVED this 07th day of December 2021.

Richard J. Child, Mayor

Attest:

Kim Crane, City Recorder

EXHIBIT A

**DEVELOPMENT AGREEMENT FOR THE HOLDAWAY SOUTH NEW
NEIGHBORHOOD PLAN**

DEVELOPMENT AGREEMENT
(Holdaway South New Neighborhood Plan)

THIS AGREEMENT is entered into effective this 07th day of December, 2021, by and between **SPRINGVILLE CITY**, a municipal corporation of the State of Utah, 110 South Main Street, Springville, Utah 84663 (“City”), and **JOHNSTON AND PHILLIPS**, located at _____, _____, Utah 8 _____ (“Developer”).

RECITALS

- A.** Developer is developing property under the Traditional Neighborhood Development Overlay Zone (the “TND Overlay Zone”), which property is located at approximately 641 East 200 North in Springville City, Utah County, Utah (Parcel No. 26:041:0068). A legal description of the property is attached as **Exhibit A** (the “Property”).
- B.** Under Section 11-5-803 of the Springville City Code, the TND Overlay Zone requires a Developer to receive an approval of a neighborhood plan and enter into a development agreement. Developer’s approved neighborhood plan is called the Holdaway South New Neighborhood plan and is attached as **Exhibit B** (the “Neighborhood Plan” or “Project”).
- C.** Developer is constructing and installing certain facilities, infrastructure and improvements on and about the Property (collectively, the “Public Improvements”), including without limitation, sewer lines, electric lines, storm drain lines, roads, and other facilities or improvements necessary to service the Project and to ultimately dedicate the Public Improvements to the City.
- D.** Developer has designed and is developing the Property 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, subdivision and development regulations, as more fully set forth below.
- E.** City, acting pursuant to its authority under Utah Code Annotated, §10-9a-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.
- F.** The purpose of this Agreement is to memorialize certain agreements and understandings in relation to the foregoing and the installation, construction and operation of the Public Improvements, all under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and City agree to the following:

- 1. Recitals Affirmed.** The parties each certify the correctness and accuracy of the facts recited above and adopt the same as a statement of their principal reasons for entering this Agreement.

2. Plans, Permits and Approvals; Impact Fees.

A. Plans; Revised Plans.

- a. Neighborhood Plan. The Neighborhood Plan has been adopted by the City Council for developing the Property. As development of the Project moves forward, Developer understands and agrees that the City Council may change the Neighborhood Plan, including repealing all or a portion of it, at any time to meet the interests of City. All City land use regulations apply to the Project unless revised by the Neighborhood Plan.
- b. Construction Plans. Developer has prepared, or will prepare, detailed construction plans, drawings and specifications (collectively, the “Construction Plans”) for the Public Improvements for the Project, which Construction Plans must be approved through City’s land use regulations and processes before construction on the Project may begin. The Construction Plans, including all future Construction Plans, are incorporated herein by this reference.

B. Permits and Approvals; Documents. Developer shall diligently pursue and obtain any and all necessary governmental approvals, permits and the like (collectively, the “Approvals”) for performance of the Project. Developer shall obtain any necessary approvals regarding any matters that are not specifically addressed in the Neighborhood Plan.

C. Impact Fees. Developer agrees to pay any “Impact Fees” in accordance with the applicable City requirements.

D. Documents. Developer agrees to provide City with a copy of relevant records and documents relating to the Public Improvements, as reasonably requested by City.

E. Building Design.

- a. All building types shall meet those type standards for each particular building type the Neighborhood Plan (the “Design Standards”). Prior to any building permit being submitted, Developer and City’s Community Developer shall meet to discuss the building’s design to determine whether the building meets the Design Standards. The City’s Community Development Director shall make the final determination regarding whether a building meets the Design Standards.
- b. Developer agrees to follow and be bound by all of the Design Standards in the Neighborhood Plan. The parties agree that this agreement meets all requirements of Section 10-9a-534 of the Utah Code and any other Utah Code Sections to require Developer to follow the Design Standards in the Neighborhood Plan. Developer shall follow the Neighborhood Plan in constructing buildings within the Project, including, but not limited, constructing buildings in accordance with the types, locations and designs in the Neighborhood Plan.

3. Manner of Performance.

A. Term. The term of this agreement shall be for a period of five years. After the initial term, this agreement may be continued for an additional term or terms as agreed to in writing by both parties.

B. Compliance with Plans and Laws; Exception for Street Trees. Developer shall pursue the Project to completion (the “Work”) (a) with due diligence, (b) in a good and workmanlike manner, (c) in conformance with the Construction Plans and Neighborhood Plan, and (d) in compliance with all applicable laws, statutes, ordinances, resolutions, the Springville Municipal Code (the “City Code”), rules, regulations, and official policies of the City governing the use, density and intensity of the uses of land within the City, and the design, improvement, and public works construction standards and specifications applicable to the development of land within the City.

C. Street Trees. Developer agrees to pay for and install all street trees shown on the approved Neighborhood Plan. After installing all street trees, Developer shall maintain the street trees for a period of one. During the one-year period after the street trees have been installed, any street trees that have died or do not appear to be thriving, as determined by City’s urban forester, shall be replaced by Developer at Developer’s sole cost and expense.

D. Materials and Labor. Developer will furnish all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of the Project at Developer’s sole cost and expense, unless otherwise stated herein.

E. Guarantee of Performance. Developer acknowledges and agrees that an improvement completion assurance is required for the Project. Developer will furnish to City an improvement completion assurance in accordance with Springville City Code §§ 14-5-202, et seq., in an amount required by Springville City but not to exceed one hundred ten percent (110%) of the engineer's estimate price for faithful completion of the Public Improvements. If Developer fully completes and City approves all of the Public Improvements prior to recording the subdivision plat, Developer is only required to furnish an improvement warranty. The engineer's estimated price is attached as **Exhibit C**.

F. Improvement Warranty. Prior to City’s acceptance of the Public Improvements, Developer shall execute an improvement warranty for the one (1) year improvement warranty period and post a ten percent (10%) cash deposit, surety bond, letter of credit, or other similar security that is acceptable to City’s City Administrator in accordance with Section 14-5-205 of the City Code.

G. Insurance. Developer agrees to obtain and maintain general public liability insurance and property damage insurance with City named as an additional insured, at the rate of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) aggregate during construction of the Project.

H. Inspections. Developer shall ensure that all inspections necessary for the Public Improvements under the City Code are timely requested. Developer understands and agrees that failure to request a proper inspection may result in the removal of Public Improvements at the sole cost and expense of Developer. The City shall perform inspections as soon as possible and otherwise in good faith following the applicable request in accordance with the City Code.

4. Off-site Work and Additional Fees and Costs.

Electrical Extension Fees. Developer shall pay \$_____ in electrical extension fees, which is the cost for installing and constructing the necessary electrical infrastructure for the Project.

5. Ownership of Improvements; Acceptance and Dedication. Developer shall retain ownership of Public Improvements constructed for the Project and shall remain solely responsible for all necessary maintenance, repairs, and replacements of the Public Improvements prior to final acceptance thereof by City. Developer agrees that no connections to the Public Improvements shall occur before City accepts the same, as contemplated herein. City agrees to accept dedication of the Public Improvements upon completion thereof by Developer in accordance with the Construction Plans, the Approvals, and all applicable land regulations. Upon such acceptance by City, (i) Developer shall assign and convey to City all of Developer's right, title and interest in the Public Improvements in writing (or shall be deemed to have done so by this writing), (ii) Developer shall have no further interest in the Public Improvements, and (iii) City shall maintain and operate the Public Improvements as part of its public systems.

6. Reimbursable Costs - Upsized Public Improvements. City has not required Public Improvements on the Project which are larger than would be required to serve the Project only. Therefore, there are no reimbursable improvements.

7. Water Shares. Prior to beginning the Work on the Project, Developer shall tender to City, in accordance with the City's land use regulations, the required number of shares of Springville Irrigation Company water shares, or its equivalent, for the Project.

8. Civic Space.

A. Park/Density Bonus. As part of the density bonus for the higher densities of the Neighborhood Plan above the density allowed for in the underlying zone, Developer agrees to and shall install all the access into the park parking lot and the parking lot improvements, including, without limitation, all infrastructure, equipment, landscaping, art work, structures and other improvements shown on the Neighborhood Plan and made part of the Construction Plans (collectively, the "Park Improvements") and dedicate the access to the park to the City.

B. Timing. The Park Improvements shall be installed within one (1) year of the date of this agreement.

C. Certificates of Occupancy. No certificates of occupancy for any phase of the Project shall be issued until all of the Park Improvements within that phase have been completed, or Developer provides an adequate improvement completion for the Park Improvements within that phase.

D. Park Costs and Payment. An itemization of City's share of the costs for installing the Park Improvements is \$156,906.95 (the "Park Costs"). The itemization is attached as Exhibit D (the "Park Costs"). The Park Costs shall be paid to Developer as follows:

a. Impact Fees. The Park Improvements shall become part of City's park system improvements. According to the City's Park Impact Fee Facilities Plan and Impact

Fee Analysis, at least a portion of the Park Improvements may be funded by park impact fees. The Parties agree and acknowledge that Developer shall install all the Park Improvements at Developer's cost and expense. Developer shall be credited the amount of \$18,575 towards park impact fees for installing the Park Improvements (the "Impact Fee Credit").

- b. **Balance.** The balance of the Park Costs minus the park impact fee credit is \$138,331.95 (\$156,906.95 minus \$18,575). City shall pay Developer the amount of \$138,331.95 within 30 days of City approving and accepting the Park Improvements.

9. Notices. Any notice which is required or which may be given pursuant to this Agreement is sufficient if in writing and given by hand-delivery or sent to a party by (i) certified or registered mail, postage prepaid, or (ii) nationally recognized overnight carrier (e.g. FEDEX), addressed as first set forth above. A party may change the address for notice to it by giving a notice pursuant to this Section 9.

10. Indemnity. Developer agrees to indemnify, release and defend City with Counsel of City's choice, and hold City, and its employees, officers, and agents harmless from and against any and all claims, demands, actions, or liability whatsoever, including, but not limited to, any bodily injury, property damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, to the extent resulting from (i) any negligent act or omission of Developer or Developer's agents, (ii) any claim or action related to the installation of the Public Improvements or breach of this Agreement, (iii) any negligent or defective construction of any part of the Public Improvements during construction thereof, and from completion of such construction until that date which is one (1) year after the acceptance of the Public Improvements by the City; and (iv) liens or claims on the Public Improvements by any persons providing materials and/or services related to such Public Improvements on behalf of or at the request of Developer.

11. Authority and Authorization. Developer hereby represents and warrants to City that the execution and delivery of this Agreement by Developer and the performance of the terms hereof by Developer, have been duly authorized through proper action and, upon full execution hereof, this Agreement will be binding on and enforceable against Developer.

12. Future Action. Nothing in the Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement; provided, however, that subject to Developer's performance of its obligations hereunder, Developer shall have the vested right to develop the Project.

13. Other Laws. Developer may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Developer agrees to comply with all laws during construction of the Project and Public Improvements.

14. Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.

15. **Attorney Fees.** In the event this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney fees and all costs of enforcement of the non-breaching party.

16. **Severability.** Should any portion or paragraph of this Agreement be declared invalid or unenforceable, the remaining portions or paragraphs of the Agreement shall remain valid and enforceable.

17. **Modification.** Modification of this Agreement shall only be effective if agreed upon, in writing, and approved by the City Council and Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

SPRINGVILLE CITY

Attest:

By: _____
Richard J. Child, Mayor

Kim Crane, City Recorder

DEVELOPER – _____

By: _____
Title: _____

Exhibit “A”
Property

Exhibit “B”
Neighborhood Plan

Exhibit “C”
Engineer's Estimated Price