ORDINANCE NO. 23-06

AN ORDINANCE OF SOUTH OGDEN CITY, UTAH, APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT WITH MCCONKIE MULTIFAMILY, LLC FOR THE PROPERTY LOCATED AT 5083 HARRISON BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION I - RECITALS:

WHEREAS, the City Council finds that the planning commission has caused to be prepared and has recommended to the City Council a zoning ordinance, subdivision ordinance, and general plan; and,

WHEREAS, the City Council finds that the Planning Commission has caused that Development Agreements be allowed as part of the prepared Subdivision Ordinance; and,

WHEREAS, the City Council finds that under Utah Code §10-9a-532, the City Council may lawfully adopt development agreements that have different standards set forth in existing land use regulations if it does so in accordance with the same procedures for enacting a land use regulation, including review and recommendation from the Planning Commission and a public hearing; and,

WHEREAS, the City Council finds that the Planning Commission has reviewed and recommended to the City Council a Development Agreement with McConkie Multifamily, LLC for development of the proposed property within the municipality; and,

WHEREAS, the City Council finds that the Development Agreement with McConkie Multifamily, LLC has been subjected to the required public hearing prior to its adoption; and,

WHEREAS, based on the recommendation of the South Ogden City Planning Commission, the City Council determines it to be in the best interest of the City to adopt the proposed Development Agreement with McConkie Multifamily, LLC; and,

WHEREAS, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED By the City Council of South Ogden, Utah:

The **Development Agreement** with McConkie Multifamily, LLC, attached as **Attachment "A"**, and fully incorporated by this reference, is approved and adopted.

The foregoing recitals are fully incorporated herein.

SECTION II - REPEALER OF CONFLICTING ENACTMENTS:

All orders, ordinances and resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Ordinance, are, for such conflict, repealed, except this repeal will not be construed to revive any act, order or resolution, or part, repealed.

SECTION III - PRIOR ORDINANCES AND RESOLUTIONS:

The body and substance of all prior Ordinances and Resolutions, with their specific provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

SECTION IV - SAVINGS CLAUSE:

If any provision of this Ordinance be held or deemed or will be invalid, inoperative or unenforceable, such invalidity will render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed the separate independent and severable act of the City Council of South Ogden City.

SECTION V - DATE OF EFFECT

This Ordinance will be effective on the 21st day of March, 2023, and after publication or posting as required by law.

DATED the 21st day of March, 2023.

SOUTH OGDEN, a municipal corporation

_____

Mayor Russell Porter

Attested and recorded

_____

Leesa Kapetanov, CMC

City Recorder

ATTACHMENT "A"

ORDINANCE NO. 23-06

An Ordinance Of South Ogden City, Utah, Approving And Adopting A Development Agreement With McConkie Multifamily, LLC For The Property Located At 5083 Harrison Boulevard; And Providing For An Effective Date.

21 Mar 23

When recorded, return to:

South Ogden City
Attn: City Attorney
3950 S. Adams Ave, Suite 1
South Ogden, UT 84403

Parcel Number: 07-002-0068

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("DA") is made and entered as of the ____ of _____, 2023, by and among South Ogden City, a political subdivision of the State of Utah (the "City") and Waters Edge Apartments LLC, a Utah limited liability company or its assignee (the "Developer").

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1b, below.

B. The Project Property is currently assigned the Neighborhood Commercial District as set forth in the Form Based Code within the South Ogden City Code, as amended by Ordinance 17-21, 11-21-2017, eff. 11-21-2017.

C. The Parties desire that the Project Property be developed in a unified and consistent fashion under the Neighborhood Commercial District within the South Ogden City Code and Developer provided Concept Plan and the terms of this DA. The Developer intends development of the Project Property into a residential apartment complex with attractive architectural and landscaping components while striving to be environmentally friendly through efficient use of water and energy in the building.

D. Development of the Project Property as a high-density residential apartment complex under this DA is acknowledged by the City to be consistent with LUDMA and generally the Neighborhood Commercial District, and to operate to the benefit of the City, Developer, and general public.

E. The Parties desire to create affordable housing in the City with a preference for the City's critical workforce which includes police, fire, emergency responders, public school teachers and staff, and municipal employees, employed within the City.

F. The Parties acknowledge that development of the Project Property under this DA will result in significant planning and economic benefits to the City and its residents by, among other things, requiring orderly redevelopment of the Project Property and increasing property tax, sales tax and other revenues to the City based on improvements

to be constructed on the Project Property.

G. Development of the Project Property under this DA will also result in significant benefits to Developer by providing assurances to Developer it can develop the Project Property under this DA.

H. The Parties have cooperated in the preparation of this DA.

I. The Parties desire to enter into this DA to specify the rights and responsibilities of Developer to develop the Project Property and the rights and responsibilities of the City to allow and regulate such development under the requirements of this DA.

J. The Parties understand and intend that this DA is a "development agreement" within the meaning of, and entered into under Utah Code Ann. § 10-9a-102 and SOCC11-3-1G.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/Definitions.

a. Incorporation. The foregoing Recitals and Exhibits "A", "B", and "C" are incorporated into this DA.

b. Definitions. As used in this DA, the words and phrases specified below shall have the following meanings:

(i) "DA" means this Development Agreement including all of its Exhibits.

(ii) "Buildout" means the completion of all of the development on the entire Project Property under this DA.

(iii) "City" means South Ogden City, a political subdivision of the State of Utah.

(iv) "City Code" means the South Ogden City Code, as amended.

(v) "Concept Plan" means the document provided by Developer for the Project, which is attached as Exhibit "A".

(vi) "Council" means the elected City Council of the City.

(vii) "Developer" means McConkie Multifamily, LLC, a Utah limited

liability company, and its assignees or transferees as permitted by this DA (other than a Sub developer).

(viii) "Development" means the development of a Parcel(s) or a portion thereof under an approved Development Application.

(ix) "Development Application" means an application to the City for development of a portion of the Project including Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

(x) "Form Based Code" means specific regulations applied to the Neighborhood Commercial Subdistrict within the City's Zoning Regulations.

(xi) "LUDMA" means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, et. seq.

(xii) "Notice" means any notice to or from any party to this DA.

(xiii) "Parties" mean the City and Developer. Each may be referred to individually as a "Party.

(xiv) "Phase" means the development of a portion of the Project at a point in a logical sequence as determined by Developer.

(xv) "Planning Commission" means the City's Planning Commission.

(xvi) "Project" means the total development to be constructed on the Project Property under this DA with the associated public and private facilities, Phases, and all of the other aspects approved as part of this DA.

(xvii) "Project Property" means approximately 5.681 acres of land owned by Developer and located on 5083 Harrison Blvd. in South Ogden, Utah and more particularly described in Exhibit "B" attached hereto.

(xviii) "Site Plan" all documents necessary under City Cod 10-5.1A-10-2E(3)(b).

(xix) "Substantial Completion" means the date at which Certificate of Occupancy has been issued for all buildings shown on the Site Plan.

(xx) "Zoning" means the zoning for the Project.

(xxi) "Zoning Ordinance" means the Zoning Regulations contained within the City Code.

2. Conditions Precedent. As conditions precedent to the obligations of the Parties, this DA is contingent upon and shall only become effective at such time, and in the event that:

a. Developer obtains all necessary planning entitlements, e.g., site plan approval, from the City's Staff Review Committee.

b. Developer obtains a traffic impact study for Harrison Blvd. and 5050 South.

The Parties understand and agree that the Project Property is intended to meet the general requirements of the Zoning Ordinance but that this DA shall control the Parties rights and obligations, subject to Section 5, below. Unless the Parties mutually agree to amend this DA under paragraph 21, below, and the above listed Conditions Precedent are not met within 12 months from the date of signatures to this DA, this DA shall be void.

3. Effect of DA. This DA shall be the sole agreement between the Parties related to developing the Project except as it may be modified by agreement of the Parties.

4. Development of the Project

a. Project Development. Development of the Project shall be under the Neighborhood Commercial Subdistrict to include: development of multi-family residential uses and accessary sub-uses; specific development standards within the Zoning Ordinance and this DA, including the Conditions Precedent set forth herein, as outlined in Section 2 , and the following:

(i) Multiple four-story apartment buildings of residential units.

(ii) The Project shall generally follow the aesthetic guidelines outlined in South Ogden City Code, Title 10, Chapter 5.1, Article A, Sec. 10-5.1A-5-4 and 10-5.1A-11, et. seq., attached as Exhibit "C" and incorporated herein by this reference.

b. Adoption of Project Standards. The Parties understand and acknowledge that the Neighborhood Commercial Subdistrict provides standards including, but not limited to, location of buildings, setbacks, lot coverage, building orientation, landscaping and other design features and that the development of the Project is and shall remain subject to these applicable standards.

c. Project Standards Exceptions. The following exceptions to the Neighborhood Commercial Subdistrict and applicable Building Type standards

will apply to this DA:

(i) Developer shall not be required to adhere to the building above-grade height restriction of three stories but will be limited, instead, to four stories of residential

(ii) The buildings shall be Row Buildings with 4 stories and internal elevators and corridors of 1 and 2 bedroom apartments.

(iii) Floor height of the buildings shall to be 11' (measured floor to floor) on the main level and 10' (measured floor to floor) on the 2nd, 3rd, and 4th floors.

(iv) The buildings shall have reduced 1st floor glazing requirements as shown on the . Exterior finish materials to include a combination of brick, hardie board, or metal.

(v) Parking stall depth minimum 18' with a parking ratio to be a minimum of 1.75 stalls per unit which includes 1 covered stall per unit.

(vi) No requirement for curb stops on stalls that abut sidewalks exceeding 6' in width. Enlarged sidewalks shall accommodate bumper overhang and comply with ADA requirements.

(vii) The Property entrance off of Harrison shall have a width of 26 feet per UDOT requirement.

d. Timing of Development. The Parties acknowledge that the efficient and economic development of the Project may be contingent and dependent upon numerous factors, such as market conditions and demand, interest rates, competition and similar factors. The City agrees that Developer shall have a reasonable level of flexibility for timing (with the exception of Section 6), sequencing, and phasing of the project.

e. Approval Processes. Development approval of the Project shall follow the review processes in the Neighborhood Commercial Subdistrict within the Zoning Ordinance and this DA.

f.

g. Project Fees. The Parties acknowledge that the City charges reasonable impact fees, building permit fees, and other fees and that Developer will be subject to all applicable fees. The Parties further acknowledge that the Project may be benefited by a Participation Agreement, but that the successful negotiation of a Participation Agreement is not a condition to performance of Developer's obligations under this DA.

5. Workforce Housing

a. Workforce Housing. Developer agrees to designate five (5) of the units depicted on Exhibit A as qualifying affordable housing units ("Workforce

Housing Units"). The remaining units not designated as Workforce Housing Units shall be Market Rate Units. First preference for occupancy and rent of the Workforce Housing Units will be given to the City's critical workforce, employed within the City, including police, fire, emergency responders, teachers and staff in public schools, and municipal employees of the City (the "Critical Workforce"). This preference will be applied when the Workforce Housing Units are offered for rent by Developer or subsequent owner. In its advertising and marketing efforts, Developer will identify the Workforce Housing Units and specify that members of the Critical Workforce will be given a preference to rent such units. The Workforce Housing Units will not be rented to households earning more than 80% of the Area Median Income ("AMI") adjusted only for family size using HUD's Family Size Adjustments. The Workforce Housing Units will be deed-restricted in such a manner to ensure that the Workforce Housing Units will continue to qualify as income targeted housing, as defined in UCA §17C-1-102(32), for a period of fifty (50) years. The restrictions in the deed will grant the City authority to enforce the restrictions. An example of the deed and required restrictions is attached as Exhibit "D".

b. Qualifications. In order to qualify to lease a Workforce Housing Unit, the leasing household's annual income must be less than eighty percent (80%) of the Weber County household median income as set forth in UCA §17C-1-102(32). Such a renter is a "Qualified Renter."

c. Permitted Rents. Monthly rents for Workforce Housing Units, adjusted annually, shall not exceed an amount equal to 30% of the gross monthly income of a household earning 80% of the AMI for Weber County, Utah adjusted only for family size using HUD's Family Size Adjustments.

d. Critical Workforce Qualified Renters Favored. If an offer to rent a Workforce Housing Unit is received which is acceptable to Developer, Developer shall not accept the offer if it is not made by a Qualified Renter who is also a member of the Critical Workforce (a "Critical Workforce Qualified Renter") for a period of fifteen (15) days to give a Critical Workforce Qualified Renter the opportunity to rent the Workforce Housing Unit. If a Critical Workforce Qualified Renter is able and willing to enter into a lease with Developer, Developer shall rent the Workforce Housing Unit to the Critical Workforce Qualified Renter.

i. If no Critical Workforce Qualified Renter is able and willing to enter into a lease with the Developer, the Workforce Housing Unit may be rented to the original offer or who is a Qualified Renter but not a Critical Workforce Qualified Renter.

ii. The City, at its option, may submit a list of Critical Workforce Qualified Renters known to the City, which shall in no event be considered a complete or exhaustive list of eligible Critical Workforce Qualified Renters.

e. Exception to Qualification. Tenants no longer meeting income qualifications may renew their lease for a period of twelve (12) months beyond the initial term of their lease if no Qualified Renter is available.

f. Rental Agreement Continuation. If a tenant no longer meets income qualifications, they may continue to occupy the Workforce Housing Unit until the termination of the stated term of the rental agreement.

g. Filling of Vacancies. Every effort shall be made to rent Workforce Housing Units to Critical Workforce Qualified Renters. At initial notification of vacancy, a minimum of sixty (60) days prior to termination of the lease, Developer shall advertise for qualified tenants.

h. Critical Workforce Designation Change or Undue Hardship. If a Critical Workforce Qualified Renter terminates the employment which gave rise to their designation of Critical Workforce Qualified Renter, they may continue to occupy the Workforce Housing Unit until the termination of the term of their rental agreement. If there are no other potential Qualified Renters available, Developer may renew the rental agreement for an additional term of not more than twelve (12) months. Upon the showing of undue hardship on Critical Workforce Qualified Renter, Developer may choose to renew a rental agreement for a term not to exceed twelve (12) months.

i. Design and Finishes. Workforce Housing Units shall be built concurrently with the Market Rate Units in an integrated fashion and shall have the same exterior design and finishes of other similar Market Rate Units within the Project.

j. Maintenance of Workforce Housing Units. The Developer shall at all times maintain the Workforce Housing Units in good, safe, and habitable condition in all respects, and in the same general condition as Developer maintains the Market Rate Units, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the units. The Developer shall suffer no mechanics' liens to be recorded against the Workforce Housing Units.

k. Covenants to Run with the Land. Developer intends, declares and covenants, on behalf of itself and all future owners of the Workforce Housing Units

that this Development Agreement and the covenants and restrictions set forth herein, regulating and restricting rents, use, and occupancy of each Workforce Housing Unit shall be covenants running with the land and improvements constituting the Workforce Housing Units, for the benefit of the City, shall encumber the Workforce Housing Units, and shall be binding upon Developer and all subsequent owners of the Workforce Housing Units.

l. Rental Agreement Limitations. All rental agreements shall be for a minimum of ninety (90) days but not to exceed twenty-four (24) months. Nightly and weekly rentals are prohibited.

6. Vested Rights and Reserved Legislative Powers.

a. Vested Rights Granted by Approval of this DA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this DA grants Developer the right to develop and construct the Project consistent with the uses and building types as provided in the Neighborhood Commercial Subdistrict and this DA. The Parties intend that the rights granted to Developer under this DA are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that the Neighborhood Commercial Subdistrict and this DA, grant to Developer "vested rights" as that term is construed in Utah's common law and under Utah Code Ann. § 10-9a-509. If any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed.

b. Reserved Legislative Powers. The Parties acknowledge that any exception to the vested rights as set forth above must meet the compelling, countervailing public interest standard in Utah Code Aim. §10-9a-509.

c. Legislative Discretion. Nothing in this DA shall be interpreted to usurp the independent exercise of the legislative discretion of the Planning Commission and Council.

7. Developer's Non-Performance. Should Developer fail to meet or perform the obligations defined within this DA, or if Substantial Completion of the Project has not been accomplished within three and one-half (3.5) years of the date of this DA, absent any extensions by further agreement of the Parties, this DA shall be automatically terminated and the Parties shall have no further rights or obligations hereunder.

8. Term of Agreement. This DA shall expire on its terms four (4) years from the date of approval and execution by the Parties, unless terminated earlier under another provision of this DA.

9. City Obligations for Improvements. In connection with the Project, the

City confirms that it has the necessary utility infrastructure to provide water, sewer, and storm water service to the Project and that such infrastructure exists within a reasonable distance of the Project Property. The City also agrees that it will permit Developer to connect to the City's water, sewer, and storm drain upon payment of all applicable fees. Developer acknowledges that all other necessary utilities, including but not limited to electrical and natural gas service, are the responsibility of Developer.

10. Upsizing. Upon request from the City, Developer shall "upsize" any public infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) provided that the City makes arrangements to compensate Developer for the reasonable costs of such upsizing on or before the date on which such infrastructure is installed by Developer. For example, if an upsize to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

11. Developer to Indemnify the City. Developer shall, protect, indemnify, hold harmless and defend the City and its agents, employees, officers and elected officials against any claims, demands, judgments, expenses, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the Parties hereto and their employers, to the extent which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by this DA. This indemnification provision shall not apply to any claims or liabilities that are unrelated to the Project or this DA.

12. Notices.

a. Notice Addresses. All notices required or permitted under this DA shall be given in writing by certified mail and regular mail to the following addresses:

To Developer:
Waters Edge Apartments LLC
Attn: Matthew McConkie
1464 E Ridgeline Dr., Ste 200
South Ogden, UT 84405

With a copy to:
Anderson & Karrenberg P.C.
Attn: Curtis Brown
50 West Broadway, Suite 600
Salt Lake City, Utah 84101

To the City:
South Ogden City
Attn: City Manager
3950 Adams Ave., Ste. 1
South Ogden City, UT 84403

Effectiveness of Notice. Each Notice shall be effective and shall be deemed delivered on the day the Notice is postmarked for mailing, postage prepaid, by

Certified United States Mail and actually deposited with or delivered to the United States Postal Service. Any party may change its address for Notice under this DA by giving written Notice to the other Parties.

13. Assignment and Transfer of Development.

a. Assignment. Developer shall not assign its obligations under this Agreement or any rights or interests herein, and, except as provided below, shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee (a) has, in the sole opinion of the City, the qualifications and financial resources necessary and adequate to fulfill the obligations of Developer under this Agreement and any then-applicable documents necessary to complete development; and (b) by instrument in writing, has expressly assumed the obligations of Developer under this Agreement and all then-applicable additional agreements and agreed to be subject to the conditions and restrictions arising under this Agreement or any other related development documents. If only a portion of the Project is assigned and/or conveyed under this Section 13, a reasonable allocation of Developer's duties appurtenant to that portion will be made.

b. Security Interests. This Section 13 shall not prohibit granting any security interests for financing the acquisition and development of the Project, subject to Developer complying with applicable law and the requirements of this DA.

c. Change in Control. A change in the majority ownership or control of Developer shall be deemed a transfer requiring the consent of the City under the requirements of this Section 13. Notwithstanding the foregoing sentence, transferring all or a portion of the Project or change in the majority ownership or control of Developer shall NOT be considered a transfer under these circumstances: (i) a transfer occurs to an entity that is an affiliate of Developer, (ii) a transfer or change in ownership occurs because of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing to enable Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the development related documents. If because of these described actions one or more new principals become associated with the Project, such principals shall sign a counterpart of this agreement evidencing their personal guaranty of Developer's obligations. For purposes of this section, an "affiliate" is an entity in which the owner(s) of Developer both holds an

ownership stake of more than 50 percent and over which the owner of Developer is able to exert control

14. Appointment of Representatives. To further the commitment of the Parties to cooperate in implementing this DA, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City and the CDRA shall be Matthew Dixon, City Manager, and the initial representatives for Developer shall be Matthew McConkie. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this DA and the development of the Project.

15. Mutual Drafting. Each party has participated in negotiating and drafting this DA and therefore no provision of this DA shall be construed for or against either party based on which party drafted any particular portion of this DA.

16. Waiver of Jury Trial; Attorneys' Fees. All disputes or claims arising under this DA shall be mediated by a mediator to be agreed upon by the Parties. If, after good faith efforts by the Parties, mediation is unsuccessful in resolving the dispute(s), any remaining controversy or claims arising out of or relating to this DA, or a breach thereof, shall be resolved by bench trial in the District Courts for the Second Judicial District, Weber County, Utah. The prevailing Party in any such action may recover all costs, including reasonable attorneys' fees, incurred in enforcing this Agreement. The Parties waive their right to a jury trial of any disputes or claims arising under this DA.

17. Applicable Law. This DA is entered into in Weber County in the State of Utah and shall be construed under the laws of the State of Utah despite Utah's choice of law rules.

18. Venue. Subject to Section 16, supra, any action to enforce this DA shall be brought only in the Second District Court for the State of Utah, Weber County.

19. No Waiver. Failure of any party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

20. Severability. If any provision of this DA is held by a court of competent jurisdiction to be invalid, the Parties consider and intend that this DA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this DA shall remain in full force and affect.

21. Limitations on Damages. UNDER NO CIRCUMSTANCE SHALL ANY PARTY BE ENTITLED TO RECOVER (I) LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, (II) PENALITIES, OR (III) SPECIAL, PUNITIVE, TREBLE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

22. Entire Agreement. This DA and all Exhibits hereto, constitute the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties. Notwithstanding the foregoing, any non-substantive amendments to this DA may be reviewed and approved in writing by the City Manager and/or City Planning Department Staff and Developer.

23. Counterparts. This DA may be executed in original counterparts when taken together shall constitute a complete, valid and binding agreement.

24. Recordation and Running with the Land. This DA shall be recorded in the chain of title for the Project. This DA shall be deemed to run with the land.

25. Authority. The Parties to this DA each warrant that they have the necessary authority to execute this DA. Specifically, on behalf of the City, the signature of the Mayor, or designee, of the City is affixed to this DA lawfully binding the City on _____ __, 2023.

IN WITNESS WHEREOF, the Parties have executed this DA by and through their respective, duly authorized representatives as of the day and year first herein above written.

SOUTH OGDEN CITY

By: _____

Its: _____

State of Utah)
:
County of _____)

On this ____ day of _____, 2023, before me, _____ a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has authority to sign on behalf of South Ogden City and that they executed the same on behalf of South Ogden City.

Witness my hand and official seal.

_____
(Notary Signature)

Waters Edge Apartments LLC
A Utah limited liability company
By: _____
Its: _____

State of Utah)
:
County of _____)

On this ____ day of _____, 2023, before me, _____ a notary public, personally appeared Matthew McConkie, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has the authority to sign the foregoing on behalf of McConkie Multifamily, LLC and that they executed the same on behalf of McConkie Multifamily, LLC.

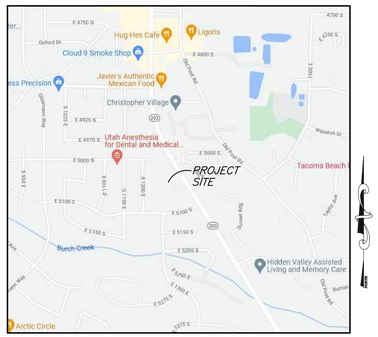
Witness my hand and official seal.

_____
(Notary Signature)

Exhibit "A"
Concept Plan


ODESSA
11743

Reeve & Associates, Inc. - Solutions You Can Build On



Vicinity Map
NOT TO SCALE

SITE DATA

TOTAL UNITS:
BLDG 1
32 – 1–BDRM UNITS
58 – 2–BRDM UNITS
BLDG 2
36 – 1–BDRM UNITS
40 – 2–BDRM UNITS
166 UNITS

PARKING WILL BE PROVIDED AT 1.75 STALLS PER UNIT
306 STALLS PROVIDED (6 A.D.A.)
166 STALLS TO BE COVERED

30 0 30 60 90
Scale: 1" = 30'

Notice:
THESE PLANS WERE CREATED UTILIZING COLORS FOR UTILITIES & OTHER INFRASTRUCTURE. IF PRINTED IN, OR COPIED TO BLACK & WHITE, SOME LINE WORK MAY NOT SHOW UP PROPERLY.

Developer Contact:
Contact Name
Matthew McConkie
1464 E. Ridgeline Dr, Ste 200
South Ogden, UT 84405
PH: (801) 458–3383

Project Contact:
Nate Reeve – Chris Cave
Reeve & Associates, Inc.
5160 South 1500 West
Riverdale, Utah, 84405
PH:(801) 621–3100

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF REEVE & ASSOCIATES, INC., 5160 SOUTH 1500 WEST, RIVERDALE, UTAH 84405, AND SHALL NOT BE PHOTOCOPIED, RE–DRAWN, OR USED ON ANY PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESIGNED FOR, WITHOUT THEIR WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF REEVE & ASSOCIATES, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS OR THE DESIGN THEREON WITHOUT THEIR CONSENT.

Reeve & Associates, Inc.
5160 South 1500 West, Riverdale, Utah 84405
TEL: (801) 621-3100 www.reeve-assoc.com
LAND PLANNERS • CIVIL ENGINEERS • LAND SURVEYORS
TRAFFIC ENGINEERS • STRUCTURAL ENGINEERS • LANDSCAPE ARCHITECTS

REVISIONS
DESCRIPTION
DATE

Apartments
5083 Harrison Blvd
SOUTH OGDEN CITY, WEBER COUNTY, UTAH

Color Rendering

Project Info.
Engineer: N. Reeve
Planner: C. Cave
Designer: J. Meyers
Date: August 2022
Name: APARTMENTS SOUTH OGDEN
Number: 8033-01

1
2 Total Sheets

Reeve & Associates, Inc. - Solutions You Can Build On

Exhibit "B"
Project Property Description
Legal Description

Tax ID: 07-002-0068

PART OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF LOT 5 OF SUNNYSIDE MANOR SUBDIVISION AND THE NORTHEAST CORNER OF LOT 1 OF OAK WOOD HILLS NO. 1, SAID POINT BEING 583.08 FEET NORTH 00°05'51" EAST ALONG THE SECTION LINE FROM THE WEST QUARTER CORNER OF SAID SECTION 15 (SAID WEST QUARTER CORNER BEING 1200.06 FEET SOUTH 06°36'05" EAST FROM A FOUND CENTERLINE MONUMENT IN THE INTERSECTION OF 5000 SOUTH STREET AND 1200 EAST STREET); THENCE NORTH 00°05'53" EAST 738.85 FEET ALONG THE EASTERLY LINE OF OAK WOOD HILLS NO. 1; THENCE SOUTH 89°19'34" EAST 109.97 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF HARRISON BOULEVARD; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES: (1) ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 1980.10 FEET, AN ARC LENGTH OF 175.15 FEET, A DELTA ANGLE OF 05°04'05", A CHORD BEARING OF SOUTH 28°50'07" EAST, AND A CHORD LENGTH OF 175.09 FEET; (2) SOUTH 31°22'09" EAST 356.31 FEET; (3) NORTH 58°54'51" EAST 15.90 FEET; AND (4) SOUTH 31°05'09" EAST 339.81 FEET; THENCE NORTH 90°00'00" WEST 270.16 FEET TO THE NORTHEAST CORNER OF LOT 3 OF SUNNYSIDE MANOR SUBDIVISION; THENCE NORTH 89°27'12" WEST 300.08 FEET ALONG THE NORTH LINE OF SAID SUNNYSIDE MANOR SUBDIVISION TO THE POINT OF BEGINNING.

CONTAINING 247,463 SQUARE FEET OR 5.681 ACRES.

Exhibit "C"

South Ogden City Code, Title 10, Chapter 5.1, Article B, Sec. 10-5.1B-5-3 and 10-5.1B-11, et. seq.

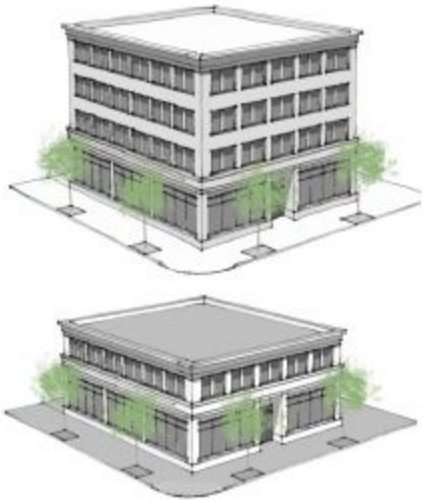
10-5.1B-5-3: Storefront Building

A. Description And Intent: The storefront building is intended for use as a mixed use building located close to the front property line with parking typically in the rear or side of the lot.

The key facade element of this building type is the storefront required on the ground floor front facade, with large amounts of glass and regularly spaced entrances.

This building is available in a variety of intensities, depending on the subdistrict within which it is located.

B. Regulations: Regulations for the storefront building type are defined in the table in this section.



(Ord. 17-21, 11-21-2017, eff. 11-21-2017)

			Permitted Subdistrict		
			Gateway Core	**Gateway General**	**Neighborhood Commerical**
1.	Building Siting: Refer to figure 5.3(1) of this section				
		Multiple principal buildings	Permitted	Permitted	Permitted
	(a)	Front sidewalk coverage	80%	80%	80%[1]
		Occupation of corner	Required[4]	Required[4]	Required[4]
	(b)	Front build-to zone	0' to 10'	0' to 10'	0' to 15'
	(c)	Corner build-to zone	0' to 10'[4]	0' to 10'[4]	0' to 15'[4]
	(d)	Minimum side yard setback	0'	0'	0'
	(e)	Minimum rear yard setback	5'	5'	5'

	(f)	Minimum lot width	None	None	None
		Maximum lot width	None	None	None
	(g)	Parking and loading location	Rear yard	Rear yard	Rear yard[1]
	(i)	Vehicular access	Alley; if no alley exists, 1 driveway is permitted per non-primary facade, or as approved by the City Manager or designee	Alley; if no alley exists, 1 driveway is permitted per non-primary facade, or as approved by the City Manager or designee	Alley; if no alley exists, 1 driveway is permitted per non-primary facade, or as approved by the City Manager or designee
2.	Height: Refer to figure 5.3(2) of this section				
	(j)	Minimum overall height	1 story	1 story	1 story
	(k)	Maximum overall height	5 stories[2]	3 stories	3 stories
	(l)	Ground story:			
		Minimum height	14'	14'	14'
		Maximum height	20'[3]	20'[3]	20'[3]
	(m)	Upper stories:			
		Minimum height	9'	9'	9'
		Maximum height	14'	14'	14'
3.	Uses: Refer to figure 5.3(2) of this section. Refer to section 10-5.1B-4, "Uses," of this article for permitted uses				
	(n)	Ground story	Any permitted use		
	(o)	Upper story	Any permitted use		
	(p)	Parking within building	Permitted fully in any basement and in rear of upper floors		
	(q)	Required occupied space	30' deep on all full floors measured from the front facade		
4.	Street Facade Requirements: Refer to figure 5.3(3) of this section				
	(r)	Minimum ground story transparency measured between 2' and 8' above grade	65%	65%	65%
	(s)	Minimum transparency per each story	15%	15%	15%

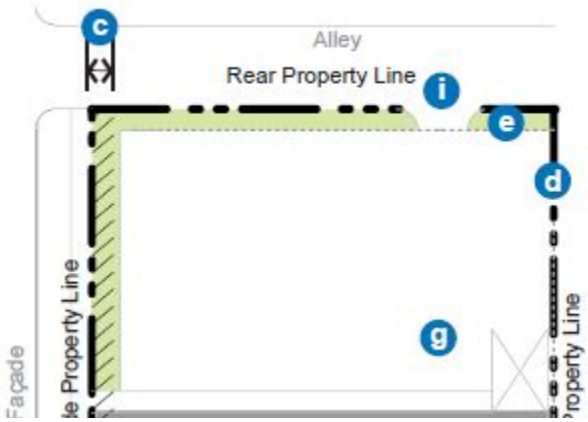
		Blank wall limitations	Required, see subsection 10-5.1B-5-2D2 of this section 10-5.1B-5		
	(t)	Front facade entrance type	Storefront, arcade	Storefront, arcade	Storefront, arcade
	(u)	Principal entrance location	Front facade	Front facade	Front facade
		Required number of street entrances	1 per each 100' of front facade	1 per each 100' of front facade	1 per each 100' of front facade
		Vertical facade divisions	Every 50' of facade width	Every 50' of facade width	Every 50' of facade width
		Horizontal facade divisions	Required within 3' of the top of the ground story		
5.	Roof Type Requirements: Refer to figure 5.3(3) of this section				
	(v)	Permitted roof types	Parapet, pitched, flat	Parapet, pitched, flat	Parapet, pitched, flat
		Tower	Permitted	Permitted	Permitted

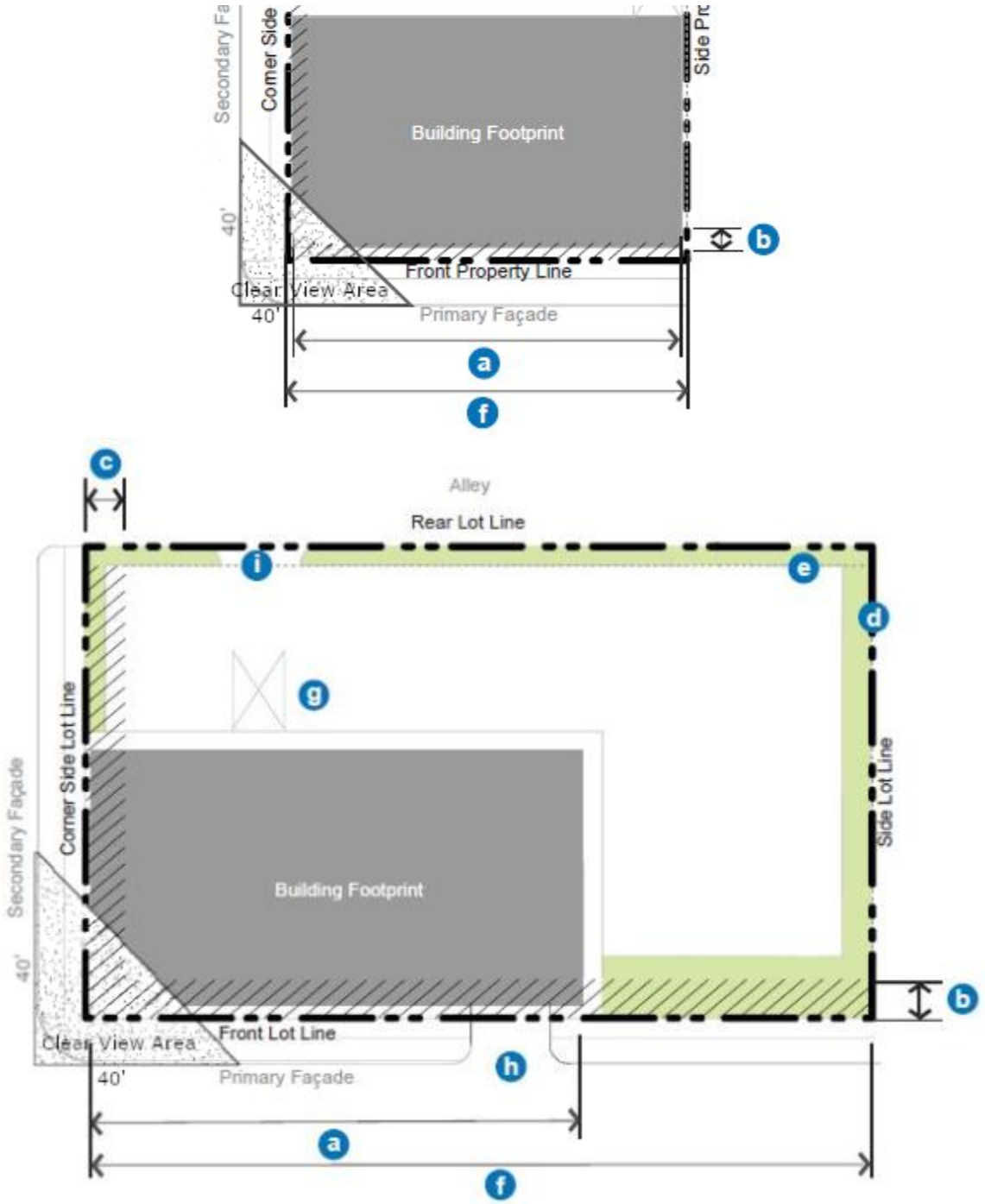
Notes:

[1]Lots wider than 140 feet are permitted 1 double-loaded aisle of surface parking (maximum width of 72 feet), located perpendicular to the front property line, which is exempt from front property line coverage.
[2]Above the third story, the upper stories of any building facade with street frontage shall have a step back from the lower stories that is a minimum of 6 feet.
[3]If 18 feet or more in height, ground story shall count as 2 stories towards maximum building height.
[4]At any uncontrolled intersection, the buildings will be modified to afford automobile drivers a clear view of approaching vehicles or pedestrians. Buildings, trees, or any obstruction shall be prohibited within a triangular area formed by the street curb lines and a line connecting them at points 40 feet from the point of intersection of the back of the curbs (clear view area).

FIGURE 5.3(1)

STOREFRONT BUILDING: BUILDING SITING

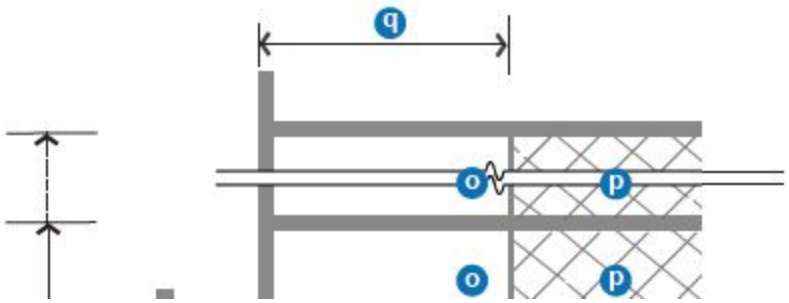




(Ord. 18-11, 9-18-2018, eff. 9-18-2018)

FIGURE 5.3(2)

STOREFRONT BUILDING: HEIGHT AND USE REQUIREMENTS



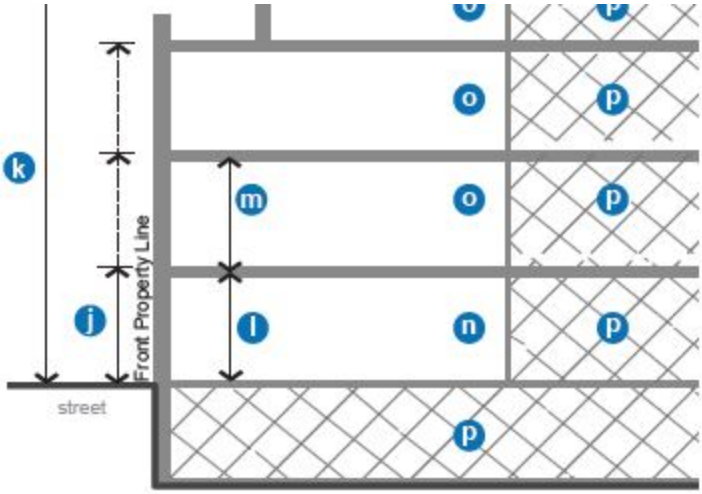
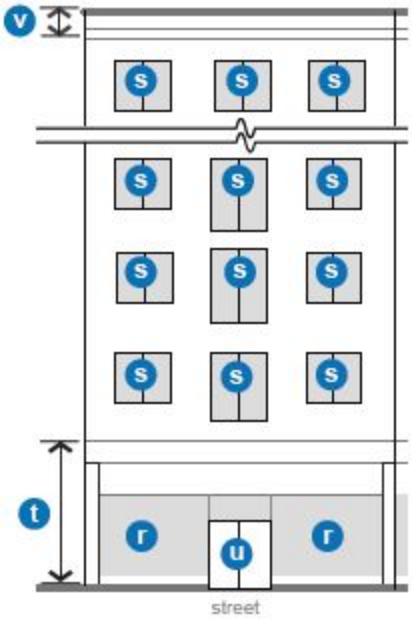


FIGURE 5.3(3)

STOREFRONT BUILDING: STREET FACADE AND ROOF REQUIREMENTS



(Ord. 17-21, 11-21-2017, eff. 11-21-2017)

10-5.1B-5-11: Additional Design Requirements

The following outlines the subdistrict design guidelines that affect a building's appearance and subdistrict cohesiveness. They improve the physical quality of buildings, enhance the pedestrian experience, and protect the character of the neighborhood.

A. Materials And Color:

1. Primary Facade Materials: Eighty percent (80%) of each facade shall be constructed of primary materials. For facades over one hundred (100) square feet, more than one material shall be used to meet the eighty percent (80%) requirement.

    a. Permitted primary building materials include high quality, durable, natural materials, such as stone, brick; wood lap siding; fiber cement board lapped, shingled, or panel siding; glass. Other high quality synthetic materials may be approved during the site plan process with an approved sample and examples of successful, high quality local installations. Refer to figure 5.11(1) of this section.

    FIGURE 5.11(1)

    PRIMARY MATERIALS









2. Secondary Facade Materials: Secondary materials are limited to details and accents and include gypsum reinforced fiber concrete for trim and cornice elements; metal for beams, lintels, trim, and ornamentation, and exterior architectural metal panels and cladding.

    a. Exterior insulation and finishing systems (EIFS) is permitted for trim only or on upper floor facades only.

3. Roof Materials: Acceptable roof materials include three hundred (300) pound or better, dimensional asphalt composite shingles, wood shingles and shakes, metal tiles or standing seam, slate, and ceramic tile. "Engineered" wood or slate may be approved during the site plan process with an approved sample and examples of successful, high quality local installations. Refer to figure 5.11(2) of this section.

    FIGURE 5.11(2)

    ROOF MATERIALS



4. Color: Main building colors shall be complementary to existing building stock.
5. Appropriate Grade Of Materials: Commercial quality doors, windows, and hardware shall be used on all building types with the exception of the row building. Refer to figure 5.11(3) of this section.

   FIGURE 5.11(3)

   COMMERCIAL GRADE DOORS AND WINDOWS





B. Windows, Awnings, And Shutters:

1. Windows: All upper story windows on all historic, residential, and mixed use buildings shall be recessed, double hung. Percent of transparency is required per building type.
2. Awnings: All awnings shall be canvas or metal. Plastic awnings are not permitted. Awning types and colors for each building face shall be coordinated. Refer to figure 5.11(4) of this section.

   FIGURE 5.11(4)

   AWNINGS









3. Shutters: If installed, shutters, whether functional or not, shall be sized for the windows. If closed, the shutters shall not be too small for complete coverage of the window. Shutters shall be wood. "Engineered" wood may be approved by City Manager or designee during the site plan process with an approved sample and examples of successful, high quality local installations.

C. Balconies: The following applies in all locations where balconies are incorporated into the facade design facing any street or parking lot. Refer to figure 5.11(5) of this section.

1. Size: Balconies shall be a minimum of six feet (6') deep and five feet (5') wide.
2. Connection To Building: Balconies that are not integral to the facade shall be independently secured and unconnected to other balconies.
3. Facade Coverage: A maximum of forty percent (40%) of the front and corner side facades, as calculated separately, may be covered with balconies, including street-facing railing and balcony structure.

FIGURE 5.11(5)

BALCONIES INTEGRAL TO FACADE



D. Treatments At Terminal Vistas: When a street terminates at a parcel, the parcel shall be occupied by one of the following:
   1. If the parcel is open space, any open space type with the exception of the pocket park shall be utilized and a vertical element shall terminate the view. Acceptable vertical elements include a stand or grid of trees, a sculpture, or a fountain.
   2. If the parcel is not utilized as an open space type, the front or corner side of a building, whether fronting a primary street or not, shall terminate the view.

E. Building Variety: Building design shall vary between vertical facade divisions, where required per the building types, and from adjacent buildings by the type of dominant material or color, scale, or orientation of that material and at least two (2) of the following. Refer to figure 5.11(7) of this section for one illustration of this requirement.
   1. The proportion of recesses and projections.
   2. The location of the entrance and window placement, unless storefronts are utilized.
   3. Roof type, plane, or material, unless otherwise stated in the building type requirements.

FIGURE 5.11(7)

BUILDING VARIETY



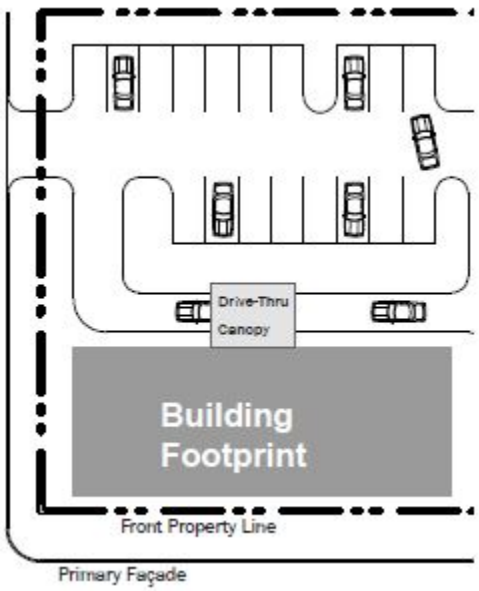


F. Drive-Through Facilities: Refer to figure 5.11(8) of this section for one illustration of the following requirements.

1. Application: Drive-through facilities are only allowed in the Gateway Core, Gateway General, and Neighborhood Commercial Subdistricts.
2. Drive-through Facilities Definition: Drive-through facilities include any window as described in 10-5.1A-4-2(L)(1), whether it has a canopy or is located in a separate structure from the main building. Drive-Through facilities shall be located on the rear facade of the building or in the rear of the lot behind the building, or side facades where permitted by use.
3. Stacking Lanes: Stacking lanes shall be located perpendicular to the primary facade or behind the building.
4. Canopy And Structure: The canopy and structure shall be constructed of the same materials utilized on the building.
5. Drive-through facilities are expressly prohibited on the front façade of any building.

FIGURE 5.11(8)

RECOMMENDED DRIVE-THROUGH FACILITY LAYOUT



Note that Drive-through facilities may be permitted on the sides of buildings where permitted by use – see 10-5.1B-5-11 F

(Ord. 17-21, 11-21-2017, eff. 11-21-2017)

HISTORY
Amended by Ord. 22-14 on 9/6/2022

Exhibit "D"

Restrictive Deed for Workforce Housing

WHEN RECORDED, RETURN TO:

[name]
[address]
[address]

DECLARATION AND AGREEMENT FOR WORKFORCE HOUSING DEED RESTRICTIONS

This DECLARATION AND AGREEEMENT FOR WORKFORCE HOUSING DEED RESTRICTIONS ("**Declaration**") is effective as of the date the Declaration is recorded at the office of the Weber County, Utah Recorder's Office (the "**Effective Date**") and is entered into by and between [name of developer], a Utah _____ ("**Developer**") which is the owner of certain real property more particularly described on **Exhibit 1**, for the benefit of and enforceable by South Ogden City, a political subdivision of the State of Utah (the "**City**").

WHEREAS, Developer owns and is developing a residential project on approximately [size] acres located at approximately [address] in South Ogden City, Weber County, State of Utah ("**Project Property**");

WHEREAS, Developer and the City share a goal of creating workforce housing in the City with a preference for the City's "critical workforce" which includes police, fire, emergency responders, public school teachers and staff and municipal employees, employed within the City;

WHEREAS, Developer and the City entered into a Development Agreement, ("**Agreement**") dated [date];

WHEREAS, this Declaration is attached as **Exhibit D** to the Agreement and is incorporated by reference into the Agreement;

WHEREAS, Developer agrees to the construction and rental of five (5) designated Affordable Housing Units (collectively, the "**Workforce Housing Units**" or "**Units**"; each individually, a "**Workforce Housing Unit**" or **Unit**) within the Project Property. The Workforce Housing Units are more particularly described on **Exhibit 1**; and

WHEREAS, the purpose of the Agreement and the City Contribution is to provide five (5) Workforce Housing Units which qualify as income targeted housing as defined in UCA § 17C-102(32) which shall be rented by Developer and by subsequent Owners to those with an annual household income of less than 80% of the Weber County household median income;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, Developer does hereby record the following Restrictive Covenants to fulfill the purposes of the Agreement to assure that the five (5) designated Workforce Housing Units are rented in accordance with the Agreement and in compliance with UCA § 17C-1-412:

1. **DEFINITIONS:**

1.1. **Domicile**. The place where an individual has a fixed permanent home and principal establishment, to which the individual, if absent, intends to return, and in which the individual and their family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home for a minimum of nine months out of each calendar year.

1.2. **Non-Qualified Renter**. Any renter of a Workforce Housing Unit that is not a Qualified Renter.

1.3. **Owner**. The title owner of record, of at least a fifty percent (50%) undivided interest, of the Project Property.

1.4. **Primary Residence.** The place where a Domicile has been established.

1.5. **Qualified Renter**. A Qualified Renter's household annual income must be less than eighty percent (80%) of the Weber County household median income as set forth in UCA §17C-1-102(32) for income targeted housing.

1.6. **Critical Workforce Qualified Renter**. A Qualified Renter who is also a Critical Workforce Qualified Renter must meet the following additional criteria:

1.6.1. Person(s) who are renting the Workforce Housing Unit as their Primary Residence; and

1.6.2. A household with a minimum of one adult who is part of the Critical Workforce employed full time (at least 30 hours of employment per week) within the City as police, fire, emergency responder, teacher and staff in public schools, or an employee of the City.

2. **RENTAL OF WORKFORCE HOUSING UNITS**.

2.1. PERMITTED RENTS. Monthly rents for Workforce Housing Units, adjusted annually, shall not exceed an amount equal to 30% of the gross monthly income of a household earning 80% of the AMI for Weber County, Utah adjusted only for family size using HUD's Family Size Adjustments.

2.2. PREFERENCE TO CRITICAL WORKFORCE QUALIFIED RENTERS. If an offer to rent a Workforce Housing Unit is received which is acceptable to Developer or subsequent Owners, Developer or the subsequent Owner shall not accept the offer if it is not made by a Qualified Renter who is also a member of the Critical Workforce (a "Critical Workforce Qualified Renter") for a period of fifteen (15) days to give a Critical Workforce Qualified Renter the opportunity to rent the Workforce Housing Unit. If a Critical Workforce Qualified Renter is able and willing to enter into a lease with Developer, Developer shall rent the Workforce Housing Unit to the Critical Workforce Qualified Renter.

a. If Developer or subsequent Owners received multiple offers from Critical Workforce Qualified Renters within the fifteen (15) day time period, Developer or Subsequent Owners shall accept the first offer received from a Critical Workforce Housing Renter. In the event the process of renting to the first matching Critical Workforce Housing Renter fails, Developer or Subsequent Owners shall accept the offer of the second matching Critical Workforce Housing Renter and attempt in good faith to rent the Workforce Housing Unit to the second matching Critical Workforce Housing Renter. This process shall continue until either the Workforce Housing Unit is rented or there are no Critical Workforce Housing Renters.

b. If all Critical Workforce Housing Renters are unable to rent, the Workforce Housing Unit may be rented to the original offeror who is a Qualified Renter but not a Critical Workforce Qualified Renter.

c. The City may, at its option, submit a list of, or refer Critical Workforce Qualified Renters known to the City to Developer or subsequent Owners, which shall in no event be considered a complete or exhaustive list of eligible Critical Workforce Qualified Renters.

3. **ADDITIONAL RESTRICTIONS AND CONDITIONS**

3.1. SUBLEASE OF UNITS. No Workforce Housing Unit Renter may sublease their Unit unless the City, at its sole discretion, has provided prior written approval. Subleasing the Unit, without the prior approval of the City, constitutes an Event of Default of the Unit Renter. If approval to sublease is granted in extenuating circumstances, it shall not total more than 12 months and the option shall not be exercised more than once by the same Renter.

3.2. NO NIGHTLY OR SHORT-TERM LEASE. In no circumstances are nightly or short term, less than thirty (30) day, rentals of Units allowed.

4. **DEED LANGUAGE** All deeds conveying the Workforce Housing Units shall include the following provision:

Subject to the restrictions and provisions of "Declaration and Agreement for Workforce Housing Deed Restrictions" recorded on [Date] as Entry Number [Number] in the Records of the Weber County Recorder.

5. **ENFORCEMENT OF DECLARATION**

5.1. REMEDIES AND ENFORCEABILITY. Developer and City acknowledge that the primary purpose for requiring compliance by Developer and subsequent Owners of Workforce Housing Units with the restrictions provided in this Declaration is to assure the purposes and goals of this Declaration and the Agreement are met. BY REASON THEREOF, DEVELOPER AND SUBSEQUENT OWNERS IN CONSIDERATION OF THE PAYMENT TO DEVELOPER BY THE CITY AND SUBSEQUENT OWNERS'

HAVING ACCESS TO INCOME TARGETED HOUSING HEREBY AGREE AND CONSENT THAT THE CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE BY DEVELOPER AND SUBSEQUENT OWNERS OF THEIR OBLIGATIONS UNDER THIS DECLARATION IN THE SECOND DISTRICT COURT FOR THE STATE OF UTAH. Developer and subsequent Owners hereby further specifically acknowledge that the City cannot be adequately compensated by monetary damages in the event of a violation of the restrictive covenants in or the terms of this Declaration.

6. **MISCELLANEOUS**

6.1. TERM OF DECLARATION. The term of this Declaration shall commence as of the date first set forth above and continue in full force and effect for a period not less than fifty (50) years from the Effective Date.

6.2. NOTICES. Any and all notices and demands by any party to any other party required or desired to be given hereunder shall be in writing and shall be validly given or made if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, sent by Federal Express or other similar courier service keeping records of deliveries and attempted deliveries, or served by facsimile transmission. Service by mail or courier shall be conclusively deemed made on the first business day delivery is attempted. Facsimile transmissions received during normal business hours on a business day shall be deemed made at the time of receipt. Facsimile transmissions not received during normal business hours on a business day shall be deemed made on the next business day. The parties may change their respective addresses for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address, shall not become effective, however, until the actual receipt thereof by the others.

Any notice or demand to Developer shall be addressed to the following address:

[Developer]
[address]
[address]

Any notice or demand to the City shall be addressed to the City at the following address:

South Ogden City
Attn: City Manager
3950 Adams Ave., Suite 1
South Ogden City, UT 84403

Any notice or demand to a subsequent Project Property Owner shall be addressed to the subsequent Owner at the then current mailing, notice or delivery address on the records of the Weber County Assessor.

6.3. SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be valid under applicable law. If any provision of any of the foregoing Declaration shall be invalid or prohibited under applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions in this Declaration.

6.4. ATTORNEYS' FEES. If the City shall take or defend against any action for enforcement or any other relief arising out of this Declaration, and the City is the prevailing party in such action or defense the City shall be entitled to reimbursement for all costs including, but not limited to, reasonable attorneys' fees and court costs incurred by the City in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and/or defense and shall be paid whether or not such action or defense is prosecuted to judgment.

6.5. CHOICE OF LAW. This Declaration shall be governed and construed in accordance with the laws of the State of Utah.

6.6. SUCCESSORS. This Declaration shall run with the land and shall be binding upon all subsequent Owners of the Project Property as well as the heirs, successors, and assigns of subsequent Owners.

6.7. PARAGRAPH HEADINGS. Paragraph or section headings within this Declaration are inserted solely for convenience of reference and are not intended to, and shall not, govern, limit or aid in the construction of any terms or provisions contained herein.

6.8. GENDER AND NUMBER. Whenever the context so requires herein, the neuter and gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

6.9. RECORDATION. Upon execution and delivery of this Declaration by Developer to the City, the City shall cause this Declaration to be recorded and filed in the office of Weber County Recorder and shall pay any fees and charges incurred in connection therewith.

6.10. COVENANTS RUN WITH LAND. Developer intends, declares and covenants, on behalf of itself, all future owners of the Project Property, and all parties that obtain any interest in any Workforce Housing Unit that this Declaration and the covenants and restrictions set forth herein, regulating and restricting the rents, use, occupancy and transfer of the Units, shall be covenants running with the land and improvements constituting the Units, for the benefit of the City, shall encumber the Units, and shall be binding upon Developer, all subsequent Project Property Owners, and any other party with an interest in any Unit.

6.11. INTEGRATION. This Declaration, along with the Agreement, constitutes the entire Declaration between the Parties with respect to the matters set forth herein.

6.12. COUNTERPARTS. This Declaration may be executed in original counterparts when taken together shall constitute a complete, valid and binding agreement.

7. **OBTAINING A COPY OF AGREEMENT.** Any subsequent Owner may obtain a copy of the Agreement by contacting South Ogden City and requesting a copy.

OWNER

[developer]

By:_____

Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF UTAH)
:§
COUNTY OF _____)

On this _____ day of _____, in the year of 20__, personally appeared before me _____, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say he/she is the _____of [developer] and that said document was signed by him/her in behalf of [developer] by authority of the general partner of [developer] and said _____ acknowledged to me that [developer] executed the same.

Witness my hand and official seal.

_____
NOTARY PUBLIC

CITY

South Ogden City

_____

[name], [title]

ATTEST:

_____

[name], [title]

APPROVED AS TO FORM:

_____

[name], City Attorney

EXHIBIT 1

LEGAL DESCRIPTION OF WORKFORCE HOUSING UNIT