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REC FOR: WEBER COUNTY PLANNING

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

And

Randy Ropelato

List of Attachments

Attachment A: Project Area Legal Description and Graphic Depiction

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**DEVELOPMENT AGREEMENT
RANDY ROPELATO**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and Randy Ropelato ("Developer"), known together herein as the "Parties."

RECITALS

WHEREAS, The Developer desires and intends to develop a commercial site (the "Project") in the unincorporated area of Weber County known as Western Weber County. Key components of the Project include commercial and office buildings;

WHEREAS, The Developer's objective is to develop a commercial site that incorporates building and site designs that complement the character of the community and is financially successful;

WHEREAS, The County's objective is to approve only development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners; and

WHEREAS, The Project will be located on land referred to herein as the "Project Site". The Project Site is as more specifically described in **Attachment A**: Project Area Legal Description and Graphic Depiction. A list of permitted uses, agreed upon by Developer and the County is included in Attachment B.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date, Expiration, Termination.

- 1.1. **Effective Date.** The Effective Date of this Agreement is the last date upon which it is signed by any of the Parties hereto.
- 1.2. **Expiration.** This Agreement shall be in full force and effect until (10) years from the Effective Date of this Agreement, at which point this Agreement shall expire.
- 1.3. **Termination.** This Agreement may be terminated by mutual written agreement of the Parties to this Agreement or terminated pursuant to Section 10 of this Agreement. This Agreement automatically terminates, without notice, in the following circumstances:
 - 1.3.1. The term of this Agreement expires;
 - 1.3.2. The Project is abandoned or the use is discontinued, as provided for by Weber County Code Chapter 108-12; or
 - 1.3.3. The Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 13 of this Agreement.

2. Definitions and Interpretation.

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

- 2.1. **Agreement.** "Agreement" means this Development Agreement between County and Developer, approved by the Board of County Commissioners, and executed by the undersigned.
- 2.2. **County.** "County" means Weber County, Utah.
- 2.3. **Construction Buildout Period.** "Construction Buildout Period" has the meaning set forth in Section 7.9 of this Agreement.
- 2.4. **Developer.** "Developer" means Randy Ropelato, or any of their Assignees as provided in Section 11 of this Agreement.
- 2.5. **Development Standards.** "Development Standards" means the requirements stated in Section 7 of this Agreement.
- 2.6. **Effective Date.** "Effective Date" has the meaning set forth in Section 1 of this Agreement.
- 2.7. **Force Majeure Event.** "Force Majeure Event" means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental or judicial authority.
- 2.8. **Parties.** "Parties" means the Developer and the County.
- 2.9. **Project.** "Project" means the commercial site as set forth in the attachments hereto.
- 2.10. **Project Site.** "Project Site" means the land area on which the Project will actually be sited, as more specifically described in Attachment A: Project Area Legal Description and Graphic Depiction.
- 2.11. **Routine and Uncontested.** "Routine and Uncontested" means simple and germane to the Project or Project Site, having very little chance of effect on the character of the area, and not anticipated to generate concern from the public.
- 2.12. **Substantial Completion.** "Substantial Completion" means the Project is constructed, installed, and a valid business license has been obtained from the county.
- 2.13. **Transferee.** A party to which the Project is transferred or assigned in part or in whole. "Assignee" shall also mean the same.
- 2.14. **Vested Laws.** "Vested Laws" means the land use laws, Part II of the Weber County Code, in effect at the time of execution of this Agreement.

3. Omitted

4. Project Description.

The Project is a commercial site, for which Design Review applications will be submitted.

5. Project Location.

The Project is located on 5.08 acres at 1900 S 5100 W, Ogden.

6. Vesting.

- 6.1. Except as otherwise noted, this Agreement vests the Project and Project Site to the existing Vested Laws until the expiration or termination of this Agreement, or until the Developer has fully developed the Project as proposed herein, whichever is earlier.
- 6.2. Developer agrees that the intent of this vesting is to offer a predictable set of development standards related to the development and establishment of the use. To that effect, Developer agrees that if the County modifies its laws in the future to specifically regulate the use or any other related performance measure, after the time provided in Section 6.1, the Project shall be subject to the new laws. This shall not affect any established nonconforming rights of the use, location, method of construction, acreage requirement, setback requirement, or height requirement of any building, structure, or internal site roadway, as may be applicable.

7. Development Standards.

- 7.1. **Use of Property.** The use of the property shall be limited to only those uses listed in Attachment B.
- 7.2. **Fair Share Intersection Improvements.** The Developer shall provide their roughly proportionate share of the cost of improvements to extend E 5100 W Street through the south end of Developer's property. Developer agrees to dedicate to the County 80 (eighty) feet of public right-of-way through the south end of Developer's property before any land use approvals are granted for The Project. The exact location of the right-of-way dedication is subject to County approval and will be reviewed when Developer submits a legal description and/or a right-of-way dedication plat prior to any land use approvals for The Project. The Developer agrees to enter into a deferral agreement with the county to pay for a portion of right-of-way improvements that is roughly proportionate and reasonably related to the Project, at the time the county receives the eighty feet of right-of-way dedication. This dedication and deferral shall equal the Developer's share of the cost of extending E 5100 W street through Developer's property.
- 7.3. **Waste water disposal.** No grey or black water dumping shall be allowed on the site without a dump station that meets all requisite standards and regulations for the location.
- 7.4. **Fire protection.** If deemed necessary by the local fire authority, each building shall be fire-sprinkled such that each unit has at least one sprinkler head, or as may be otherwise required by the fire code or the local fire authority.
 - 7.4.1. If a fire hydrant is not already within an acceptable proximity from the site, as determined by the local fire authority, the Developer shall install a water trunk line no less than 8 inches in diameter, or as otherwise specified by the local fire authority or

County Engineer, from the nearest hydrant to the site, and shall install a hydrant onsite or in the adjoining public right-of-way, as may be deemed appropriate by the local fire authority.

- 7.5. **Noxious weeds.** The Developer shall be responsible for regular monitoring and removal of noxious weeds on the site.
- 7.6. **Outdoor storage.** There shall be no outdoor storage permitted on the site.
- 7.7. **Phasing.** The Parties agree that no phasing plan has been approved as a part of this agreement. Additional phases will require considerations at the time they are proposed.
- 7.8. **Floodplain Development.** The Developer agrees to maintain compliance with floodplain development requirements.
- 7.9. **Construction Staging and Construction Buildout Period.** Developer agrees there will be no construction staging outside of the Project Site boundaries, except what is reasonable and necessary for the construction of the driveway access or to fulfill any requirements of law. County agrees that Developer is allowed to construct the Project such that Substantial Completion is achieved no later than 5 years from the date that all permits necessary to construct the Project are obtained in final form, but in no event later than 10 years from the Effective Date of this Agreement (the "Construction Buildout Period"), unless construction is delayed by a Force Majeure Event.
- 7.10. **Sanitary Sewer and Culinary Water.** Developer agrees to satisfy the requirements of the Weber Morgan Health Department, if any, regarding sanitary sewer and culinary water provisions for the site.
- 7.11. **Permits.** Developer agrees to obtain all necessary federal, state, and local permits required prior to any work onsite, including but not limited to building permits, storm water pollution prevention permits, right-of-way encroachment permits, and Army Corps of Engineers permits.

8. Amendments and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Developer and County (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

- 8.1. **Project Facility Repair, Maintenance and Replacement.** Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.
- 8.2. **Authorized Changes, Enlargements, or Alterations.** As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.
 - 8.2.1. **Changes Necessary to Comply with Other Laws.** Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval; provided that the changes are routine and uncontested and the application thereof does not materially affect the County's original intent, findings, or conditions on the Project in a manner that would have likely resulted in a different decision on this Agreement, as determined by the Planning Director.

9. Omitted.

10. Termination.

In addition to what is stated in paragraph 1.3, the following termination provisions apply:

- 10.1. **Developer's Option.** Developer shall have the option, in its sole discretion, to terminate this Agreement prior to Substantial Completion of the Project, provided such termination will not relieve the Developer of any obligation owed the County under the terms of this Agreement and outstanding at the time of such termination. If it elects to terminate this Agreement, Developer shall submit a Notice to this effect to County at least thirty (30) days prior to such termination.
- 10.2. **Zoning Reversion.** The Parties agree that this agreement and the rezone of the property from the A-2 zone to the C-3 zone are inextricably related. The Parties agree that the termination of this agreement shall result in the reversion of the Property back to the rights, standards, and regulations of the A-2 zone. At that time, any established nonconforming right may continue as provided by law, but no new right may be established unless it complies with the A-2 zone.

11. General Provisions.

- 11.1. **Assignability.** The rights and responsibilities of Developer under this Agreement may be assigned as provided herein.
 - 11.1.1. **Total Assignment of Project and Project Site.** The Developer, as the landowner of the Project Site at the time of the execution of this agreement, may sell, convey, reassign, or transfer the Project Site or Project to another entity at any time, provided any division of land, if applicable, complies with County Laws.
 - 11.1.2. **Partial Assignment of Project Site.** A partial assignment of the Project Site is prohibited under this Agreement. The Project Site shall be continuously owned under the ownership of Developer and assignees, until this agreement is Terminated.
- 11.2. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Site, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.
- 11.3. **Utah Law.** This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.
- 11.4. **Authority.** Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.
- 11.5. **Duty to Act Reasonably and in Good Faith.** Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.
- 11.6. **Communication and Coordination.** The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues,

changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues.

- 11.7. **Force Majeure Event.** A Force Majeure Event shall be promptly addressed by Developer. County agrees to offer a reasonable period for Developer to cure the effect of the event given the extent of the effect on the Project and the Developer's ability to redress the effect.

12. Notices.

- 12.1. **Written Notice.** Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.

- 12.2. **Addresses.** Notices shall be given to the Parties at their addresses set forth as follows:

<p>If to the County:</p> <p>Weber County Commission 2380 Washington Blvd, Ste #360 Ogden, UT 84401</p>	<p>With copies to:</p> <p>Weber County Attorney 2380 Washington BLVD, Ste. #230 Ogden, UT 84401</p> <p>Weber County Planning Director 2380 Washington BLVD, Ste. #240 Ogden, UT 84401</p>
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If to Developer:

Randy Ropelato
3954 W 1400 S
Ogden, UT 84401

- 12.3. **Notice Effect.** Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by Notice to the other party may designate a different address or person to which such notice or communication shall be given.

13. Default and Remedies.

- 13.1. **Failure to Perform Period.** No Party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

- 13.2. **Remedies.** The Developer's failure to comply with this agreement constitutes a violation of the Land Use Code of Weber County, and is subject to the enforcement provisions and remedies thereof. In addition, the County may withhold any permits from the Project Site.

- 13.3. **Dispute Resolution Process.**

- 13.3.1. Conference.** In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County employees and contractors with information relating to the dispute, and (b) Developer shall send Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.
- 13.3.2. Mediation.** If this Conference process does not resolve the dispute within the 7-day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within 45 days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

14. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This agreement is specifically intended by the Parties to supersede all prior agreements between them, whether written or oral.

15. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

SIGNATORIES

"County"

Weber County, a body corporate and politic of the State of Utah

By: 

Chair, Weber County Commission

DATE: 2/7/2023

ATTEST: 

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

Attachment A

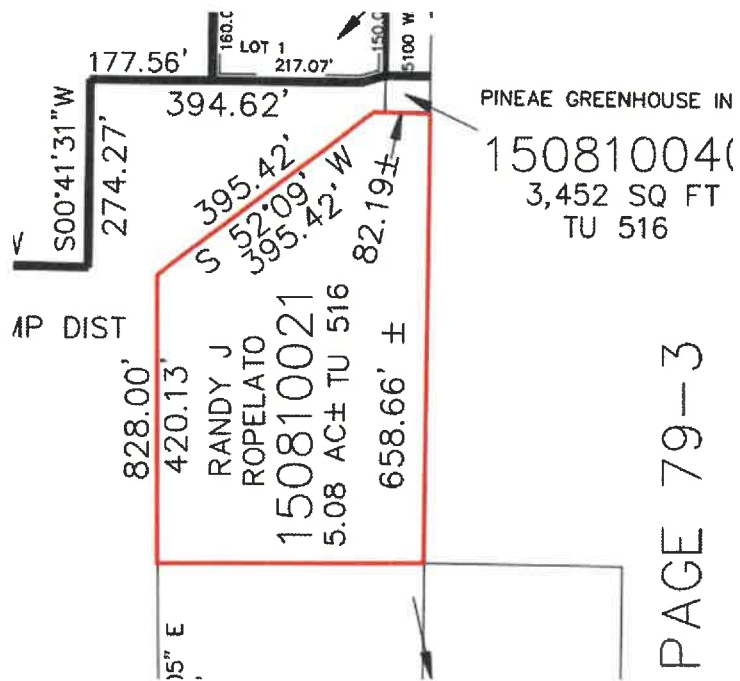
Project Area Legal Description and Graphic Depiction

All of the property described as follows:

PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 742.50 FEET NORTH 0D41'31" EAST AND NORTH 00D41'31" EAST 577.50 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 30, RUNNING THENCE NORTH 89D54'20" WEST 387.40 FEET, THENCE NORTH 0D16'05" WEST 420.13 FEET, THENCE NORTH 52D50'31" EAST 395.42 FEET, THENCE SOUTH 89D18'29" EAST 82.19 FEET THENCE SOUTH 0D41'31" WEST 658.66 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Attachment A (Cont.)

Project Area Legal Description and Graphic Depiction



PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 742.50 FEET NORTH 0D41'31" EAST AND NORTH 00D41'31" EAST 577.50 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 30, RUNNING THENCE NORTH 89D54'20" WEST 387.40 FEET, THENCE NORTH 0D16'05" WEST 420.13 FEET, THENCE NORTH 52D50'31" EAST 395.42 FEET, THENCE SOUTH 89D18'29" EAST 82.19 FEET THENCE SOUTH 0D41'31" WEST 658.66 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Attachment B

List of permitted uses

Accessory building incidental to the use of a main building; main building designed or used to accommodate the main use to which the premises are devoted; and accessory uses customarily incidental to a main use.

Air conditioning, sales and service

Antique, import or souvenir shop

Archery shop and range, provided it is conducted within completely enclosed building

Art and artists supply store

Barbershop

Beauty culture school

Beauty parlor for cats and dogs

Beauty shop

Bicycle sales and service

Bookstore, retail

Cafe or cafeteria

Camera store

Candy store, confectionery

Clinics, medical or dental

Contractor shop, provided work is conducted within a completely enclosed building

Data processing service and supplies

Day care center

Detective agency

Educational institution

Employment agency

Express and transfer service

Flooring sales and service, carpet, rug, and linoleum

Glass sales and service, with no outdoor storage

Government office buildings

House cleaning
Ice cream parlor
Insurance agency
Interior decorator and designing establishment
Legal office
Library
Linen store
Locksmith
Medical office
Museum
Newsstand
Nursery school
Office in which goods or merchandise are not commercially created, exchanged or sold
Optometrist, optician or oculist
Park and playground
Pharmacy
Photo studio
Physician or surgeon
Printing or copying sales and services
Professional office
Public utilities substation
Public building
Real estate agency
RV Storage, indoor only
Sign, business
Sign, flat
Sign, construction project
Sign, directional
Sign, freestanding

Sign, identification and information

Sign, marquee

Sign, nameplate

Sign, projecting

Sign, temporary

Sign, wall

Spa

Temporary building for uses incidental to construction work. Such buildings shall be removed upon the completion of the construction work

Travel agency

Vendor, short term, in compliance with the requirements of Section 108-13-3

Warehouse storage

Window washing establishment

