

**HUNTSVILLE TOWN  
ORDINANCE 2022-8-25**

**SAGE DEVELOPMENT AGREEMENT AND SUBDIVISION PLAT**

**AN ORDINANCE OF HUNTSVILLE TOWN, UTAH, ADOPTING A  
DEVELOPMENT AGREEMENT AND FINAL SUBDIVISION PLAT FOR  
THE SAGE PROJECT.**

**WHEREAS**, Huntsville Town (hereafter referred to as "Town") is a municipal corporation, duly organized and existing under the laws of the State of Utah;

**WHEREAS**, Title 10, Chapter 9a of the *Utah Code Annotated* provides the process of subdivision and development including the adoption of a development agreement;

**WHEREAS**, the Town received a subdivision application from CW Lands to subdivide certain real property as outlined in an Annexation Agreement previously entered by the Parties;

**WHEREAS**, the Parties have negotiated the Development Agreement over the course of the last year and now desire to enter said Development Agreement and approve the Final Subdivision Plat;

**WHEREAS**, the Planning Commission held a public hearing on the Development Agreement and Final Subdivision Plat at its meeting on August 25, 2022, and subsequently gave its recommendation to adopt this Ordinance and approve the Final Subdivision Plat on this day, the 15<sup>th</sup> of September, 2022;

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of Huntsville Town, Weber County, State of Utah, as follows:

**Section 1. Findings.**

The Town Council hereby finds as follows:

1. That this application for Subdivision was duly filed by CW Lands.
2. That the Town and CW Lands have negotiated a Development Agreement which is attached hereto and incorporated herein by this reference.
3. The Development Agreement includes the applicable provisions of the Annexation Agreement.
4. That all notices have been properly posted or otherwise given.
5. That the Planning Commission held its public hearing and gave its recommendation to the Town Council.
6. That the Town Council is the Legislative Body of the Town with authority to approve the Development Agreement.

**Section 2. Development Agreement Approved.**

The Development Agreement attached hereto as Exhibit "A" and incorporated herein by this reference is hereby adopted and approved. The Town Council hereby authorizes the Mayor to

correct any remaining grammatical or typographical errors, finalize the Development Agreement, and execute the same.

**Section 3. Final Subdivision Plat Approval.**

The Final Subdivision Plat attached hereto as Exhibit "B" and incorporated herein by this reference is hereby approved and adopted, the same shall be finalized and executed as may be required by Weber County prior to recording.


**Section 6. Effective Date.**

This Ordinance is effective immediately on adoption and posting.

**ADOPTED AND PASSED** by the Town Council this 15<sup>th</sup> day of September, 2022.

Municipal Roll Call Vote:

VOTES:	AYES	NAYS	EXCUSED	RECUSED
Mayor Richard Sorensen	X			
CM Bruce Ahlstrom	X			
CM Kevin Anderson	X			
CM Sandy Hunter			X	
CM Artie Powell	X			

  
RICHARD L. SORENSEN, Mayor

ATTEST:

  
BECKKI ENDICOTT, Town Clerk

RECORDED this 15<sup>th</sup> day of September, 2022.  
POSTED this 16 day of September, 2022.



**CERTIFICATE OF PASSAGE AND POSTING**

According to the provision of U.C.A. §10-3-713, 1953 as amended, I, the Town Clerk of Huntsville Town, hereby certify that foregoing Ordinance was duly passed and published, or posted on the above-referenced dates at the following locations: 1) Town Hall, 2) Huntsville Town Post Office, 3) [www.huntsvilletown.com](http://www.huntsvilletown.com) 4) [www.pmn.gov](http://www.pmn.gov)



Beckki Endicott, Town Clerk

DATE: 9-16-2022

## EXHIBIT "A"

WHEN RECORDED, RETURN TO:

CW The Sage, LLC

Attn: Legal Department

1222 W. Legacy Crossing Blvd., Ste. 6

Centerville, UT 84014

Affecting Parcel No(s): 24-019-001; 24-019-0023; 21-026-0040 through 0041; and  
24-019-0011 through 0013

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### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of the Effective Date (defined on the top of the first signature page below), by and between Huntsville Town, a municipal corporation of the State of Utah ("**Town**") and CW The Sage, LLC, a Utah limited liability company, or its permitted assigns ("**Developer**"). Town and Developer may be referred to herein individually as a "**Party**" or collectively, as the "**Parties**".

### RECITALS

A. Developer is the owner of approximately seventy-three (73) acres of real property located in the Town, as is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "**Property**").

B. The Property was annexed into the Town pursuant to that certain *Annexation Agreement for Property Located at Huntsville Town, Weber County, Utah*, dated effective August 5, 2021, and recorded in the office of the Weber County Recorder on October 22, 2021 as Entry Number 3192269 (the "**Annexation Agreement**") and is currently zoned Agricultural Zone A-3 (the "**A-3 Zone**") under the Town's existing zoning ordinances. Developer desires to develop upon the Property a maximum of twenty (20) three-acre minimum single-family lots ("**Project**") consistent with the Agricultural Zone A-3 zoning ordinance and the Annexation Agreement.

C. Developer or its assignee shall design, develop, and construct common improvements within the Project in accordance with (i) applicable laws, rules, ordinance, and regulations, including the Town's zoning ordinance in effect on the date on which this Agreement is approved by the Huntsville Town Council, and (ii) the terms and provisions of the Annexation Agreement.

D. The Town has the authority to enter into this Agreement pursuant to Utah Code Ann. ("**Utah Code**") Section 10-9a-102(2) and relevant provisions of the zoning ordinance, and the Town desires to enter into this Agreement with the Developer for the purpose of establishing specific rights and obligations, in addition to those already vested in the Property through the Agricultural Zone A-3 zoning ordinance, Annexation Agreement, or otherwise, of the Town and the Developer with respect to the Project in accordance with the terms and conditions of this Agreement.

E. The Parties intend to be bound by the terms of this Agreement as set forth in Utah Code §10-9a-102

### AGREEMENT

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

1. **Incorporation of Recitals.** The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. **Purpose.** The purpose of this Agreement is for the subdivision and development of land as legally described in Exhibit "A" and referred to as the "**Subdivision**" to be developed according to the terms of this Agreement.

3. **Zoning.** The Property shall be developed in accordance with the requirements of (i) the Annexation Agreement; (ii) the A-3 Zone and the Town Code and all other applicable land use regulations, standards, and specifications of the Town in effect as of the Effective Date of this Agreement ("**Town Land Use Regulations**"); and (iii) this Agreement. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of, Utah Code §10-9a-102(2). Notwithstanding this Agreement, the Parties remain subject to the approval and permit process, specifically related to subdivisions and building permits as provided in the Town Land Use Regulation, and any other applicable ordinances of the Town, and applicable state and federal law.

4. **Governing Standards and Guidelines.**

a. **Generally.** Subject to any deviations or modifications herein, the: (i) terms and provisions of the Annexation Agreement; and (ii) the Town A-3 Zone, and (iii) all other Town ordinances and regulations, including without limitation its Land Use Regulations, (collectively, the "**Governing Standards and Guidelines**"). All Developer submittals must comply with the Governing Standards and Guidelines. Any standards not addressed in this Agreement shall follow Governing Standards and Guidelines.

b. **Density.** The overall density for the Project shall not exceed twenty (20) residential dwelling units (the "**Maximum Lots**"). However, Developer may be further limited from developing the Maximum Lots by wetlands, topography, changes to highways, eminent domain acquisitions, the sale of any interests in the Property, including without limitation, under threat of eminent domain acquisition, or other limiting factors unrelated to this Agreement. Based upon current plans of the Utah Department of Transportation ("**UDOT**") for the Project widening S.R. 39 at 100 South Street, all lot size standards are anticipated to conform to the UDOT widening Project under UDOT's current plans. If UDOT takes additional property from a lot making it non-conforming and the Developer owns said lot, then UDOT is presumed to have taken the value of the lot and the subdivision is reduced by that lot. In the event the owner of the lot has filed an application for a building permit it is vested under state law and any taking by UDOT that reduced the lot size below the standard shall render the lot a legal non-confirming lot.

c. **Right-of-Way.** The sixty-six foot (66') wide and approximately two thousand four hundred fifty foot (2,450') long public right-of-way located within the development, and graphically depicted on the Concept Plan, shall be constructed and comply strictly with all requirements imposed by the office of the Weber County Fire Marshall, including without limitation those attached hereto as Exhibit "B", Town Land Use Regulations, Governing Standards and Guidelines (the "**Right-of-Way**"). Notwithstanding the terms and provisions contained in the Annexation Agreement, the Parties agree that the Right-of-Way shall be open to the public and no gates across the Right-of-Way shall be permitted. Additionally, the Association (as defined below) shall be responsible for the ongoing maintenance, repair, and general upkeep of the Right-of-Way including, without limitation, snow removal. No vehicle parking where posted "No Parking" by the

proper sign. In the event the homeowners' association fails to maintain the Right-of-Way to Governing Standards and Guidelines, the Town may provide written notice of such failure and a reasonable cure period to remedy the identified deficiencies. If the Homeowners' Association ("Association") fails to timely remedy the identified deficiencies to Governing Standards and Guidelines, then, upon expiration of the applicable cure period, the Town may, pursuant to Section 7 below, create a special service district (as defined in Utah Code §17D-1-102(11), or successor statute, to fund maintenance of the Right-of-Way, at which point the Town shall be charged with all ongoing maintenance, repair, and general upkeep of the Right-of-Way including, without limitation, snow removal.

d. **Violations.** In addition to fines allowed under state law or the municipal code, where the Association is in violation of this Agreement or other agreement with the Town, then the Association may be fined by the Town, after a thirty (30) day cure period commencing upon written notice from the Town: i) \$500 for the first uncured offense and, ii) \$1,000 for the second uncured offense. The Town may also record a Certificate of Non-compliance on the Association common property area until cured.

e. **Pedestrian Trail and Landscaping.** Developer shall install a pedestrian sidewalk/trail as well as landscaping improvements along 500 South on the North side of the Right-of-Way (collectively, the "Pedestrian Trail"). The Pedestrian Trail shall be constructed pursuant to Developer's construction drawings and design standards and specifications approved by the Town. Bicycle access is also permitted on the Pedestrian Trail.

f. **Culinary Water.** Culinary water shall be provided by the Town and the Developer has already paid the agreed connection fees in accordance with the applicable Annexation Agreement. Developer shall construct the culinary water facilities to the Governing Standards and Guidelines as reasonably determined by the Town Engineer. Meters and installations costs shall also be paid by the lot owner at the time each building permit is issued.

g. **Secondary Water.** The Project is located within the service boundary of the Huntsville Irrigation Water Company (the "Water Company"). As such, Developer and the Water Company will finalize plans for Developer to connect to the Water Company's system for secondary water service. The Developer acknowledges that it and the Association shall not be entitled to connect to the Town's secondary water system nor shall Developer and the Association be obligated to pay any costs, fees, expenses, or other liabilities associated with the Town's secondary water system as a condition of development of the Project. Developer and the Association shall have no right to use culinary water for secondary or irrigation purposes.

h. **Sanitary Sewer.** The Weber-Morgan Health Department has required a sewer system in accordance with Utah Rule 317-4. The Developer is required to construct the required sewer system in accordance with Utah Rule 317-4 as applied by the Weber-Morgan Health Department. The Association is responsible for all operation, maintenance, repair, and replacement for the sewer system. The Town and Developer shall enter a Sewer Maintenance Agreement making the Association fully responsible for the sewer system and outlining responsibilities of the Parties.

i. **Wetlands.** All applicable regulations of the Army Corps of Engineers shall be followed with regards to the Project and preserved with a mutually approved Conservation Easement to be submitted as part of subdivision approval holding the Town harmless for the same. The Developer does not anticipate any changes to the current boundaries shown on the Final Plat of the wetlands delineated as already inspected by the U.S. Army Corps of Engineers. The Developer agrees to indemnify the Town and any lot owner from any liability arising from approval of the Final Plat and/or approval of the Conservation Easement by the Army Corps of Engineers.

j. **Flag Lots.** As part of the development, Developer will construct the shared driveway portion of the flag lots in accordance with the approved Improvement plans. For the length of the flag, the shared driveway shall be a minimum of twenty-six feet (26') wide.

5. **Authorized Development Activities.** Upon execution of this Agreement, the following activities related to the Project and development of the Property shall be authorized subject to the Huntsville Town Planning Commission's Notice of Action conditions dated August 25, 2022 and noted as Exhibit "D":

a. **Improvement Plans.** The Town Engineer shall review and return comment on each improvement drawing within thirty (30) days of receipt.

b. **Final Plat.** The Developer submitted the Final Plat to the Town on or about June 15, 2022 and the Final Plat has been reviewed by the Town Engineer who has issued a Memorandum consisting of items to be addressed, and such items shall be resolved before signing and recording of the Final Plat.

6. **Vested Rights and Reserved Legislative Powers.**

a. **Vested Rights.** Developer may develop the Project in accordance with the provisions of the Governing Standards and Guidelines and approvals to the full extent permitted under the laws of the Town, the State of Utah and the United States, (collectively, the "**Vested Rights**"). The scope of any "vested rights" is subject to Utah Code §10-9a-509 and Utah's applicable common law.

b. **Reserved Legislative Powers.** Pursuant to Utah Code §10-9a-532(2)(a), this Agreement is not intended to, and does not (i) limit the Town's authority in the future to enact a land use regulation; or take any action allowed under Utah Code §10-8-84. Neither does this Agreement require the Town municipality to change the zoning designation of an area of land within the municipality in the future; or contain a term that conflicts with, or is different from a standard set forth in an existing land use regulation that governs the area subject to this Agreement with the same procedures for enacting a land use regulation under Utah Code §10-9a-502, including a review and recommendation from the planning commission and a public hearing. is different from, a standard set forth in an existing land use regulation that governs the area subject to this Agreement, unless the legislative body approves this Agreement in accordance with the same procedures for enacting a land use regulation under Utah Code §10-9a-502, including a review and recommendation from the planning commission and a public hearing. Notwithstanding this Section 6(b), the Project shall be limited to one (1) single-family home per lot and any and all other structures or improvements allowed in accordance with the Governing Standards and Guidelines.

c. **Applications and Legislative Powers.** The Town shall process each application of the Developer consistent with the Governing Standards and Guidelines and applicable ordinances and statutes.

d. **Indemnification.** Developer shall, at all times, protect, indemnify, save harmless and defend the Town and its agents, employees, officers, and elected officials from and against any and all claims, demands, judgments, expense, 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 employees, which may arise out of any act or failure to act, work or other activity related in any way to the failure to completely adhere to the Governing Standards and Guidelines, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the



work/development contemplated by this Agreement. Nothing in this provision shall be deemed to limit or impair Developer's rights or claims for contribution, indemnification, or relief against Developer's contractors, subcontractors, or suppliers. Unless otherwise provided by this Agreement, Developer shall not be required to indemnify, hold harmless, or defend the Town from any claims or liabilities caused by, or resulting from, any negligent actions or failures to act by the Town or its agents, employees, officers, or contractors.

e. **Referendum.** In the event of a referendum for the approval of this Agreement, and if the Town in its sole discretion, subsequent to the approval of this Agreement, elects to defend against a referendum (including a referendum or similar ballot measure), the Developer shall reimburse the Town for any applicable attorney's fees, court costs, and any related costs of defending against the referendum so long as such defense is undertaken with counsel acceptable to and approved in writing by Developer. The Developer's obligation to indemnify the Town during any defense of a referendum shall be reimbursed within ten (10) business days of the Town providing written notice to Developer of the Town's receipt of a periodic or final invoice, a judgment, a settlement, or other obligation by the Town, which written notice shall include support satisfactory to Developer that the Town has actually incurred and paid the identified reimbursement costs. Developer's obligation to indemnify against the actual incurred and paid costs of defense shall exist if, and only if, such defense is undertaken with counsel acceptable to and approved in writing by Developer, regardless of the outcome of the referendum or decisions to modify or withdraw the approval.

7. **Special Assessment Areas or Limited Purpose Government Entities.** Subject to Section 4(c) above, the Town, in its sole discretion, may create a special service district pursuant to Utah Code §17D-1-101, et seq., or successor statute, to fund maintenance of the public Improvements following the Town's final acceptance of the same.

8. **Town Obligations.**

a. **Approval.** The Town Council grants approval of this Agreement and Final Plat as a legislative function and in accordance with Paragraphs 5 and 6.

b. **Improvements.** The Developer shall submit a list of itemized improvements and cost estimate to the Town Engineer who may approve, modify, or deny each itemized improvement and cost as is reasonable under the circumstances. The Town Engineer has thirty (30) days from receipt to review the list of itemized improvements. Upon approval by the Town Engineer, the list of itemized improvements, along with the cost estimate shall become the official list of Subdivision Improvements ("**Improvements**") and the list of improvements and costs is referred to as the "**Engineer's Cost Estimate**". The Engineer's Cost Estimate shall be the basis for the estimated total cost of the Improvements plus a ten (10) percent contingency to account for the "Improvements" related to this Subdivision. The Town Engineer may include any fees owed to Town related to the Subdivision as part of the Engineer's Cost Estimate, including but not limited to planning, inspection, and engineering fees that the Town will incur during the construction of the Subdivision through final acceptance of the Improvements. The Engineer's Cost Estimate shall be attached as Exhibit "C" and incorporated herein. Developer is responsible for the actual costs, including any overages, on the Project. The Developer shall provide the Town a surety bond by a minimum "A" rated bond agency.

c. **Acceptance.** The Town may, in its reasonable discretion, accept Improvements intended for public use and constructed by Developer, or Developer's contractors, subcontractors, agents or employees, if the Improvements meet Governing Standards and Guidelines



applicable to the Project at the time of acceptance through the subdivision dedication process; provided, however, Town's acceptance of all applicable Improvements shall not be unreasonably withheld, conditioned, or delayed. Subject to any provision herein to the contrary, following such approval and acceptance by the Town, the Town shall be solely responsible for all accepted Improvements pursuant to the Governing Standards and Guidelines.

d. **Dedication.** Except for septic systems, secondary water systems, and any other Improvement not maintained by the Town, the Improvements constructed as part of this Project shall be dedicated to the Town at final acceptance.

9. **Developer Obligations.** In addition to all other duties and obligations of the Developer required by this Agreement and the Governing Standards and Guidelines, Developer shall have the following obligations.

a. **Dedication of Improvements.** Developer shall dedicate to the Town free of any interest all Improvements. Developer shall also dedicate all roadways, easements, and other interests as shown on the Final Plat to the Town.

b. **Town Fees.** The property owner of each lot shall pay all duly imposed applicable fees owned to the Town, or other agency, for issuance of the building permit.

c. **Construction Mitigation.** Developer shall submit to a pre-construction meeting with the Town and other affected entities as needed. The Developer will following reasonable mitigation measures to mitigate the impact of construction within the Project on adjoining parcels. Owner shall also adhere to the usual and customary construction impact mitigation measures required by the Town, including the SWPPP requirements as mandated by the State of Utah, as such may be amended from time to time. Additional reasonable site-specific mitigation measures may be required. The following measures shall be included with as part of the construction drawings

i. Limit of disturbance, vegetation protection, and the re-vegetation plan for all construction, including construction of public improvements;

ii. Protection of existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed;

iii. Construction traffic routing plan to minimize traffic impacts as approved by Town.

iv. Developer shall comply with all restoration landscaping requirements required by the U.S. Army Corps of Engineers and as may be specified in the Governing Standards and Guidelines.

v. Developer shall design and engineer all subdivision Improvements in compliance with applicable standards.

10. **Default.** An "Event of Default" shall occur under this Agreement if any Party fails to perform its obligations hereunder when due and the defaulting Party has not performed the delinquent obligations within ninety (90) days following delivery to the delinquent Party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 90-day period, a Party shall not be in default so long as that Party commences to cure the default within that 90-day period and diligently continues such cure in good faith until complete.

Prior to either Party exercising any default remedies set forth in Section 10(a), the non-defaulting Party hereby agrees to meet and confer with the defaulting Party to explore and determine, in good faith, a mutually acceptable resolution to cure the default or an acceptable plan to cure the default in the future.

a. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to exercise all of the following rights and remedies against the defaulting Party:

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, including attorney's fees to the prevailing Party.

2. The right to withhold all further approvals, licenses, permits, or other rights associated with the Project or development activity pertaining to the defaulting Party as described in this Agreement until such default has been cured.

3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting Party.

The rights and remedies set forth herein shall be cumulative.

11. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such Party at its address shown below:

To the Developer: CW Land Co., LLC  
Attn: Colin Wright  
1222 W. Legacy Crossing Blvd., STE 6  
Centerville, Utah 84014  
[colin@cw.land](mailto:colin@cw.land)

With a copy to: CW Development Group, LLC  
Attn: Tony Hill  
1222 W. Legacy Crossing Blvd., STE 6  
Centerville, Utah 84014  
[tony@cw.land](mailto:tony@cw.land)

To the Town: Beckki Endicott, Town Clerk  
PO Box 267  
Huntsville, Utah 84317  
[bendicott@huntsvilletown.com](mailto:bendicott@huntsvilletown.com)

12. **Payment of Fees.**

a. **General Requirement of Payment of Fees and Costs.** Developer and/or an assignee shall pay to the Town all fees in amounts and at times specified in the Governing Standards and Guidelines. In order to facilitate the Town's third-party engineer to timely review the Improvement plans, the Town shall send to Developer an invoice identifying a retainer payment equal to Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "**Retainer**"), which amount Developer shall pay to the Town within ten (10) business days

of receipt. Thereafter, the Town agrees to solely use the Retainer to pay its third-party engineer for costs arising from its review of the Improvement plans.

b. **Reimbursement for “Upsizing”.** The Town shall not require Developer to “upsized” any public improvements (i.e., to construct the improvements to a size larger than required to service the Project) unless the Town agrees to compensate Developer for the pro rata costs incurred as a result of such upsizing. Compensation to Developer for any “upsizing” of the public improvements shall be agreed to by Developer and the Town as a part of a customary reimbursement agreement which may be entered into by such Parties.

### 13. **Security.**

a. **Bonding.** With respect to development of the Project, the Parties agree that the only required bonding for the Project shall be governed by this Section 13(a). Additionally, the Parties agree and acknowledge that, following approval of the Improvement, Developer is expressly authorized to post a surety bond issued by a reputable company and approved by the Town Attorney (the “**Bond**”) to satisfy all bonding requirements for the Project. Developer’s Bond obligations shall be as follows:

i. **Ten Percent (10%) Bond.** Upon approval of the Improvement Plans and the Engineer’s Cost Estimate, which review, and approval shall not be unreasonably withheld, conditioned, or delayed, and prior to the Developer commencing any Improvements (as identified in the Improvement plans) within the Project, Developer shall post a Bond equal to ten percent (10%) of the Engineer’s Cost Estimate (the “**10% Bond**”), and

ii. **Plat Recordation.** At recordation of the final plat, Developer shall replace the 10% Bond with a new Bond equal to the amount of the incomplete Improvements (as identified in the Improvement plans) for the Project.

b. **Warranty.** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of one (1) year from the date that the Town accepts the improvement when completed by the Developer and as requested by the Developer for conditional acceptance as provided by law.

### 14. **General Terms and Conditions.**

a. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors, and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a “**successor**” includes a Party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such Party’s submission of land use applications to the Town relating to the Property or the Project.

c. **Non-Liability of Town Officials and Employees.** No officer, representative, consultant, attorney, agent, or employee of the Town shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the Town, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. **Third Party Rights.** Except for the Developer, the Town, and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the Town has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the Town has accepted the dedication of such improvements

e. **Further Documentation.** This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering, and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. **Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking, business arrangement, or fiduciary relationship between the Town and the Developer.

g. **Agreement to Run With the Land.** This Agreement shall be recorded in the office of the Weber County Recorder against the Property and is intended to and shall be deemed to run with the land and individual parcels and shall be binding on and shall benefit all successors in the ownership of any portion of the Property. No later than ten (10) days after the Town enters into this Agreement, the Town shall cause the same to be recorded in the office of the Weber County Recorder.

h. **Performance.** Each Party, person, and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other Party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of the final plat, certificates of occupancy or other approvals associated therewith.

i. **Applicable Law.** This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. **Construction.** This Agreement has been reviewed and revised by legal counsel for both Town and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

k. **Consents and Approvals.** Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any Party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the Town shall be given or withheld by the Town in compliance with this Agreement and the Town Ordinances.

l. **Approval and Authority to Execute.** Each of the Parties represents and warrants as of the Effective Date this Agreement, that each has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. **Estoppel Certificate.** If no default has occurred in the provisions of this Agreement and upon ten (10) days prior written request by Developer or an assignee, the Town will execute an estoppel certificate to any third party, certifying that Developer (or an assignee) at that time is not in default of the terms of this Agreement.

n. **Termination.**

i. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement shall be until ten (10) years after this Agreement is recorded (unless earlier terminated or modified by written amendment as set forth below). The Term may be extended by mutual agreement of the Parties for up to two (2) periods of five (5) years each, which extensions shall be granted if Developer has not been notified by Town of any default hereunder, or if any noticed default is in the process of being cured as provided for herein. However, the provisions that apply to the Association shall continue in perpetuity.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the Town and the defaulting Party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

15. **Assignability.** The rights and responsibilities of Developer under this Agreement may not be assigned in whole or in part by Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

16. **Sale or Conveyance.** If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, requirements, and density as applicable to such parcel and be subject to the same limitations and rights of the Town as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the Town except as otherwise provided herein.

17. **No Waiver.** Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

18. **Severability.** If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

19. **Force Majeure.** Any prevention, delay, or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment, or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations, or controls; pandemics or epidemics; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

20. **Integration.** This Agreement constitutes the entire understanding and agreement between the Parties, and supersedes any previous agreement, representation, or understanding between the Parties relating to the subject matter hereof; provided, however, that the zoning ordinance and the Town Master Plan shall govern the procedures and standards for approval of each subdivision and public improvement.

21. **Remedies/Costs of Enforcement.** Either Party hereto may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In the event of an Event of Default by Developer or in the event of a default hereunder by the Town, that Party shall be liable for all reasonable costs and expenses incurred by the other Parties enforcing the provisions of this Agreement, whether or not legal action is instituted.

22. **Amendment.** This Agreement may be amended only in writing signed by the Parties hereto. All amendments to this Agreement shall be considered by the Town Council if and as applicable in accordance with the requirements and procedures set forth in the zoning ordinance. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit, or other portion of the Project.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the 15<sup>th</sup> day of September, 2022 (the "Effective Date").

**TOWN:**

HUNTSVILLE TOWN

By: [Signature]  
Name: Richard L. Sorensen  
Title: Mayor - Huntsville Town

**ATTEST:**

**APPROVED AS TO FORM:**

By: Beekki Endicott  
Name: Beekki Endicott  
Title: Clerk - Huntsville Town

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH                    )  
   §  
COUNTY OF WEBER            )

On this 15<sup>th</sup> day of September, 2022, personally appeared before me Richard L. Sorensen, the Mayor and authorized signer of Huntsville Town, whose identity is personally known to me, or proven on the basis of satisfactory evidence, to be the person who executed this Development Agreement on behalf of Huntsville Town, and who duly acknowledged to me that she / he executed the same for the purposes therein stated.

[Signature]  
(Notary Public)



[Developer Signature and Acknowledgement Page Follows]



**EXHIBIT "A"**

Legal Description of the Property

PART OF THE EAST HALF OF SECTION 18 AND THE WEST HALF OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

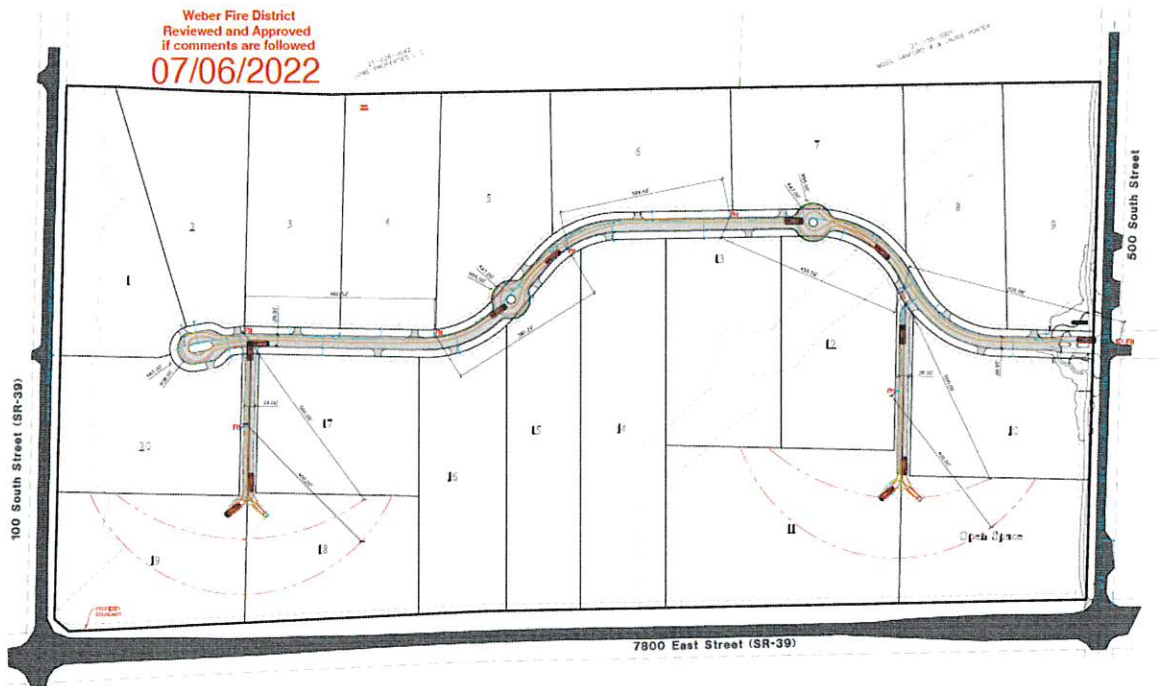
BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF 500 SOUTH STREET AND THE EASTERLY RIGHT OF WAY LINE OF HIGHWAY 39, SAID POINT BEING NORTH 2148.19 FEET AND WEST 592.15 FEET FROM A FOUND WITNESS CORNER TO THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE ALONG THE EASTERLY RIGHT OF WAY LINE OF HIGHWAY 39 THE FOLLOWING TWO (2) COURSES: (1) N01°06'54"W 1453.03 FEET; AND (2) N02°42'54"W 1009.43 FEET; THENCE N39°56'32"E 45.65 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF 100 SOUTH STREET; THENCE S88°46'33"E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, 1279.69 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE THE FOLLOWING FIVE (5) COURSES: (1) S01°12'05"W 120.70 FEET; (2) S02°49'41"W 203.53 FEET; (3) S01°36'49"W 319.23 FEET; (4) S01°00'32"E 985.88 FEET; AND (5) S00°53'49"E 873.20 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 500 SOUTH STREET; THENCE N88°28'15"W ALONG SAID NORTHERLY RIGHT OF WAY LINE, 1242.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 72.021 ACRES MORE OR LESS.

## EXHIBIT "B"

### Weber County Fire Marshall Right-of-Way Requirements

See image below showing Weber County Fire Marshall's approval if the requirements established on that certain *Plan Review*, reviewed by David Reed, Fire Marshal, dated July 6, 2022, for the Sage Subdivision are followed. Although not attached to this Agreement, the Plan Review is expressly included and made a part of this Agreement by this reference.



**EXHIBIT “C”**

Engineer's Costs Estimate

[TO BE PROVIDED BY TOWN ENGINEER]

EXHIBIT “D”

Huntsville Town Planning Commission Notice of Action



EXHIBIT "D"

## NOTICE OF ACTION

**TO: Huntsville Town Council**  
**FROM: Huntsville Town Planning Commission**  
**DATE: August 25, 2022**  
**RE: Sage Subdivision – Final Plat**

In accordance with *Utah Code* 10-9a-202, or any similar notice that may be required under State Law or the Municipal Code, notice is hereby given that the Planning Commission, at its meeting on August 25, 2022 reviewed your Final Plat Application and in that meeting took the following action:

  X   RECOMMEND APPROVAL of the Final Plat Application subject to and based upon compliance with the following:

1. Compliance with the Town Engineer and any effected agency requirements.
2. Approval of the Development Agreement and Bond for public improvements.
3. Final delineation approval from the Army Corps of Engineers.
4. Approval from Weber-Morgan Health for sewer system design under Utah Rule 317.
5. Further review from Weber County addressing the culvert and drainage at 500 South that connects to the Chevron.

The Final Plat for Sage Development will now be reviewed for approval by the Huntsville Town Council at the next Huntsville Town Council Meeting. The date of the Town Council Meeting is Thursday, September 15, 2022, 6:45 p.m. at the Ogden Valley Library, 131 South 7400 East, Huntsville, Utah, 84317.

The decision of the Planning Commission may be appealed to the Town's Appeal Authority by filing a written such appeal within ten (10) calendar days from the date of the decision on the Application. The Appeal Authority must follow the code requirements. The Appeal Authority may uphold, modify, or reverse the decision of the Planning Commission or impose any additional requirements consistent with the Municipal Code. The decision of the Appeal Authority is final.

  
Shannon Smith, Clerk

cc: Town Engineer