Ent **501454** Bk **1358** Pp **1151-116**4 Date: 03-JUN-2021 10:48:16AM Fee: \$40.00 Check Filed By: HP

Fee: \$40.00 Check Filed By: HP MARCY M MURRAY, Recorder WASATCH COUNTY CORPORATION For: WADSWORTH DBURBAN HEBER LLC

AND COVENANT RUNNING WITH THE LAND

(Sequoia Apartments at Turner Mill)

THIS AGREEMENT entered into this 27th day of 000, 2021, by and between Heber City, hereinafter referred to as "City" and the undersigned WADSWORTH DBURBAN HEBER, LLC, hereinafter referred to as "Developer".

WHEREAS, the Developer has proposed the Sequoia Apartments at Turner Mill development, consisting of 145 Apartments, to be constructed upon that certain real property located in Heber City, Wasatch County, Utah, legally described on Exhibit A attached hereto.

NOW, THEREFORE, the parties hereby agree as follows:

- 1. With respect to Exhibit B (the approved site plan), the Developer shall, prior to beginning any construction, transfer to the City all required water rights necessary for development, contingent upon the City Engineer's approval, in the form of diversion water rights acceptable to the City.
- 2. Developer shall grant a 5' temporary construction easement to the City at no cost and without warranties along the proposed 1500 South road alignment to allow for construction of the concrete sidewalk in the City road project. Additionally, the City acknowledges and agrees to the provision in the Turner Mill Master Plat Subdivision Agreement allowing the first five (5) feet of width (identified within Parcel C on the Master Plat) of the development frontage to be included in Developer's open space requirement.
- 3. The open space outlined in Exhibit C-1 shall remain open space perpetually. All open space shall be maintained by the Developer or property owner's association. Should the City, or any other governmental body, engage in any future taking of any of the open space, for any reason, the City, or governmental body, will be responsible to maintain the area that was so taken and Developer or a property owner's association shall not be responsible for the same.
- 4. The landscaping shall be completed as shown in the landscape drawings in Exhibit C-2 through C-5. Landscape maintenance, including landscaping in the public right-of-way areas associated with the development, shall be the responsibility of the property owner or property owner's association.
- 5. All streets, utilities, and improvements will be constructed and improved up to property lines. Any sidewalks, trails, or similar amenities falling outside of the dedicated public right-of-way shall be privately owned and maintained by the Developer or property owner's association. Where requested by the City, easements and any such amenities associated therewith, that are approved by and acceptable to the City, shall be accessible to the public in perpetuity.
- 6. All public streets shall be dedicated to the City and slurry sealed per the City's Standard Specifications during the warranty period.

- 7. Any facilities which collect or convey storm drainage from private property, alleys, or streets shall be private and maintained by the Developer or property owner's association. Some of these private facilities are also designed to receive storm water from public streets which shall also be the Developer or property owner's association responsibility; provided, however, if storm water is collected by a facility located on public property and then conveyed to a facility located on private property, the City shall be responsible for maintaining and repairing the facility located on public property.
- 8. Water, sewer, and pressurized irrigation main lines within the development shall be private and maintained by the property owner's association. The 8" water line constructed by this development in the 1500 South road alignment shall be completed by the Developer prior to the City's construction of 1500 South, and coordinated so as to not unreasonably delay the City's road project.
- 9. Developer shall immediately begin construction, deposit funds and complete construction work as required by Heber Light and Power for undergrounding of power infrastructure along the Daniel Road frontage in accordance with the plans that are approved by the City and without any further approvals and/or permits from the City. The timing of this part of the project shall coincide with, and be concurrent with completion of the undergrounding work required for the City's construction of the 1500 S and Daniel Road intersection.
- 10. Developer shall provide, by separate document acceptable to the City, a Public Utility Easement (PUE) 10 feet in width immediately inside the property boundary for Lot 2 of the Turner Mill Master Subdivision Plat for utilities.
- 11. Offsite improvements required to support this development, specifically described below and shown in Exhibit D, shall be completed concurrently with the improvements for Lot 2 and operational before building permits are issued as a condition precedent.

Offsite Improvements:

- a. Replacement of City sewer line from Daniel Road to Industrial Parkway (CIP S-042) as outlined in the Subdivision Agreement for the Turner Mill Master Plat. The entire cost of this work shall be reimbursed by the City within thirty (30) calendar days of the sewer line being completed and accepted by the City.
- b. Construction of the 1500 South Hwy 40 Connector Road which shall be completed by Heber City.
- 12. Developer agrees to abide by the best management practices for storm water pollution prevention as adopted by the City and state as of the date of this Agreement, as well as environmental and sensitive lands regulations, and obtain any necessary state or federal permits.
- 13. Developer will provide a copy of their noxious weed control plan approved by the Wasatch County Weed Control Board.
- 14. All aforementioned improvements shall consist of frontage improvements of curbs, sidewalks, pavements, inlets, planting of trees and placing of monuments, as required and consistent with City Standards as of the date of this Agreement, including but not limited to

- the City's subdivision improvement requirements, and the requirements noted on approved construction drawings.
- 15. Except for the costs related to 1500 South and the offsite sewer line, which shall be the responsibility of the City, said improvement costs shall be paid by the Developer, their assigns, transferees or successors as owners or Developers.
- 16. Developer shall execute a performance agreement and provide a cash bond or letter of credit in a form acceptable to the City, guaranteeing the improvements related to the project. Developer can install the improvements at its own risk and forgo providing a cash bond or letter of credit for the improvements prior to obtaining any building permits. At the time of obtaining building permits, Developer shall provide a cash bond or letter of credit for amount of the total improvement cost less the improvement costs that have been completed and accepted by the City. Developer will provide a warranty amount of ten percent (10%) of the improvement costs to the City following the final acceptance of Developer's improvements.
- 17. The parties agree that the public improvements will be completed concurrently, and that no building permits shall be issued thereto without completing the public improvements required in Section 15.08.020 of the Heber City code.
- 18. Upon the full and complete performance of all of the terms and conditions of this Agreement by the Developer, or their assigns, transferees or successors, and upon approval and acceptance of the improvements, the City agrees to take over roads dedicated to the public, and maintain them as public works and public highways of the City. Nothing contained here shall be construed in any way to render the City liable for any charges, costs, or debts for material, labor, or other expenses incurred in the construction, completion or making of these improvements, except for those related to 1500 South and the offsite sewer line.
- 19. In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
- 20. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties.
- 21. If any one or more provisions of this Agreement shall be held by any court to be invalid or unenforceable such invalidity or unenforceability shall not affect the validity of enforceability of any other portion of this Agreement.
- 22. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.

- 23. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.
- 24. This Agreement may be terminated by the parties hereto upon mutual written agreement, or at any such time that the City approves the Property for redevelopment.

[Signatures and Acknowledgments Follow]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this 27^{4h} day of 8021.

HEBER CITY:

Kelleen Potter, Mayor

ATTEST:

Heber City Recorder

DEVELOPER:

WADSWORTH DB URBAN HEBER, LLC,
a Utah limited liability company

By: Wadsworth Heber, LLC,
a Utah limited liability company

Its: Manager

By: Wadsworth & Sons II, LLC,
a Utah limited liability company

Its: Manager

By: Name: Kip L. Wadsworth
Its: Executive Manager

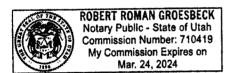
STATE OF UTAH

: ss.

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COUNTY OF SALT LAKE)

On this 15 day of _______, 2021, personally appeared before me Kip L. Wadsworth, Executive Manager of Wadsworth & Sons II, LLC, a Utah limited liability company, Manager of Wadsworth Heber, LLC, a Utah limited liability company, Manager of Wadsworth dbUrban Heber, LLC, a Utah limited liability company, who duly acknowledged to me that said company executed the same.



NOTARY PUBLIC

EXHIBIT A

Lot 2, TURNER MILL MASTER SUBDIVISION PLAT, according to the official plat thereof recorded August 28, 2020 as Entry No. 483557 in Book 1309 at Page 807 in the office of the Wasatch County Recorder.

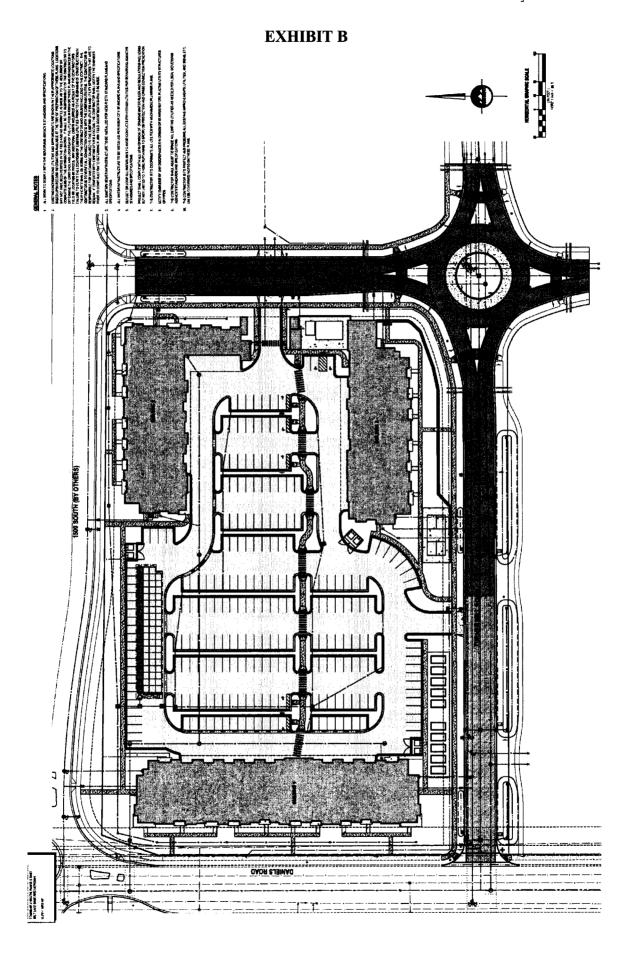


EXHIBIT C-1



EXHIBIT C - 2

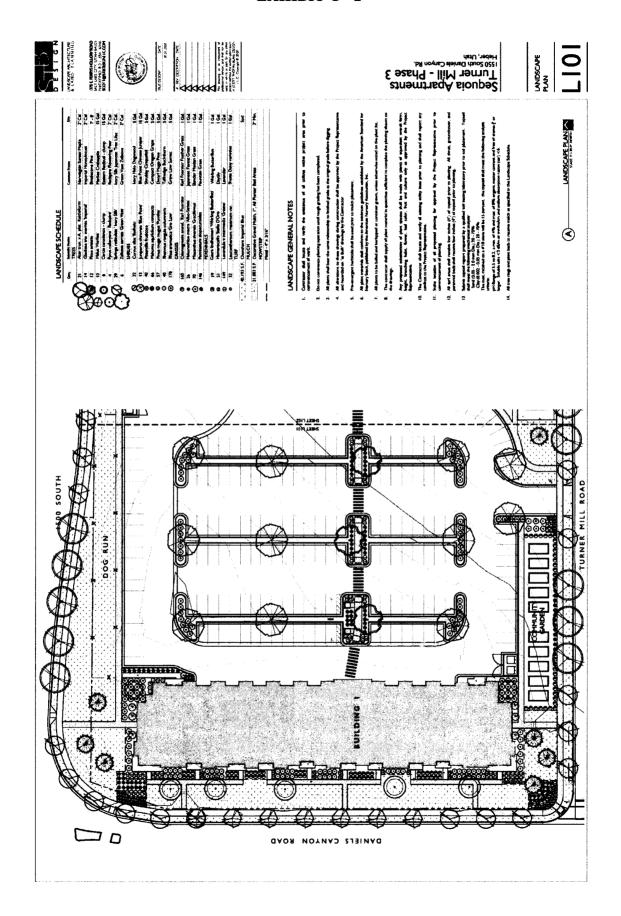


EXHIBIT C-3

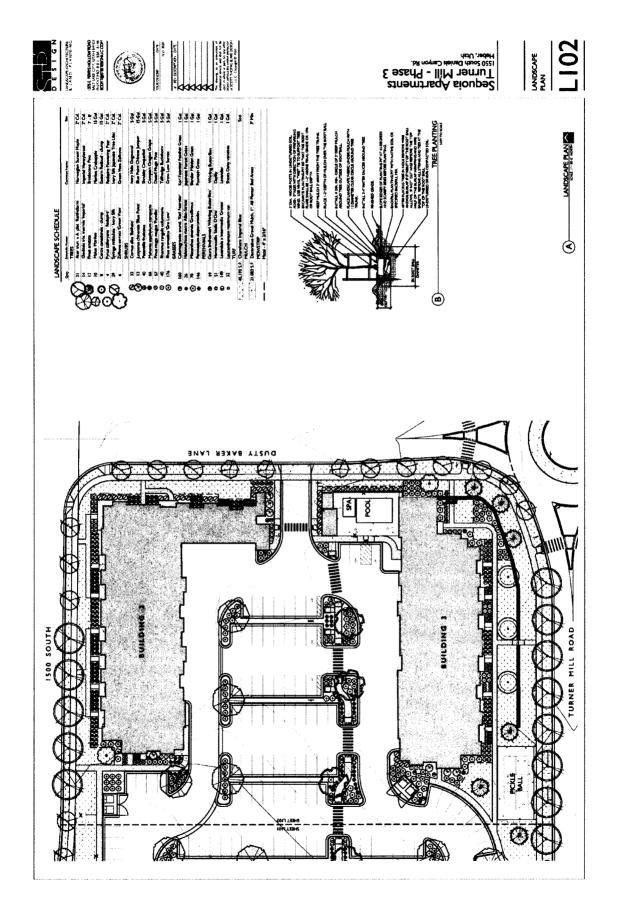


EXHIBIT C - 4

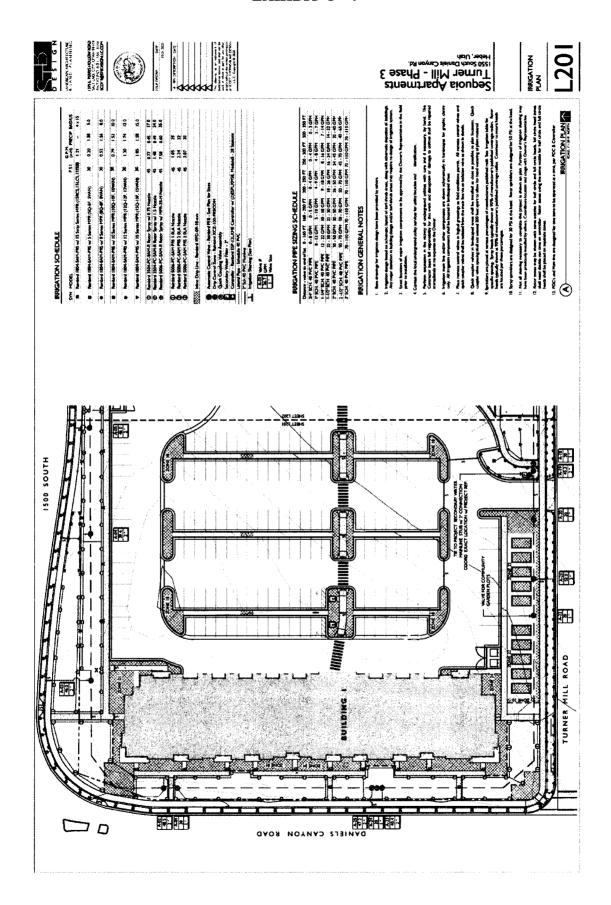


EXHIBIT C - 5

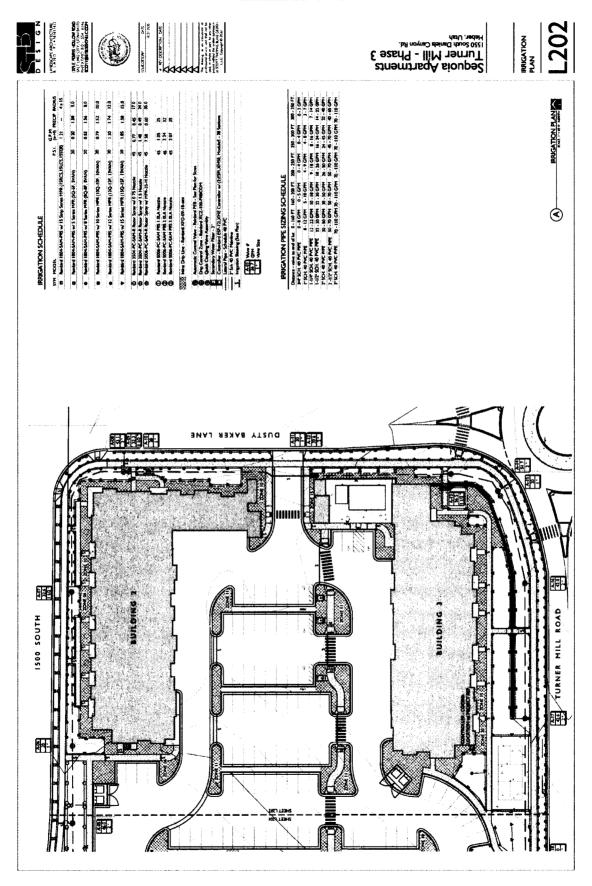


EXHIBIT D

