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E# 3229876 PG 1 OF 5

LEANN H KILTS, WEBER CTY. RECORDER
13-APR-22 2:20 PM FEE \$40.00 NNP
REC FOR: SHANE SKEEN

RIGHT-OF-WAY AND
UTILITIES IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 2nd day of September , 2021 by and between PLAIN CITY, a Utah Municipal Corporation whose principal place of business is 4160 West 2200 North, Plain City, Utah 84404 (hereinafter referred to as “the City”) and Big Sky Development, LLC, a Utah Limited Liability Company (hereinafter referred to as “Big Sky”), and is based upon the following:

RECITALS

A. This Agreement relates to certain real property located generally at the intersection of 3600 West and 2200 North in Plain City, Weber County, State of Utah, (hereinafter referred to as “the Property”) and more particularly described as:

Land Serial Number 190350062

LEGAL DESCRIPTION: 2020 R/P ACRES: 5.9 PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U S SURVEY: BEGINNING AT A POINT 70.17 RODS NORTH AND 22.5 RODS WEST OF THE SOUTHEAST CORNER OF SAID QUARTER SECTION, RUNNING THENCE NORTH 90.33 RODS, THENCE WEST 24 RODS, THENCE SOUTH 90.33 RODS, THENCE EAST 24 RODS TO THE PLACE OF BEGINNING. EXCEPT THAT PORTION WITHIN 2200 NORTH STREET PER DEDICATION PLAT 59-40 AND THAT PORTION WITHIN 3600 WEST STREET PER DEDICATION PLAT 5-80. SUBJECT TO BOUNDARY LINE AGREEMENT AS RECORDED E# 2310035 (12-DEC-2007) ALSO EXCEPTING: A J SKEEN SUBDIVISION (E# 2339179) ALSO LESS & EXCEPTING: PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE WEST LINE OF S AND J SUBDIVISION LOCATED SOUTH 01D00'00" WEST 412.39 FEET, FROM A POINT LOCATED NORTH 89D58'59" WEST 98.35 FEET

AND NORTH 89D12'02" WEST 371.26 FEET FROM THE CURRENT MONUMENTED LOCATION OF THE EAST QUARTER CORNER OF SAID SECTION, SAID POINT BEING OF RECORD LOCATED NORTH 2648.25 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION, AND RUNNING THENCE ALONG THE WEST LINE OF S AND J SUBDIVISION SOUTH 01D00'00" WEST 304.78 FEET TO THE NORTH LINE OF 2200 NORTH STREET; THENCE ALONG SAID NORTH LINE NORTH 89D00'00" WEST 351.92 FEET; THENCE NORTH 01D17'49" EAST 303.56 FEET; THENCE SOUTH 89D12'02" EAST 350.35 FEET TO THE BEGINNING. CONTAINING 2.45 ACRES. E# 3095885.

B. Individuals associated with Big Sky are the owners of the property and have proposed to subdivide the property into seven residential lots as shown on the preliminary and final plats for the Skeen ^{Brothers} Subdivision. The Skeen ^{Brothers} Subdivision has been approved by the Plain City Planning Commission. The final plat was approved by the City Council of Plain City on July 1, 2021.

C. The timing of the Skeen ^{Brothers} Subdivision proposal was based on the City's plans to improve 3600 West Street (hereinafter the "street improvements"). The street improvements will include all pavement, storm drain, curb, gutter, and sidewalk that would otherwise be required of those involved in subdivision of property under the City land use regulations.

D. In order to proceed with the street improvements, the City will need to acquire additional right-of-way to expand the width of the streets in the areas abutting the property. It is in the interest of both the City and Big Sky that this required right-of-way be dedicated to the City.

E. The City has been working with Weber County and other governmental agencies to secure funding for the street improvements for these streets. That street improvements project is now prepared to move forward as soon as funding is finalized and construction contracts executed.

F. Big Sky and the City determined that it would be in the mutual interest of both the Big Sky and the City to proceed with development of the property at this

time. In order to proceed with the subdivision and improvement of the lots to be created on the property, the Big Sky will need to install sewer, water, secondary water, and other utilities to serve the property (hereinafter the “private utility improvements”).

G. Because to do so later would involve placing utility lines in the streets after the street improvements were complete, neither the City nor the Big Sky considers it desirable to cut into the newly constructed street improvements to install the private utility improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, receipt of whereof is hereby acknowledged, it is agreed as follows:

1. Big Sky will proceed before the City street improvements are initiated to install the sewer, water, secondary water, and other utility connections needed for the lots proposed for 3600 West.
2. Big Sky will complete the private utility improvements before the City begins construction of the street improvements project.
3. Upon written notification by the City that the street improvements project plans are finalized, that funding is secure, and the street improvement project is certain to proceed, Big Sky Development will also arrange for the property owners involved to convey to the City good and marketable title to that portion of the property that the City needs for the additional right-of-way to complete the street improvements, including Parcel A as shown on the Skeen Subdivision Plat.
4. In the meantime, since both the City and Big Sky Development anticipate that the street improvements project will proceed, the final plat for the Skeen Subdivision has been approved and recorded. Building permits may be issued for dwellings proposed on the lots within the Skeen Subdivision. The street improvements will not need to be complete before building permits and certificates of occupancy are issued for the Skeen Subdivision lots, but Big Sky will otherwise comply with the requirements of Plain City Code 11-4-5 Issuance of Building

Permits and Certificates of Occupancy. Big Sky will not make final connections for driveways until the street improvements are completed.

6. Nothing in this agreement shall be interpreted to require the City to complete the street improvements. If, at any time, the City and Big Sky determine that the City is unable or unwilling to complete the street improvements, Big Sky, with the permission and coordination of the City, may complete that portion of the street improvements which Big Sky would otherwise be required to complete under the codes, standards, and ordinances relating to the approval of a subdivision.

7. In the case of any change in city regulations, regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under the Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then the parties shall negotiate in good faith to revise the Agreement to give effect to its original intent.

8. This Agreement shall be fully assignable, in whole or in part, by either party and shall bind and inure to the benefit of the parties.

9. The following shall constitute defaults on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party.

10. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in

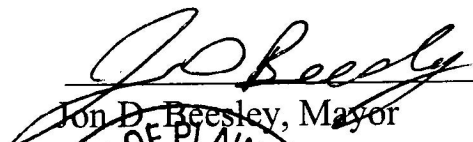
equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

11. This Agreement may be amended or terminated by the mutual consent of the parties.

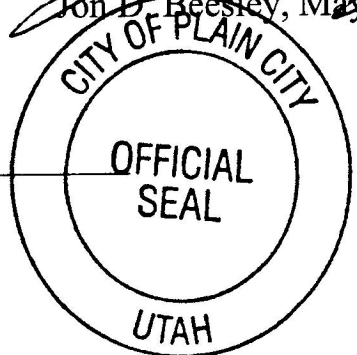
IN WITNESS WHEREOF, the said parties have hereunto set their hands as of the date noted above in this Agreement.

THE CITY:
PLAIN CITY, a Utah Municipal
Corporation


By



Jon D. Beesley, Mayor

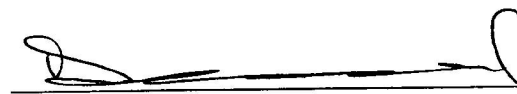


ATTEST:

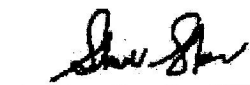


Diane Hirschi
City Recorder

BIG SKY DEVELOPMENT, LLC



Dustin Skeen, Member/Manager



Shane Skeen, Member/Manager