

**AGREEMENT FOR DEVELOPMENT OF LAND
AT 150 32ND STREET,
OGDEN CITY, UTAH**

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This Agreement for Development of Land (the “**AGREEMENT**”) is dated February 11, 2024⁵, and is entered into between Ogden City, a Utah municipal corporation (the “**CITY**”) and DMC Ogden LLC, a Utah limited liability company (the “**OWNER**”). CITY and OWNER are individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

RECITALS

WHEREAS, in furtherance of the objectives of the Ogden City General Plan, the CITY has considered an application for a zone change on certain real property located at 150 32nd Street, Ogden City, legally described in Section 1.04 below (the “**SUBJECT AREA**”), from its present zoning designations of C-2 (Community Commercial) to R-4/CO (Multiple Family Residential with Conditional Overlay) in accordance with the provisions and requirements of Title 15 Chapter 29 of the CITY’s zoning ordinance;

WHEREAS, the OWNER has presented to the CITY a general proposal for development in the SUBJECT AREA, which provides for development in a manner consistent with the Ogden City General Plan;

WHEREAS, the OWNER desires approval by the City Council of the R-4/CO zoning for the SUBJECT AREA;

WHEREAS, the CITY is willing to grant the approval of such rezoning subject to the OWNER agreeing to certain requirements and restrictions of use and development within the SUBJECT AREA, which requirements and restrictions are intended to:

1. Provide more specific land use designations and land development suitability by eliminating or restricting potential uses otherwise allowed in the underlying R-4 Zone.

WHEREAS, development in the SUBJECT AREA pursuant to the terms of this AGREEMENT is in the vital and best interests of the CITY and the health, safety, morals, and welfare of its residents;

WHEREAS, the OWNER agrees and desires to proceed with the development and use of the SUBJECT AREA subject to the terms and conditions of this AGREEMENT.

NOW THEREFORE, each of the Parties hereto, for and in consideration of the premises and agreement of the other Party hereto, does hereby covenant and agree as follows:

**ARTICLE 1
DEFINITIONS**

The following terms have the meaning and content set forth in this ARTICLE I, wherever used in this AGREEMENT:

- 1.01 “**CITY**”. The “**CITY**” shall mean Ogden City, a Utah municipal corporation. The principal office of the CITY is located at 2549 Washington Boulevard, Ogden City, Utah 84401.
- 1.02 “**OWNER**”. “**OWNER**” means DMC Ogden LLC, a Utah limited liability company
- 1.03 “**PROPOSED DEVELOPMENT**”. The “**PROPOSED DEVELOPMENT**” shall mean the development of the SUBJECT AREA as a single-family rowhouse project.

- 1.04 **"SUBJECT AREA"**. The **"SUBJECT AREA"** means real property located at 150 32nd Street, Ogden City, Utah, further described as follows:

PART OF BLOCK 9, CENTRAL PARK ADDITION; PART OF BLOCK 1, CENTRAL PARK ANNEX; AND PART OF AN UNNUMBERED LOT IN SOUTH PARK ADDITION, OGDEN CITY, WEBER COUNTY, UTAH; DESCRIBED AS FOLLOWS:

ALL OF LOTS 6 THROUGH 10 OF BLOCK 9 CENTRAL PARK ADDITION AND ALL OF LOTS 18 THROUGH 23 AND A PORTION OF LOT 24 OF BLOCK 1 OF CENTRAL PARK ANNEX AND A PORTION OF 20 FOOT WIDE ALLEY WAY NORTHERLY OF SAID LOTS. THE BOUNDARIES OF SAID PARCEL ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 6 AND RUNNING THENCE NORTH 88°40'22" WEST (NORTH 89°02' WEST BY RECORD) 272.81 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF 32ND STREET TO A POINT 273.00 FEET DISTANT EASTERLY OF THE INTERSECTION OF SAID NORTHERLY RIGHT OF WAY LINE AND THE EASTERLY RIGHT OF WAY LINE FOR WALL AVENUE; THENCE NORTH 01°19'00" EAST 159.73 FEET (NORTH 00°58'00" EAST 159.75 FEET BY RECORD) TO THE NORTH LINE OF SAID 20 FOOT ALLEY; THENCE SOUTH 88°41'03" EAST (SOUTH 89°02' EAST BY RECORD) 272.82 FEET ALONG THE NORTH LINE OF SAID 20 FOOT ALLEY TO THE SOUTHWEST CORNER OF LOT 16 OF SAID BLOCK 9; THENCE SOUTH 01°19'12" WEST 159.79 (SOUTH 00°58' WEST 159.75 FEET BY RECORD) TO THE POINT OF BEGINNING.

PARCEL NO. 04-062-0024

ARTICLE II CONDITIONS PRECEDENT

- 2.01 This AGREEMENT shall not take effect until the date upon which all of the following events and requirements have occurred or been completed (the **"EFFECTIVE DATE"**):
- 2.01.1 The Ogden City Council has approved this AGREEMENT as a condition of approval for rezoning of the SUBJECT AREA to R-4/CO;
 - 2.01.2 The Mayor has executed this AGREEMENT on behalf of the CITY; and
 - 2.01.3 The OWNER has executed this AGREEMENT.

ARTICLE III OWNER COVENANTS REGARDING FUTURE DEVELOPMENT AND USE

- 3.01 Upon the EFFECTIVE DATE, the OWNER waives the right to use or occupy the SUBJECT AREA or to use, occupy or erect thereon any building or structure other than single-family rowhouses, notwithstanding the fact that other or more dense uses may otherwise be allowed in the R-4 zone as either a permitted or conditional use under existing or future zoning regulations:
- 3.01.1 Single family rowhouses subdivided so that each dwelling unit could be individually owned, along with garages, parking areas, residential accessory structures, utilities, recreational or similar amenities associated with the single family rowhouse dwellings on the SUBJECT AREA.

- 3.02 Upon the EFFECTIVE DATE, the OWNER waives the right to use, occupy, or erect upon the SUBJECT AREA any structure designed, erected, altered, or used or occupied which does not comply with the following site development standards:
- 3.02.1 The SUBJECT AREA shall be developed as single-family rowhouses.
 - 3.02.2 The SUBJECT AREA shall be subdivided to allow ownership of each unit within the project.
 - 3.02.3 Garages, parking areas, residential accessory structures, recreational similar amenities associated with single-family rowhouses shall be developed per planning requirements.
- 3.03 The applicable development standards of the Ogden City Municipal Code shall apply in the review and approval of the final site plan, building plans, and all other permits related to the development of the SUBJECT AREA:
- 3.04 The development of the SUBJECT AREA as contemplated by this AGREEMENT is conditioned upon approval by Ogden City of both a site plan and final subdivision plat, which must be recorded with the Weber County Recorder. In the event OWNER is unable to secure approval of both the site plan and the final subdivision plat, the AGREEMENT shall be void *ab initio* and the CITY may commence proceedings to revert the zoning of the SUBJECT AREA back to that existing prior to the rezoning application.

ARTICLE IV CITY'S UNDERTAKINGS

A change in zoning affecting the SUBJECT AREA from its present zoning of C-2 to the R-4/CO zoning shall be effective as described in an ordinance approved by the Ogden City Council subject only to the terms and conditions of this AGREEMENT. Such rezoning shall take effect immediately upon the EFFECTIVE DATE.

ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF THE CITY

- 5.01 CITY Approval Required. The development plans (*i.e.* site plan, technical architectural and engineering plans), and any changes to such development plans, must be approved by the CITY pursuant to the requirements of the Ogden City zoning ordinance and all other applicable provisions of the Ogden City Municipal Code. In addition to any standards, requirements, or regulations imposed by ordinance, the development plans must also be reviewed by the CITY to determine compliance with the terms of this AGREEMENT. This approval is in addition to any required CITY approval which is directed to zoning, engineering or structural matters or compliance with building codes and regulations or applicable City, State or Federal law relating to land use or construction standards. As required by Section 6.10, below, the CITY shall provide OWNER with written notice and the opportunity to cure any alleged failure by OWNER to comply with any terms of this AGREEMENT. OWNER reserves any and all rights to appeal any administrative determinations made by the CITY regarding OWNER's compliance with this AGREEMENT.
- 5.02 Issuance of Permits. OWNER shall have the sole responsibility for obtaining and/or ensuring that all necessary permits are obtained and shall make application for such permits directly to the Ogden City Community and Economic Development Department and other appropriate departments and agencies. OWNER shall timely submit and, prior to the date scheduled for construction, obtain building permit(s), and engineering permits as required, and thereafter prosecute such work in a diligent and commercially reasonable manner, as is authorized in such permits. Failure to timely file and/or obtain issuance of all permits, and prosecute such work in a diligent and commercially reasonable manner once issued, shall constitute a material breach of this AGREEMENT and grounds for termination thereof at the option of the CITY and the exercise of any and all remedies contained herein.

- 5.03 CITY Obligations Conditional. The obligations of the CITY, as set forth in this AGREEMENT, are subject to the condition that the OWNER shall not be in default of its obligations under this AGREEMENT at any time; *provided* the CITY must provide OWNER with written notice and the opportunity to cure or remedy any such default, as set forth under Section 6.01. The obligations of the CITY will continue during the entire time the OWNER commences and/or continues to cure or remedy any such default in accordance with Section 6.01. The CITY shall deliver to the OWNER written notice if the CITY is unable to fulfill any such obligations unless and until the OWNER has completed its cure or remedy of such default.
- 5.04 Completion Date. The OWNER for itself, and its successors and assigns, agrees to promptly begin and prosecute to completion, in a diligent and commercially reasonable manner, the PROPOSED DEVELOPMENT of the SUBJECT AREA, through the obtaining of all necessary building and engineering permits, and after the issuance of such permits the subsequent construction of the improvements thereon, and that such permits shall be obtained and such construction shall in any event commence no later than three (3) years following the EFFECTIVE DATE of this AGREEMENT and, once commenced, be diligently pursued, in a commercially reasonable manner, to completion no later than four (4) years following such EFFECTIVE DATE.

The Parties mutually acknowledge and agree that, as set forth under Section 6.03, the time periods and deadlines set forth under this Section 5.04 shall be adjusted and extended to include any FORCE MAJEURE DELAY PERIOD.

- 5.05 Access to the SUBJECT AREA. The CITY, for the purpose of inspection, and whenever and to the extent necessary, to carry out the purposes of this and other sections or provisions of this AGREEMENT shall be permitted access to the SUBJECT AREA, so long as the same shall not unreasonably interfere with the use and development of the SUBJECT AREA consistent with the terms and conditions of this AGREEMENT.

ARTICLE VI REMEDIES

- 6.01 Notice and Cure / Remedies Upon Default or Breach. In the event of any default in or breach of this AGREEMENT, or any of its terms or conditions, either Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event such default or breach cannot reasonably be cured or remedied within said thirty (30) day period, the Party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such breach and shall continue diligently thereafter to cure or remedy such breach or default in a timely manner. In case such action is not taken, or diligently pursued, the aggrieved Party may institute such judicial proceedings as may be necessary or desirable in its option to:
- A. Cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; or
 - B. Terminate this AGREEMENT. In the event that the OWNER is the defaulting party, upon termination, the CITY may proceed to reinstate the zoning as it existed prior to the changing of the zoning to R-4/CO; *provided* CITY must first provide OWNER with written notice and an opportunity to cure or remedy any such default, as set forth under Section 6.01.
- 6.02 Additional Remedies of CITY. Notwithstanding anything in this AGREEMENT to the contrary, it is agreed by the Parties that (unless due to the provisions of Section 6.04, below) if the OWNER fails to commence construction of the PROPOSED DEVELOPMENT within three (3) years of the EFFECTIVE DATE, the CITY shall have the right, but not the obligation, at the sole discretion of the CITY to terminate this AGREEMENT and the CITY may institute proceedings to change the zoning to the zoning designation that

existed prior to the changing of the zoning to R-4/CO. As used in this AGREEMENT, the phrase “commence construction” means that demolition of any and all structures or other improvements located on the site, including the removal of any and all debris resulting from such demolition, has been completed, and OWNER has obtained any and all necessary permits.

- 6.03 Delay Beyond Parties’ Control (Force Majeure). For the purposes of any other provisions of this AGREEMENT, neither CITY nor OWNER, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the preparation of the SUBJECT AREA for development, the seeking or obtaining of permits, or beginning and completion of construction of improvements, or progress in respect thereto, in the event any such delay in the commencement, performance and/or completion of such obligations are due to any acts, instances, events or causes that are beyond such Party’s control and without such Party’s intentional acts, gross negligence or willful misconduct (“**FORCE MAJEURE**”), including, for example but without limitation, acts of God, or of the public enemy, civil disturbance or disobedience, riot, sabotage, terrorism, acts of the government, acts of the other Party, fires, floods, pandemics, epidemics, quarantine restrictions, strikes, labor unrest or disputes, freight embargoes, unavailability or shortage of labor or materials, and unusually severe weather or unforeseeable delays of contractor or subcontractors due to such causes. In the event of any such acts or instances of FORCE MAJEURE, all time periods and deadlines within which and by which either Party must fulfill its obligations under this AGREEMENT shall be adjusted and extended to include the **FORCE MAJEURE DELAY PERIOD**. As used in this AGREEMENT the term “**FORCE MAJEURE DELAY PERIOD**” shall mean, with respect to any particular occurrence of FORCE MAJEURE, the number of days of delay in either Party’s performance of their respective obligations under this AGREEMENT resulting from such occurrence of FORCE MAJEURE.
- 6.04 Extension by the CITY. The CITY, acting through its Mayor and in writing, may extend the time for the OWNER to perform any term, covenant, or condition of this AGREEMENT; *provided, however*, that any such extension shall not operate to eliminate any of the OWNER’s obligations and does not constitute a waiver of the CITY’s right with respect to any other term, covenant or condition of this AGREEMENT. The provisions of the Section 6.04 shall not apply to any acts or instances of FORCE MAJEURE, which, as provided under Section 6.03, shall cause all time periods and deadlines within which and by which OWNER must fulfill its obligations under this AGREEMENT to be adjusted and extended.

ARTICLE VII GENERAL PROVISIONS

- 7.1 Assignability. Except for an assignment to a federal or state chartered bank or credit union, OWNER shall not assign this AGREEMENT or any rights or interests herein without the prior written consent of the CITY. Any such assignment of this AGREEMENT, the rights and obligations set forth herein, shall be accomplished via assignment and assumption agreement, wherein the assignee shall consent in writing to be bound by the terms of this AGREEMENT, and the CITY shall sign acknowledging and approving such assignment. The CITY’s approval shall be at CITY’s sole discretion but shall not be unreasonably withheld. Notwithstanding the foregoing,
- Upon notice to the CITY, the OWNER shall have the right to assign and transfer this AGREEMENT and its rights and obligations hereunder to an entity controlled by or under common control with the OWNER, so long as any such entity shall consent in writing to be bound by the terms of this AGREEMENT. Any assignee shall consent in writing to be bound by the terms of this AGREEMENT as a condition of the assignment. The OWNER shall not transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this AGREEMENT separate from its interest in the SUBJECT AREA.
- 7.2 Successors and Assigns of OWNER. This AGREEMENT shall be binding upon the OWNER and its permitted successors and assigns, and where the term “OWNER” is used in this AGREEMENT, it shall mean

and include the successors and assigns of the OWNER except that the CITY shall have no obligation under this AGREEMENT to any unapproved, or otherwise unauthorized, successor or assign of the OWNER.

- 7.3 Reserved Legislative Powers. Nothing in this AGREEMENT shall limit the future exercise of the police power by the CITY in enacting zoning, subdivision development and related land use plans, policies, ordinances and regulations after the date of this AGREEMENT.
- 7.4 Minimum Zoning Standards and Vested Rights. It is not the intention of this AGREEMENT to waive any existing minimum zoning standards, or to restrict the ability of the Ogden City Council to enact additional standards in the future. The only vested right obtained by the OWNER in the approval of this AGREEMENT as part of the rezoning, is the right under the terms and conditions of this AGREEMENT, to apply for site plan approval and building permits.
- 7.5 No Joint Venture or Partnership. This AGREEMENT does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto.
- 7.6 Third Party Beneficiaries. Any claims of third-party benefits under this AGREEMENT are expressly denied.
- 7.7 Agreement to Run With the Land. This AGREEMENT shall be recorded against the property referred herein as the SUBJECT AREA. The AGREEMENT its rights and obligations, shall be deemed to run with the land and shall be binding on all successors in the ownership and development of part or all of SUBJECT AREA.
- 7.8 Integration. This AGREEMENT contains the entire agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.
- 7.9 Authority. The parties represent that each has the requisite authority to enter into this AGREEMENT and that the same has been duly authorized by all necessary or appropriate corporate or regulatory action.

IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be duly executed on its behalf and OWNER has caused the same to be duly executed on its behalf.

CITY: OGDEN CITY CORPORATION,
a Utah Municipal Corporation

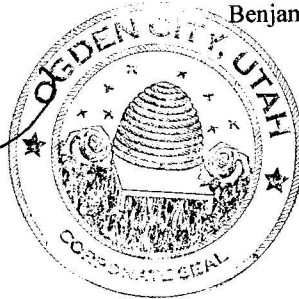
By: [Signature]
Benjamin K. Nadolski, Mayor

ATTEST:

[Signature]
City Recorder

APPROVED AS TO FORM:

City Attorney



OWNER: DMC Ogden LLC, a Utah limited
liability company

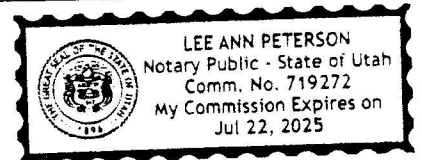
By: [Signature]
Name/Title: David Anderson, Manager

ACKNOWLEDGMENTS

STATE OF UTAH)
:SS
COUNTY OF WEBER)

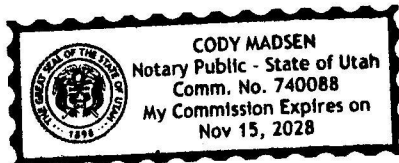
On this 20th day of March, 2025, personally appeared before me, Benjamin K. Nadolski, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the Mayor of Ogden City, a municipal corporation, and that the foregoing document was signed by him in behalf of said Ogden City, and that said Ogden City executed the same.

[Signature]
Notary Public



STATE OF UTAH)
:SS
COUNTY OF WEBER Salt Lake

On this 10th day of February, 2025, personally appeared before me David Anderson, who being by me duly sworn did say that he/she is the Manager of DMC Ogden LLC, a Utah limited liability company, and that the foregoing instrument was signed on behalf of said company, and he/she acknowledged to me that said corporation executed the same.



[Signature]
Notary Public



**OGDEN CITY
CONTRACT APPROVAL CHECKLIST**

Contract Type:	Agreement - General
Contract Title:	DMC Ogden, LLC - 150 32nd
Contract Amount:	0.00
Period of Performance:	- 2/11/2028
Contract ID:	5943
Munis Contract ID:	
Vendor/Customer:	DMC Ogden, LLC

Contracting Manager:	Aimee Pagano
Department:	CED - Planning

APPROVALS:

DATE APPROVED:

Comptroller:	2/27/2025
Fiscal Operations:	2/27/2025
City Attorney:	2/28/2025
(James Tanner)	
Division Director:	2/27/2025
Executive Director:	3/11/2025
CAO Review:	3/11/2025

Bid/Procurement Method Used:	None-Bidding is NA
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SS Exceptions for General Contracts:

SS Exceptions for Professional Services:

Sole Source Justification: