

Development Agreement for Kastlecove Phase 1

RETURNED

OCT 05 2023

When recorded return to:
South Weber City
1600 East South Weber Drive
South Weber, UT 84405

E 3546468 B 8352 P 214-226
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/5/2023 12:12 PM
FEE 0.00 Pgs: 13
DEP NM REC'D FOR SOUTH
WEBER CITY

13-302-0013
13-296-0026
13-027-0019, 0002
13-021-0004, 0005,
0054, 0055, 0093

**DEVELOPMENT AGREEMENT
FOR KASTLECOVE PHASE 1
IN SOUTH WEBER CITY**

This **DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into as of this 26th day of September 2023, by and between **KASTLE ROCK EXCAVATION & DEVELOPMENT LLC**, a Utah limited liability company having its principal business address as 8085 South Juniper Court, South Weber, UT (hereinafter referred to as "Developer"), and **SOUTH WEBER CITY**, a municipal corporation of the State of Utah (hereinafter referred to as "City"), of 1600 East South Weber Drive, South Weber, UT 84405. Developer and City are hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

- A. Developer represents that it owns certain real property or is the authorized agent of the owner of property located within the city located at approximately 7382 South 1050 East, South Weber, UT, and more particularly described in **Exhibit A** (the "Property").
- B. Developer wishes to develop or otherwise improve the Property pursuant to the City's subdivision, zoning, and land use planning ordinances and requirements, as the Kastlecove Phase 1 Subdivision (the "Subdivision").
- C. To establish the Subdivision, Developer will be required by city ordinance to install infrastructure for the Subdivision.
- D. In addition to the infrastructure required for the Subdivision, Developer has agreed to relocate an existing 16" culinary waterline from its current location to the proposed future city right-of-way for the Subdivision as shown in **Exhibit B**. Developer shall relocate and reinstall the waterline per current City Standards.
- E. City owns certain real property within the proposed Subdivision on Lester Street; more particularly described in **Exhibit C**, a copy of which is attached hereto and incorporated herein by reference (the "Land"). In exchange for all costs related to the construction of the road connecting Lester Street to 7375 South, along with the relocation of the waterline, the City will convey ownership of the Land to the Developer to be included as part of the Subdivision.
- F. City, acting pursuant to its authority under Utah Code Ann. § 10-9a-101, *et seq.*, and its land use policies, ordinances, and regulations, has made certain determinations with respect to the Development and, in the exercise of its administrative discretion, has elected to approve this Development Agreement for the purpose of specifying the obligations of the respective parties with

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respect to the installation of required infrastructure improvements and such other matters as the Parties agree herein.

AGREEMENT

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

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals and all Exhibits referenced therein are hereby incorporated by this reference and made part of this Agreement.
2. **City Laws and Purpose.** City determines that the provisions of this Agreement relating to establishment of Developer's rights and obligations are consistent with City laws, including the City's land use ordinances, the purposes set forth in the zoning district, and the City's General Plan. This Agreement has been adopted by City via resolution as an administrative act to implement the approval for the development of the Property.
3. **Approval.** This Agreement does not remove the Developer from their obligation to adhere to the City's established approval process. The Developer shall comply with all applicable time frames, as specified in the City Code. The Parties' respective obligations, as set forth herein, are subject to and conditioned upon City's final approval of the rezone of the Property and approval of the Kastlecove Phase 1 Subdivision.
4. **Relocation of Existing Culinary Waterline and Services.** Currently, an existing 16-inch (16") waterline serves the residents along Lester Street, with a portion of the waterline being located outside of a designated city right-of-way, as shown on **Exhibit B**. For maintenance purposes, City identified the need to relocate the existing waterline into a city right-of-way and install new service connections for all existing services connected to said waterline. Developer agrees to complete all work necessary to abandon the existing 16-inch (16") culinary waterline as shown in **Exhibit B** and install a new 16-inch (16") culinary waterline with all necessary fittings, valves, and services within the Subdivision's proposed city right-of-way. The waterline will be constructed to meet all current City standards in place at the time of development.
5. **Ingress / Egress Road.** The Developer is required to install an ingress/egress route for the Subdivision. Said ingress/egress road shall connect the existing 7375 South Street to the existing Lester Street. The road shall be constructed by the Developer to meet all current City standards in place at the time of development. This obligation may require the Developer to acquire additional properties or other necessary rights to use said properties to meet these obligations. Said acquisition shall be the sole obligation of Developer and shall be achieved at their sole cost and expense, unless otherwise agreed by the City at City's sole and ultimate discretion and in compliance with all applicable ordinances and other similar requirements.
6. **Right of Way Deed.** Prior to recordation of the plat, the Developer agrees to acquire all required signatures to record a vacation agreement and thereby release any and all rights associated with Right of Way Deeds, recorded in the Davis County Recorder's Office as Entry #305504 (Book 358 Page 622), #310020 (Book 368 Page 436), and #1414384 (Book 2310 Page 545-552).

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7. **Lester Street Vacation.** Prior to recordation of the plat, the City agrees to vacate a portion of Lester Street, similar to the example shown in **Exhibit D**. The property will return to the last prior owner before it was dedicated as Lester Street right-of-way.
8. **Deed of Land.** In exchange for Developer relocating the culinary waterline as described in paragraph 4 and after fulfilling in order the requirements as outlined below, City shall deed the Land as described in **Exhibit C** to Developer through a Quitclaim Deed and cause such to be recorded with the Davis County Recorder.
 - 8.1. **Approvals.** Developer shall receive all required approvals from City for the Property including request to rezone, Subdivision approval, and this Agreement.
 - 8.2. **Pre-construction Meeting.** A pre-construction meeting shall be held with the Developer, City, Developer's Engineer, Developer's General Contractor, City Engineer, and all other entities as requested or required by the City. No work shall be completed on the Property until the pre-construction meeting is held.
 - 8.3. **Removal of Existing Home (7382 South 1025 East).** Developer shall obtain all required permits to remove the existing home and any outbuildings and clear the parcel for construction of the Subdivision. Developer shall ensure removal and proper disposal of all materials from the site and shall follow all applicable laws and regulations.
 - 8.4. **Construction of all Underground Infrastructure.** Developer shall install all required underground infrastructure as shown on the approved Subdivision improvement plans.
 - 8.5. **Completion of all Surface Improvements.** Developer shall complete all surface improvements (asphalt, curb, and gutter) including the connection to existing pavement on 7375 South and the closure of the North section of 1025 East (private road) between South Weber Drive and Lester Street.
 - 8.6. **Escrow for Remaining Public Improvements.** Developer shall escrow funds for all remaining public improvements prior to the recordation of the Subdivision Plat. Escrow shall be established as required by City ordinance.
9. **Costs and Fees.** Developer shall act as the owner of the Property and shall be the sole payor on the contract for the construction of all required improvements and all fees associated with required permits and approvals. City has no financial obligation related to this Property or to the terms of this Agreement.
10. **Warranty and Escrow.**
 - 10.1. Developer warrants to City that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all said materials and equipment will be of good quality, free from faults and defects and in conformance with all industry standards, plans, specifications, and laws. All such material and equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be

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considered defective. If required by City, Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

10.2. Without limiting any special warranties contained herein, Developer guarantees that the Property and all portions thereof will be free from all defects in material and workmanship for a period of one (1) year following completion of the Subdivision. As part of the guarantee, Developer agrees to commence repair or replacement of any defective material or equipment and performance of any labor necessary to correct any such defect in the Subdivision within fifteen (15) business days after receipt of notice thereof and thereafter to diligently prosecute all corrective work to completion, all at Developer's sole cost and expense.

10.3. City shall retain the equivalent of ten percent (10%) of the Developer's cost of the Subdivision in an escrow to be kept and maintained for one (1) year commencing upon the date of substantial completion of the Subdivision in order to ensure compliance with the one (1) year warranty set forth herein and the condition of the Subdivision after the one (1) year period. The money held in escrow shall be returned to Developer upon request for final inspection and after final acceptance by the City Council after one (1) year from substantial completion of the Subdivision. Notwithstanding anything to the contrary, the money held in escrow may not be used by Developer during the one (1) year period to perform warranty work as required under the warranty provisions set forth herein.

11. Successors and Assigns.

11.1. **Binding Effect.** This Agreement shall be binding upon the successors and assigns of the Parties. Developer acknowledge and agree that if the City is not paid in full in a timely fashion by Developer of all monies as stated in this Agreement, no future development will be permitted by City on the Property until full payment is made.

11.2. **Assignment.** Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any unrelated third-party individual or entity without assigning the rights and responsibilities under this Agreement and without the prior written consent of City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to South Weber City, and the prior written consent of City may also be evidenced by letter from City to Developer.

12. **Default.** In the event either Party fails to perform its obligations hereunder or to comply with the terms and commitments hereof and does not otherwise cure or comply within thirty (30) days after having been given written notice of default from the other Party, the non-defaulting Party may, at its election, have the following remedies, which shall be cumulative.

12.1. All rights and remedies available at law and in equity, including but not limited to injunctive relief, specific performance, and/or damages;

12.2. To cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement; and

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- 12.3. The right to withhold all further approvals, licenses, permits, or other rights associated with any activity or development described in this Agreement, to the extent allowed by law, until such default is cured.
13. **Insolvency.** Insolvency, bankruptcy, or any voluntary or involuntary assignment by any Party for the benefit of creditors, which action is unresolved for a period of one hundred eighty (180) days, shall be deemed to be a default by such Party under this Agreement.
14. **Court Costs and Attorneys' Fees.** In the event of any legal action or defense between the Parties arising out of or related to this Agreement or any of the documents provided for herein, the prevailing Party or Parties shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their costs and reasonable attorneys' fees.
15. **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, be by certified mail, return receipt requested, postage prepaid, to such Party at:

Developer: Kastle Rock Excavation & Development, L.L.C.
 8085 East Juniper Court
 South Weber, UT 84405

City: South Weber City
 Attention: City Manager
 1600 East South Weber Drive
 South Weber, UT 84405

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this section.

16. General Terms and Conditions.

- 16.1. **Amendments.** Any alteration or change to this Agreement shall be made only after complying with any applicable notice and hearing provisions of MLUDMA and applicable provisions of the City Laws.
- 16.2. **Captions and Construction.** This Agreement shall be construed according to its fair meaning and as if prepared by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed to effectuate the public purposes, objectives and benefits set forth herein while protecting any compelling countervailing public interest and providing to Developer vested development rights as described herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word.
- 16.3. **Term of Agreement.** The term of this Agreement shall be for a period of five (5) years.

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- 16.4. Agreement to Run with the Land.** This Agreement shall be recorded in the office of the Davis County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 16.5. No Representations or Warranties.** Except for the duties, obligations and express warranties of the Parties set forth herein, including each Party's representation and warranty that each Party has authority to sign for and bind themselves and the persons or entities for whom they sign or for whom they imply to sign, the Parties make no representations or warranties of any kind or nature whatsoever.
- 16.6. No Warranty of Subdivision Approval.** Nothing in this Agreement expressly or impliedly guarantees or otherwise warrants the approval, final or otherwise, of the City or any of its subdivisions of any subdivision or other land use application with respect to the Property or any portion thereof, inasmuch as said approval(s) is a legislative determination to be carried out independently by and through the different and varying bodies and commissions of the City, including, but not limited to, the City Council.
- 16.7. Legal Representation.** Each of the Parties hereto acknowledge that they each have been represented by legal counsel in negotiating this Agreement and that no Party shall have been deemed to have been the drafter of this Agreement.
- 16.8. Non-Liability of City Officials.** No officer, representative, agent or employee of the City shall be personally liable to any other Party hereto or any successor in interest or assignee of such Party in the event of any default or breach by the defaulting Party, or for any amount which may become due the non-defaulting Party, its successors or assigns, or for any obligation arising under the terms of this Agreement.
- 16.9. Entire Agreement.** This Agreement, together with the exhibits hereto, integrates all the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective Parties hereto.
- 16.10. No Third-Party Rights.** The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the Parties named herein. The Parties alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.
- 16.11. 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, government restrictions, regulations or controls, judicial orders, enemy or hostile government actions, war, civil commotions, fires, floods, earthquakes 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. Any Party seeking relief under the provisions of this paragraph must have noticed

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the other parties in writing of a force majeure event within thirty (30) days following the occurrence of the claimed force majeure event.

16.12. Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.

16.13. Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

16.14. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Davis County, Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

[Signature Pages Follow]

Development Agreement for Kastlecove Phase 1

"Developer"
Kastle Rock Excavation & Development, LLC

By Layne Kap
Title President

Witness the hand of said grantors, this 4 day of October 2023.

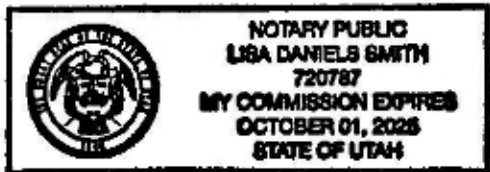
Layne Kap
Kastle Rock Excavation & Development, LLC

State of Utah)
) ss.

County of Davis)

On this 4th day of October, 2023, personally appeared before me,
Layne Kap, the signer of the foregoing instrument, who duly
acknowledged that he/she is the President of Kastle Rock Excavation & Development, a
Utah limited liability company and signed said document in behalf of said Kastle Rock Excavation &
Development, L.L.C. by Authority of its Bylaws or Resolution of its Board of Directors, and said
Layne Kap acknowledged to me said Limited Liability Company
executed the same.

WITNESS my hand and official seal the day and year in this certificate first above written.




Lisa Daniels Smith
NOTARY PUBLIC

Development Agreement for Kastlecove Phase 1

"City"
SOUTH WEBER CITY

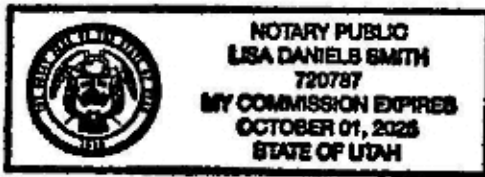
By 
David Larson, City Manager


Attest: Lisa Smith, City Recorder

State of Utah)
) ss.
County of Davis)

Subscribed and sworn to before me on this 26th day of September 2023, by David Larson.

WITNESS my hand and official seal the day and year in this certificate first above written,




NOTARY PUBLIC

Development Agreement for Kastlecove Phase 1

Exhibit A

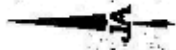
The "Property"

(Boundary Description of the Kastlecove Subdivision)

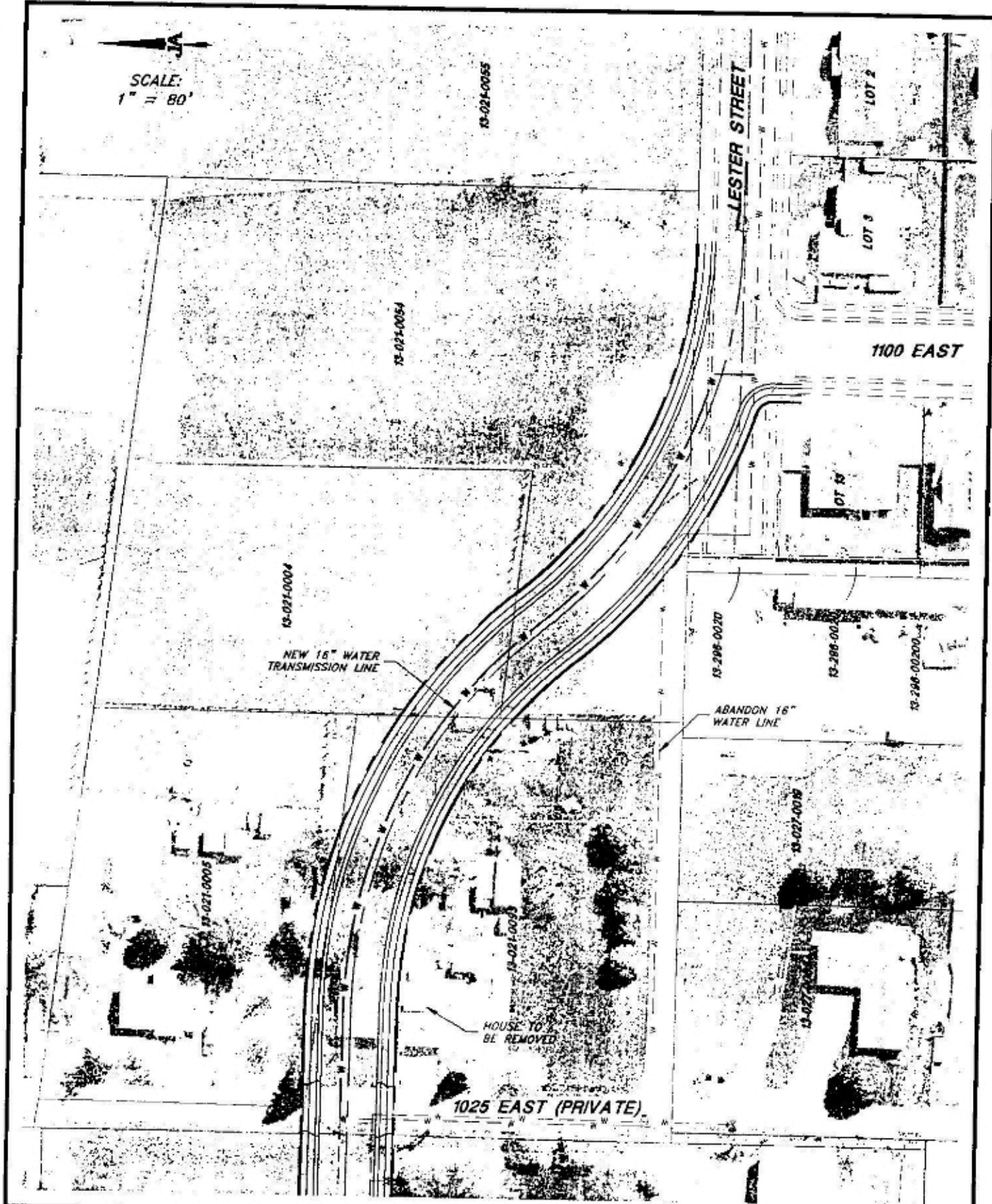
PART OF THE SOUTHEAST QUARTER OF SECTION 28 AND THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LESTER STREET, SAID POINT BEING NORTH 89°49'39" WEST 701.39 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 28 (SOUTHEAST CORNER BEING SOUTH 89°49'39" EAST 2660.05 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 28); THENCE NORTH 89°49'39" WEST 232.90 FEET; THENCE SOUTH 51°39'54" EAST 15.81 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 235.00 FEET, AN ARC LENGTH OF 80.71 FEET, A DELTA ANGLE OF 19°40'41", A CHORD BEARING OF SOUTH 61°30'14" EAST, AND A CHORD LENGTH OF 80.31 FEET; THENCE SOUTH 00°10'21" WEST 22.62 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 10.50 FEET, AN ARC LENGTH OF 16.49 FEET, A DELTA ANGLE OF 90°00'00", A CHORD BEARING OF NORTH 44°49'39" WEST, AND A CHORD LENGTH OF 14.85 FEET; THENCE NORTH 89°49'39" WEST 95.52 FEET; THENCE NORTH 00°28'30" EAST 60.00 FEET; THENCE NORTH 89°49'40" WEST 371.20 FEET; THENCE NORTH 00°10'22" EAST 415.23 FEET; THENCE SOUTH 89°49'38" EAST 24.75 FEET; THENCE SOUTH 83°21'41" EAST 571.80 FEET; THENCE SOUTH 05°19'22" EAST 352.46 FEET TO THE POINT OF BEGINNING.

CONTAINING 237,915 SQUARE FEET OR 5.462 ACRES.



SCALE:
1" = 80'



CONSULTING ENGINEERS

6080 Fashion Point Drive
South Ogden, Utah 84403 (801) 476-9787

SOUTH WEBER CITY CORPORATION

KASTLECOVE PHASE 1

WATERLINE RELOCATION EXHIBIT

EXHIBIT

B

Development Agreement for Kastlecove Phase 1

Exhibit C

The "Land"

PART OF THE SOUTHEAST QUARTER OF SECTION 28 TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 709.5 FEET WEST FROM SOUTHEAST CORNER OF SECTION 28, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, IN THE CITY OF SOUTH WEBER, RUNNING THENCE NORTH 90.97 FEET; THENCE NORTH 5°46'30" WEST 258.67 FEET; THENCE NORTH 83°52'30" WEST 161.18 FEET; THENCE SOUTH 0°33'30" EAST 266.25 FEET; THENCE NORTH 83°52'30" WEST 161.18 FEET TO SOUTHWEST CORNER OF PROPERTY CONVEYED IN BOOK 358, AT PAGE 622 OF OFFICIAL RECORDS; THENCE SOUTH 0°33'30" EAST 121.85 FEET, MORE OR LESS, TO THE SECTION LINE; THENCE EAST 346.03 FEET, MORE OR LESS ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

BEARINGS ARE DAVIS COUNTY. ROTATE CLOCKWISE 0°41'31" FOR NAD 83 BEARINGS.

CONTAINING 79,279.2 SQUARE FEET AND 1.82 ACRES.

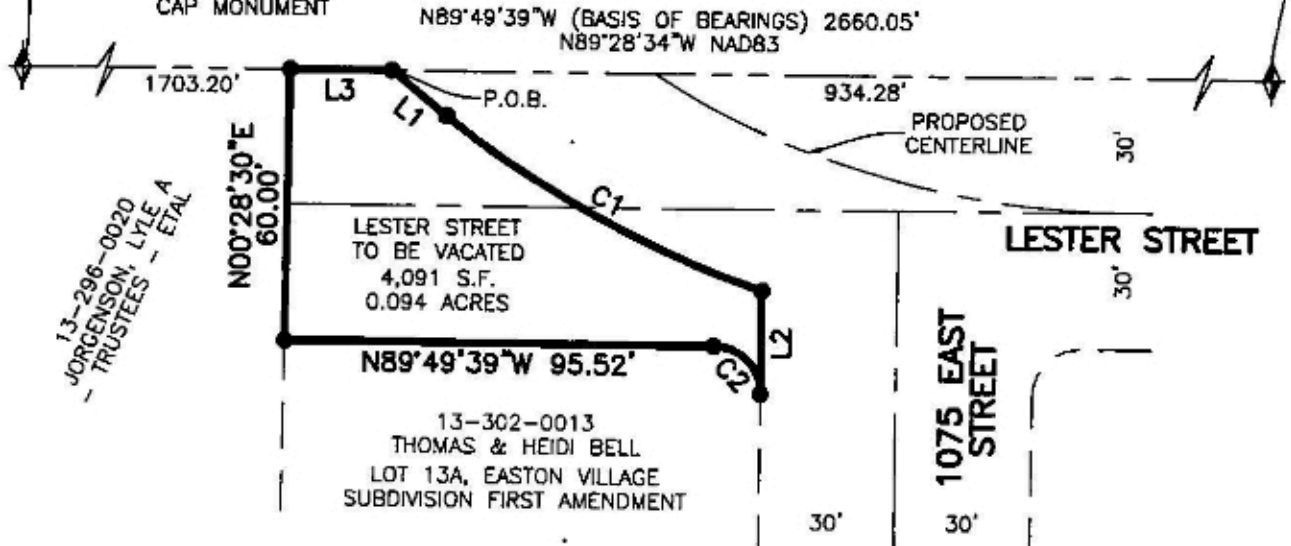
EXHIBIT D

SOUTH WEBER CITY
LESTER STREET VACATION

PROPOSED KASTLECOVE
SUBDIVISION

NORTHEAST CORNER OF
SECTION 33, TOWNSHIP 5
NORTH, RANGE 1 WEST, SALT
LAKE BASE AND MERIDIAN,
U.S. SURVEY, FOUND BRASS
CAP MONUMENT

NORTH QUARTER CORNER OF
SECTION 33, TOWNSHIP 5
NORTH, RANGE 1 WEST, SALT
LAKE BASE AND MERIDIAN,
U.S. SURVEY, FOUND BRASS
CAP MONUMENT

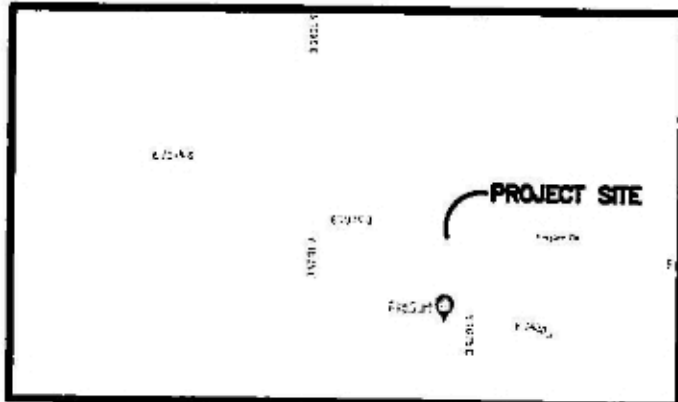


CURVE TABLE

#	RADIUS	ARC LENGTH	CHD LENGTH	TANGENT	CHD BEARING	DELTA
C1	235.00'	80.71'	80.31'	40.76'	S61°30'14"E	19°40'41"
C2	10.50'	16.49'	14.85'	10.50'	N44°49'39"W	90°00'00"

LINE TABLE

LINE	BEARING	DISTANCE
L1	S51°39'54"E	15.81'
L2	S00°10'21"W	22.62'
L3	S89°49'39"E	22.57'



VICINITY MAP
NOT TO SCALE

LEGEND

- = SECTION CORNER
- = SET 5/8" REBAR AND PLASTIC CAP STAMPED "REEVE & ASSOCIATES"
- = BOUNDARY LINE
- = ADJOINING PROPERTY
- = ROAD CENTERLINE
- = SECTION TIE LINE
- = STREET VACATION

1"=40'



Reeve & Associates, Inc.

5160 S 1500 W, RIVERDALE, UTAH 84405
 TEL: (801) 621-3100 FAX: (801) 621-2888 www.reeve.co
 LAND PLANNERS • CIVIL ENGINEERS • LAND SURVEYORS
 TRAFFIC ENGINEERS • STRUCTURAL ENGINEERS • LANDSCAPE ARCHITECTS

Project Info.

Designer: N. ANDERSON
 Date: 05-16-2023
 Name: EXHIBIT B
 Number: 5918-18
 Scale: 1"=40'