

RESOLUTION 21-28

**A RESOLUTION OF THE SOUTH WEBER CITY COUNCIL AMENDING
AND RESTATING THE DEVELOPMENT AGREEMENT FOR THE
LOFTS AT DEER RUN IN SOUTH WEBER CITY**

WHEREAS, Deer Run Investments, LLC and South Weber City entered into a development agreement on 27 June 2019 which was subsequently recorded; and

WHEREAS, the need for greater clarification in the agreement was realized as the development process ensued, and

WHEREAS, a public hearing was held on December 17, 2020 at a Planning Commission meeting; and

WHEREAS, the Planning Commission recommended approval of the Amended and Restated Development Agreement; and

WHEREAS, Council has now reviewed the Amended and Restated Development Agreement and approves the changes;


NOW THEREFORE BE IT RESOLVED by the Council of South Weber City, Davis County, State of Utah, as follows:

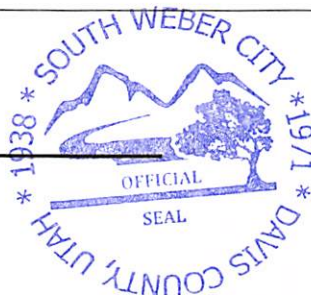
Section 1. Approval: The Amended and Restated the Development Agreement for the Lofts at Deer Run in South Weber City is hereby approved as attached in Exhibit 1.

Section 2: Repealer Clause: All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by the City Council of South Weber, Davis County, on the 25th day of May 2021.

Roll call vote is as follows:		
Council Member Winsor	FOR	AGAINST
Council Member Petty	FOR	AGAINST
Council Member Soderquist	FOR	AGAINST
Council Member Alberts	FOR	AGAINST
Council Member Halverson	FOR	AGAINST


Jo Sjoblom, Mayor




Attest: Lisa Smith, Recorder

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

**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
FOR THE LOFTS AT DEER RUN
IN SOUTH WEBER CITY**

This **AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (THIS Amended and Restated “Agreement”) is made and entered into this 25th day of May, 2021, by and between **DEER RUN INVESTMENTS, LLC** OF 782 Parkway Drive, North Salt Lake, Utah 84054 (hereinafter referred to as “Developer”), and **DEER RUN PLAZA, LLC** of 10883 South Martingale Lane, South Jordan, Utah 84095 (hereinafter referred to as “Owner”), 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, Utah 84405. Developer, Owner, and City are heretofore referred to as the “**Parties**.”

RECITALS:

- A. Owner acknowledges that Developer is its authorized agent to represent its interest in development of its fee simple title property, approximately 3.175 acres, as more particularly described in **Exhibit A** attached hereto (the “Property”). A Concept Plan of the site is attached hereto as **Exhibit B**.
- B. Developer proposes a mixed-use development which includes residential and commercial buildings, the associated streets, and other required improvements collectively known as “The Lofts at Deer Run” (the “Development”), on the Property.
- C. On June 27, 2019, the Parties entered into a Development Agreement (the “Original Agreement”) for the purpose of establishing the approved criteria required for the Development prior to approval through the City’s required subdivision process.
- D. The Parties, in accordance with section 14.1 of the Original Agreement, desire to enter into this Amended and Restated Agreement amending and restating the Original Agreement to provide for the terms and conditions upon which the Property can be developed.

- E. City, acting pursuant to its authority under Utah Code Ann. § 10-9-101, *et seq.*, and its land use policies, ordinances and regulations, has made certain determinations with respect to the Subdivision and, in the exercise of its legislative discretion, has elected to approve this Agreement for the purpose of specifying the obligations of the parties with 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 is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals and all Exhibits referenced herein 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 is adopted by a City ordinance as a legislative act and hereby amends the City laws only to the extent within the authority of City and only to the extent necessary to give Developer the effect of the rights and obligations of this Agreement where such City laws may be inconsistent with this Agreement's intent.
3. **Subdivision Approval.** This Agreement does not remove the Developer from their obligation to adhere to the City's established Subdivision approval process. The Developer shall comply with all applicable time frames as specified in City Code. Approval will be based on substantial compliance with Exhibit B.
4. **Geotechnical.** The Development is located within the area identified in the General Plan as Sensitive Lands. As such, the Developer must comply with all provision of City Code, Title 10 Zoning Regulations, Chapter 14 Sensitive Lands Development Regulations.
5. **Sewer Capacity.** The Sewer Capital Facilities Plan, dated August 2017, identifies the Property as requiring 4.0 Equivalent Residential Units (ERU's) based on an assumed commercial-only land use. The City acknowledges that the Development exceeds the anticipated demand and the needed capacity will be addressed through future Capital Facilities Plans and future capital improvement projects. The Development's proportional share of the future capital improvement projects which will provide the desired capacity will be paid through the impact fees assessed when the Building Permits are issued. Building permit approval and occupancy will not be contingent upon sewer capacity.
6. **Density.** The Development will be limited to not more than sixty (60) new residential units. The Development shall include a ground floor commercial component fronting 2700 East Street. However, only that portion of the Development fronting 2700 East

Street, not **one-hundred percent (100%) of the floor area on the first** level of that structure, must be commercial.

7. **Parking.** In order to accommodate the parking needs of both the residential and commercial users within the Development, the provisions of Title 10, Chapter 8 of South Weber City Code shall apply and shall be in full force and effect.
8. **Detention Basin.** A detention basin is required in order to control the flow of storm water leaving the site. The basin is the sole responsibility of the Development and will be privately owned and maintained. However, the sizing, design, location and construction of the basin must comply with City Code and City Standards.
9. **Successors and Assigns.**

10.1 **Binding Effect.** This Agreement shall be binding upon the successors and assigns of the Parties. Owners 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.

10.2 **Assignment.** Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other Party, individual, or entity without assigning the rights as well as the 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.

10. **Default.** In the event either Party fails to perform its obligations hereunder or to comply with the terms and commitments hereof, 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:

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

11.2 to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement; and

11.3 the right to withhold all further approvals, licenses, permits, or other rights associated with any activity or development described in this Agreement until such default is cured.

11. **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.

12. 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: Deer Run Investments, LLC
784 Parkway Drive
PO BOX 540395
North Salt Lake, UT 84054

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

Owner: Deer Run Plaza LLC
10883 South Martingale Lane
South Jordan, UT 84095

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

13. General Terms and Conditions.

14.1 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.

14.2 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.

14.3 Term of Agreement. The term of this Agreement shall be for a **period of seven (7) years following the date of its adoption.**

14.4 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. This Agreement shall be construed in accordance with the City Laws. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Davis County, Utah.

14.5 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.

14.6 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.

14.7 Entire Agreement. This Agreement, together with the exhibits hereto, integrates all of 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.

14.8 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.

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

14.10 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.

14.11 Waiver. No waiver of any of the provisions of this Agreement shall operate as 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.

14.12 Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

14.13 Exhibits. Any exhibit to this Agreement is incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit.

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.

“Developer”
DEER RUN INVESTMENTS, LLC

By: _____ Title: _____

Witness the hand of said grantors, this ___ day of _____, 2021.

Deer Run Investments, LLC

State of Utah)
) ss
County of Davis)

On this __ day of _____, 2021, personally appeared before me, _____, the signer of the foregoing instrument, who duly acknowledged that he/she is the _____ of Deer Run Investments, a Limited Liability Company and signed said document in behalf of said Deer Run Investments, LLC, by authority of its Bylaws or Resolution of its Board of Directors, and said, _____ 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.

NOTARY PUBLIC
Commission Expires:

EXHIBIT "A"
THE LOFTS AT DEER RUN
BOUNDARY DESCRIPTION

A part of Lot 2, Deer Run Estates Unit No. 5. And A part of the Southwest Quarter of Section 36, T5N Range 1 West Salt Lake Base and Meridian

Beginning at the intersection of the Southeasterly right of way line of the Davis and Weber Canal, and the West right of way line of the Frontage Road said point being 555.59 feet South 89°58'06" East along the Section line; and 296.80 feet South 00°02'01" West from the West Quarter Corner of said Section, and running thence two (2) courses along said West right of way line as follows: (1) Southerly along the Arc of a 626.80 foot radius curve to the right a distance of 45.54 foot radius point bears South 89°38'52" West, (Central Angle equals 04°09'47", and Center Bears South 89°38'52" West); and (2) South 04°12'50" West 541.15 feet to the North right of way line of 7950 South Street, being a point of curvature; thence two (2) courses along said North right of way line as follows: (1) Southwesterly along the arc of a 20.67 foot radius curve to the right a distance of 29.83 feet (Central Angle equals 82°40'37", and Long Chord bears South 45°33'08" West 27.31 feet) to a point of non-tangent curvature of which the radius point lies South 03°06'39" East; and (2) Westerly along the arc of a 197.04 foot radius curve to the left a distance of 50.55 feet (Central angle equals 14°42'01", and Long Chord bears South 79°32'20" West 50.42 feet) to the West line of said Lot 2; thence North 28°31'06" West 234.73 feet along said West line to the Northwest corner of said lot marked by a rebar with no cap; thence North 87°57'40" West 116.31 feet along the North line of said Deer Run Estates Unit No. 5 to said Southeasterly right of way line of said Canal; thence six (6) courses along said Southeasterly right of way line as follows: (1) North 17°15'00" East 118.53 feet; (2) North 07°55'00" East 144.20 feet; (3) North 33°15'00" East 44.30 feet; (4) North 53°01'00" East 35.40 feet; (5) North 67°01'00" East 219.00 feet; and (6) North 83°46'00" East 29.50 feet to the POINT OF BEGINNING.

Containing 2.9140 acres, more or less.

TOGETHER WITH

A part of the Southwest Quarter of Section 36, T5N Range 1 West Salt Lake Base and Meridian

Beginning at the intersection of the Northwesterly right of way line of the Davis and Weber Canal, and the West right of way line of the Frontage Road said point being 535.54 feet South 89°58'06" East along the Section line; and 143.69 feet South 00°02'01" West from the West Quarter Corner of said Section, and running; thence two (2) course along said Northwesterly right of way line as follows: (1) South 89°46'00" West 45.57 feet; and (2) South 67°01'00" West 60.99 feet; thence North 00°11'51" East 51.08 feet; thence East 6.00 feet; thence North 52.00 feet; thence West 6.00 feet; thence North 64.67 feet; thence South 89°58'06" East 44.68 feet to said Westerly right of way line of Frontage Road, being a point of non-tangent curvature of which the radius point lies South 61°19'57" West; thence Southerly along the arc of a 626.80 foot radius curve to the right a distance of 154.95 feet (Central Angle equals 14°09'52", and Long Chord bears South 21°35'07" East 154.56 feet) along said Westerly right of way line to the POINT OF BEGINNING.

Containing 11,372 square feet more or less.

EXHIBIT "B"
THE LOFTS AT DEER RUN
CONCEPT PLAN

BLDG CODE INFO	
S BUILDING A	OCCUPANCIES, B, M, R-2
	TYPE V-B
	NFPA 13
N BUILDING B	OCCUPANCY: R-2
	V-B
	NFPA 13
W BUILDING C	OCCUPANCY: R-2
	V-B
	NFPA 13

PROJECT SUMMARY			
S BUILDING A	COMMERCIAL	RESIDENTIAL	TOTAL
1ST FLOOR	0 SF	4685 SF	4685 SF
2ND FLOOR	3985 SF	4607 SF	8592 SF
3RD FLOOR	0 SF	8592 SF	8592 SF
TOTAL	3985 SF	17884 SF	21869 SF
N BUILDING B	COMMERCIAL	RESIDENTIAL	TOTAL
1ST FLOOR	0 SF	4685 SF	4685 SF
2ND FLOOR	0 SF	8592 SF	8592 SF
3RD FLOOR	0 SF	8592 SF	8592 SF
TOTAL	0 SF	21869 SF	21869 SF
W BUILDING C	COMMERCIAL	RESIDENTIAL	TOTAL
1ST FLOOR	0 SF	5627 SF	5627 SF
2ND FLOOR	0 SF	10320 SF	10320 SF
3RD FLOOR	0 SF	10320 SF	10320 SF
TOTAL	0 SF	26267 SF	26267 SF
GRAND TOTAL	3985 SF	66020 SF	70005 SF

Fred C. Cox,
Architect

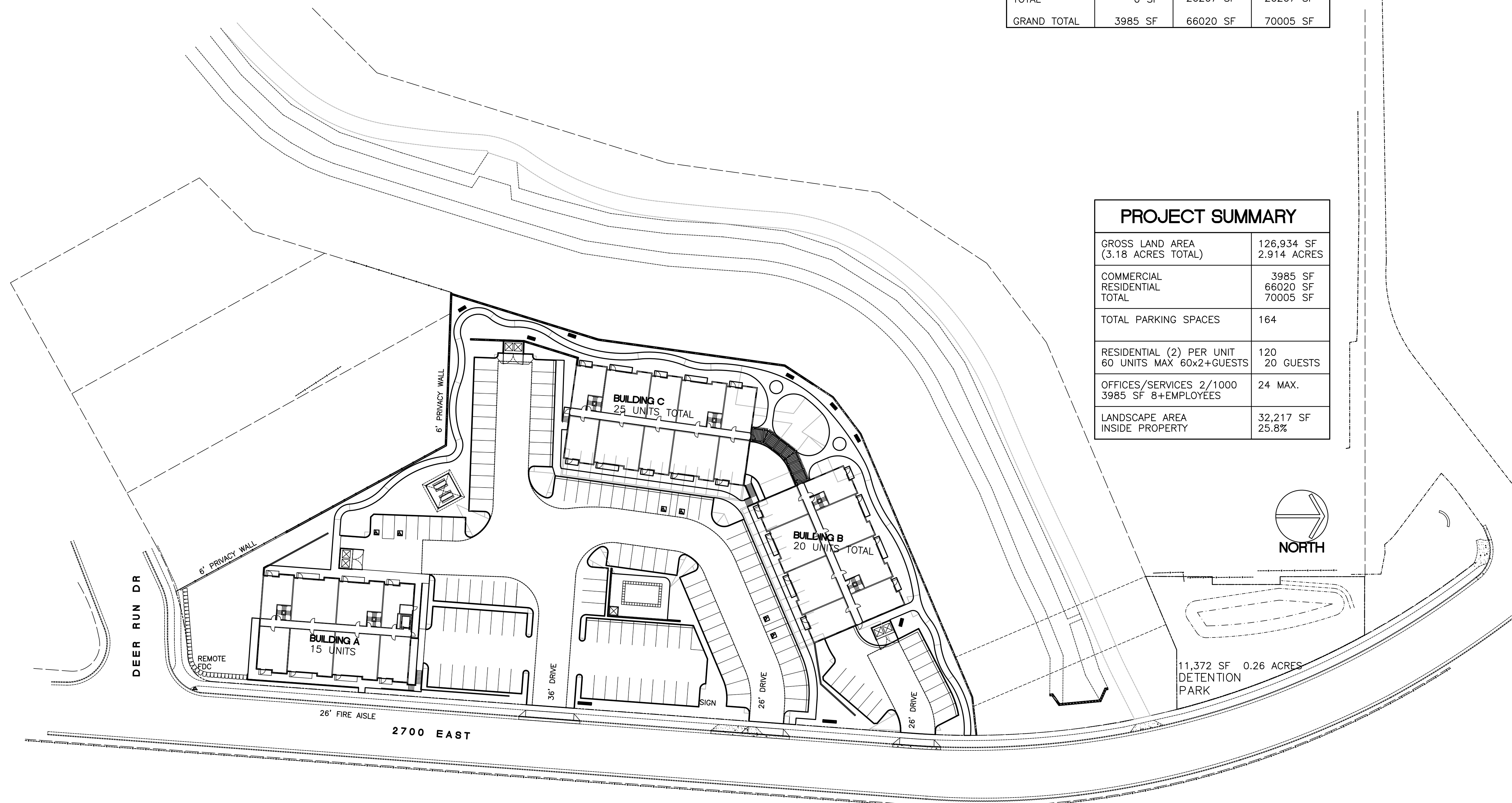
4466 Early Duke St.
West Valley City,
Utah 84120-5723

Phone: 801-968-3733

Email: fcc@fredccox.com

THIS DOCUMENT IS FOR CITY APPROVAL OF THE PROJECT NOTED AND IS ALSO FOR CONSTRUCTION. ACTUAL SITE DIMENSIONS COULD VARY. USE OF THIS DOCUMENT FOR ANY OTHER PROJECT IS NOT PERMITTED.

PROJECT SUMMARY	
GROSS LAND AREA (3.18 ACRES TOTAL)	126,934 SF 2.914 ACRES
COMMERCIAL	3985 SF
RESIDENTIAL	66020 SF
TOTAL	70005 SF
TOTAL PARKING SPACES	164
RESIDENTIAL (2) PER UNIT 60 UNITS MAX 60x2+GUESTS	120 20 GUESTS
OFFICES/SERVICES 2/1000 3985 SF 8+EMPLOYEES	24 MAX.
LANDSCAPE AREA INSIDE PROPERTY	32,217 SF 25.8%



DEER RUN INVESTMENTS, LLC

LOFTS AT DEER RUN

7870 SOUTH 2700 EAST
SOUTH WEBER, UTAH

SITE PLAN

SCALE: 1" = 40'-0"

OCTOBER 16, 2020
194001-A01-K016

DRAWINGS ARE BASED ON SURVEYS BY GREAT BASIN ENG. AND CIVIL BY ENTELLUS.