

ORDINANCE NO. 22-09

AN ORDINANCE OF SOUTH OGDEN CITY, UTAH, APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT WITH OGDEN CLINIC FOR THE PROPERTIES LOCATED AT 1378 AND 1394 EAST 6000 SOUTH; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION I - RECITALS:

WHEREAS, the City Council finds that the planning commission has caused to be prepared and has recommended to the City Council a zoning ordinance, subdivision ordinance, and general plan; and,

WHEREAS, the City Council finds that the Planning Commission has caused that Development Agreements be allowed as part of the prepared Subdivision Ordinance; and,

WHEREAS, the City Council finds that under Utah Code §10-9a-532, the City Council may lawfully adopt development agreements that have different standards set forth in existing land use regulations if it does so in accordance with the same procedures for enacting a land use regulation, including review and recommendation from the Planning Commission and a public hearing; and,

WHEREAS, the City Council finds that the Planning Commission has reviewed and recommended to the City Council a Development Agreement with Ogden Clinic for development of the proposed property within the municipality; and,

WHEREAS, the City Council finds that the Development Agreement with Ogden Clinic has been subjected to the required public hearing prior to its adoption; and,

WHEREAS, based on the recommendation of the South Ogden City Planning Commission, the City Council determines it to be in the best interest of the City to adopt the proposed Development Agreement with Ogden Clinic; and,

WHEREAS, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN, UTAH:

The **Development Agreement** with Ogden Clinic, attached as **Attachment "A"**, and fully incorporated by this reference, is approved and adopted.

The foregoing recitals are fully incorporated herein.

SECTION II - REPEALER OF CONFLICTING ENACTMENTS:

All orders, ordinances and resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Ordinance, are, for such conflict, repealed, except this repeal will not be construed to revive any act, order or resolution, or part, repealed.

SECTION III - PRIOR ORDINANCES AND RESOLUTIONS:

The body and substance of all prior Ordinances and Resolutions, with their specific provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

SECTION IV - SAVINGS CLAUSE:

If any provision of this Ordinance be held or deemed or will be invalid, inoperative or unenforceable, such invalidity will render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed the separate independent and severable act of the City Council of South Ogden City.

SECTION V - DATE OF EFFECT

This Ordinance will be effective on the 17th day of May, 2022, and after publication or posting as required by law.

DATED the 17th day of May, 2022.

SOUTH OGDEN, a municipal corporation

Mayor Russell Porter

Attested and recorded

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT “A”

ORDINANCE NO. 22-09

An Ordinance Of South Ogden City, Utah, Approving And Adopting A Development Agreement With Ogden Clinic For The Properties Located At 1378 And 1394 E 6000 S; And Providing For An Effective Date.

17 May 22

**DEVELOPMENT AGREEMENT
FOR A PROFESSIONAL OFFICE
SPACE**

THIS AGREEMENT is made and entered into this ____ day of _____, 2021 by and between South Ogden City, a municipal corporation organized and existing under the laws of the State of Utah (hereinafter the “City”), and OGDEN CLINIC (hereinafter the “Developer;”) (“Developer” includes successors and/or assigns of OGDEN CLINIC), as follows:

RECITALS

WHEREAS, Developer is desirous of developing an administrative office facility (the “Facility”) on certain real property located in the City of South Ogden, County of Weber, State of Utah and more particularly described on the Site Plan attached hereto as Exhibit A.

WHEREAS, the purpose of this Agreement is to define the development standards, conditions and improvements, schedule for development of the Facility and other terms and conditions pursuant to which the Facility proposed by Developer is to be developed within the City; and

WHEREAS, the City is willing to grant an exception to the current zoning ordinance of the property and to authorize the development of the Facilities proposed by Developer.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. GENERAL DESCRIPTION.

A. Area Description. The property upon which the Facilities shall be developed (the “Property”) is located as shown on the site plan which is attached as Exhibit A hereto and incorporated by reference herein.

B. Project Description. The project proposed by Developer is a remodel of an

existing facility and construction of a new facility. Both facilities will be used by Ogden Clinic for general administrative/office use.

2. DEVELOPMENT STANDARDS AND GUIDELINES

A. Adoption of Development Standards. The City hereby adopts, as the development standards and guidelines for the Facility (the “Development Standards”), the following in addition to all other applicable City Ordinances, standards and guidelines:

(1) Architecture. Developer shall construct the Facility in similar compliance and conformance with the Architecture as set forth in Exhibit B, project renderings.

(2) Building Placement. City grants an exception to current code by allowing the new building to be placed adjacent to the existing building (currently being remodeled) on the site rather than on the front or corner of the property.

(3) Parking. City grants an exception to current code by allowing parking to be placed in front of the existing and newly developed buildings rather than in the rear of the facilities.

(4) Trail Access. Developer shall provide a paved trail to the Nature Park as well as four (4) dedicated and eleven (11) shared parking spaces available during the hours the park is open (dawn to dusk). City shall assume all maintenance responsibilities of access/trail after construction.

B. Findings of Compatibility. In adopting the Development Standards identified in Section 2.A, the City hereby expressly finds that the development of the Facility, in conformance with the Development Standards and this Agreement, promotes the creation of a desirable professional office in an appropriate location. The City further finds that the development of the Facility, in conformance with the Development Standards and this Agreement, will not violate the general purpose, goals and objectives of the City Ordinances and any plans adopted by the Planning Commission and City Council of the City.

Subject to the Developer's performance and compliance with the terms of this Agreement and City Ordinances in effect on the date of this Agreement, Developer's rights to develop the Facility in accordance with the approved site plan, construction drawings and building plans is vested.

C. Developer's Non-Performance. Should Developer fail to meet or perform the obligations defined within this DA, or if Substantial Completion of the Project has not been accomplished within three and one-half (3.5) years of the date of this DA, absent any extensions by further agreement of the Parties, this DA shall be automatically terminated and the Parties shall have no further rights or obligations hereunder.

D. Term of Agreement. This DA shall expire on its terms four (4) years from the date of approval and execution by the Parties, unless terminated earlier under another provision of this DA.

3. ON-SITE PROJECT IMPROVEMENTS

Developer shall construct and install all site improvements, including utilities, required for the Facility, at Developer's sole cost and expense, in compliance with approvals, and all applicable ordinances, regulations, standards and status of the City, the secondary water provider as applicable.

4. OFF-SITE PROJECT IMPROVEMENTS

In accordance with applicable standards, Developer shall repair all sidewalks, utilities, and drainage, due to the construction of the on-site improvements.

5. REPRESENTATIONS OF DEVELOPER

A. Authority. Developer hereby represents that is has authority to proceed with the Facility.

B. Ability. Developer represents that it has the ability to proceed with the development and construction of the Facility.

6. ASSIGNMENT

Developer may assign this Agreement to any other third party provided that the City consents to such assignment, which consent shall not be unreasonably withheld, upon a showing to the satisfaction of the City that such third party has the financial ability to perform

Developer's obligations hereunder.

7. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. ATTORNEY'S FEES

In the event that this Agreement or any provision hereof shall be enforced by an attorney retained by a party hereto, whether by suit or otherwise, the fees and costs of such attorney shall be paid by the party who breaches or defaults hereunder, including fees and costs incurred upon appeal or in bankruptcy court.

9. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

10. CAPTIONS

The section and paragraph headings contained in this Agreement are for the purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

11. GOVERNING LAW

This Agreement and all matters relating hereto, shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

12. ENTIRE AGREEMENT

This Agreement, together with the exhibits attached hereto, constitutes the entire understanding and agreement by and among the parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

13. CONSTRUCTION

As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

14. AUTHORIZATION OF EXECUTION

A. City. The execution of this Agreement by the City has been authorized by the City Council of South Ogden City at a regularly scheduled meeting of that body, pursuant to the notice.

B. Developer. The execution of this Agreement has been duly authorized by the Developer.

