

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2022 (the “Effective Date”) by and between FIRST AVENUE SOUTH APARTMENTS LLC, a Washington limited liability company (the “Owner”), and the City of Federal Way, a Washington municipal corporation (“City”). Owner and the City are each a “Party” and collectively the “Parties” to this Agreement.

RECITALS

A. The Washington State Legislature has authorized the execution of development agreements between a local government and an entity having ownership or control of real property within its jurisdiction, pursuant to RCW 36.70B.170 through 36.70B.210 (“Development Agreement Statute”). This Agreement is authorized pursuant to the Development Agreement Statute and the Federal Way Revised Code (“FWRC” or “Code”) Chapter 19.85, as established by Ordinance 02-426.

B. Owner owns the property at 32818 1st Avenue South in Federal Way, Washington (King County Assessor No. 1721049038 and the “Property”), legally described on Exhibit A, which is attached hereto and incorporated herein by reference.

C. Owner applied for a Comprehensive Plan land use designation amendment and associated rezone of the Property from Office Park (“OP”) to Multifamily Residential RM-1800 zone (“RM-1800”) under City File No. 20-103733-00-UP (collectively, the “Rezone”).

D. Owner has prepared a conceptual site plan development of the Property dated _____, 2021 as depicted in Exhibit B (“Conceptual Plan”), which is attached hereto and incorporated herein by reference. The Parties agree the Conceptual Plan is a conceptual guide for the development of the Project as defined in this Agreement, but is not intended to be, nor must it satisfy the requirements of a “Development Plan” as defined in FWRC 19.85.100.

E. Redevelopment of the Property consistent with the Conceptual Plan will be a benefit to the City through implementation of the vision of the Comprehensive Plan by, among other reasons, providing new market-rate housing opportunities for City residents.

F. Redevelopment of the Property also supports and implements the City’s recently adopted Housing Action Plan objectives and strategies, including Objective 1 to “promote new market-rate...construction that expands housing choices” and Objective 2 to “encourage homeownership opportunities and support equitable housing outcomes” by providing new market-rate housing choices for City residents and the potential for future homeownership opportunities.

G. The City desires to enter into this Agreement to assure the development of the Property consistent with the Conceptual Plan as a condition of the approval of the Rezone.

H. By this Agreement, the Parties intend to set forth their mutual agreement and understandings as they relate to the development of the Property.

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

AGREEMENT

1. Definitions.

1.1. “City Council” means the City Council of the City of Federal Way.

1.2. “Development Regulations” means those sections of the Federal Way Revised Code, Federal Way Zoning and Development Code, Federal Way Comprehensive Plan, Federal Way Zoning Map, and any implementing policies, regulations, procedures or guidelines addressing the zoning, building and site design, utilities, environmental review (including SEPA procedures and substantive authority), transportation concurrency, and any other elements that govern the development of real property within the City. A term defined in the Development Regulations shall have the meaning assigned to it within the Development Regulations, unless otherwise defined herein.

1.3. “Market-rate” means a type of housing available or offered in the open market without public, nonprofit, or similar subsidies; provided however, nothing in this definition shall prohibit housing purchasers from utilizing commercially available affordable housing financing mechanisms for owner financing of individual units, if offered for sale.

1.4. “Owner” means FIRST AVENUE SOUTH APARTMENTS LLC, a Washington limited liability company, and its successors and permitted assigns pursuant to Section 11.

1.5. “Development Director” is the Director of the Department of Community Development.

1.6. “Townhouse” shall have the same meaning as in FWRC 19.05.200, except that it shall expressly exclude zero lot line townhouses as defined in FWRC 19.05.040.

1.7. Each term defined within the Agreement shall have the meaning assigned to it within the Agreement.

2. Purpose. As a condition of the City’s approval of the Rezone authorized by Ordinance _____, this Agreement governs Owner’s right to develop the Property pursuant to the RM-1800 zoning subject to the Public Benefits and the Development Regulation modifications defined in Section 3.

3. Project. The Owner shall develop the Property with a Townhouse community generally consistent with the Conceptual Plan (collectively, the “Project”) subject to the following conditions:

3.1. Public Benefits. The Project shall provide the following public benefits:

- a. Market-rate Townhouses. Development of the Property shall be limited to a Market-rate Townhouse community. Within sixty (60) days of issuance of the Certificate of Occupancy for the final Townhouse in the Project, the Owner shall execute and record a Map in the form required by RCW 64.90.245 and a Declaration in the form required by RCW 64.90.225, to create a residential condominium community that allows each individual Townhouse to be sold as a condominium; provided, however, nothing in this provision shall require Owner to sell any individual Townhouse as a condominium and the Property may operate as a “for rent” apartment community at the sole discretion of Owner.
- b. Dedicate garage parking. Each Townhouse shall provide privately accessible two (2) stall garage parking, which may be in a tandem configuration.
- c. Access to open space. Open space provided by the Project shall comply with FWRC 19.205.010 and shall provide access directly to private yards and/or balconies from each Townhouse.
- d. Amenities building. Owner shall design and construct any permanent leasing or sales office and common amenity building in the Project to be substantially in the same architectural style as the Project’s Townhouses.

3.2. Development Regulation Modifications. The Parties agree that the Development Regulations shall apply to the City’s review of the Project; provided however; as a component of this Agreement, the City approves the following modifications for the Development Regulations applicable to the Project:

- a. Parking. Each Townhouse shall have 2 garage parking stalls. Guest parking shall be surface-parked and provided at a 1 stall per 6 dwelling unit ratio.
- b. Minimum building separation. The minimum required separation between structures shall be 10 feet.

4. Vesting. Except as provided in Sections 4.1 and 4.2, and as may otherwise be prohibited by law, Owner shall be entitled to develop the Project under the Development Regulations and land use controls in effect as of the Effective Date of this Agreement (“Vested Code Provisions”), which shall apply for the Term of this Agreement.

4.1. Exemptions. The following are exempt from vesting under this Agreement:

- a. Plan review fees, inspection fees, and other land use application fees;
- b. Connection charges, general facilities charges and monthly service charges;
- c. Amendments to building, plumbing, fire and other construction codes adopted pursuant to RCW Ch. 19.27 or 19.27A;
- d. Impact fees authorized by state law; and

e. City enactments that are adopted pursuant to state or federal mandates (such as the City's NPDES Municipal Stormwater Permits) that preempt the City's authority to vest regulations;

4.2. Reserved Rights. Notwithstanding any provision in this Agreement, the City reserves authority pursuant to RCW 36.70B.170(4) to impose new or different Development Regulations to the extent required by a serious threat to public health or safety, as determined by the City Council after written notice and an opportunity to be heard by Owner.

4.3. Future Agreement Modifications, Amendments, and Procedure. Modification and/or amendment of this Agreement shall be governed by the procedures in FWRC 19.85.200–.210.

4.4. Further Discretionary Actions. Owner acknowledges that the Project requires further discretionary review by the City. Nothing in this Agreement shall be construed to limit the authority or obligation of the City to hold legally required public hearings for the Project, or otherwise limit the discretion of the City in reviewing the Project as authorized by the Development Regulations and terms of this Agreement.

5. Agreement to Run with the Land. The benefits and obligations of this Agreement shall run with the land and continue following the subdivision, leasing, or transfer of ownership to Owner's successors and assigns in accordance with Section 12.

6. Term. The term of this Agreement shall be ten (10) years from the Effective Date of this Agreement ("Expiration Date").

7. Construction of Documents. In the event there are any conflicts or ambiguities between the terms of the body of this Agreement and the terms in any of the Exhibits, the terms of the body of this Agreement shall control.

8. Recitals. The Recitals are incorporated herein as material terms of this Agreement.

9. Agreement Consistency with RCW 82.02.020. The Owner agrees that the improvements, mitigation payments and dedications established by this Agreement shall be consistent with the requirements of RCW 82.02.020 and mitigate the direct impacts that have been identified as a consequence of the Project.

10. Recording. This Agreement shall be recorded by Owner with the King County Recorder's Office.

11. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns. Owner shall have the right, in its sole discretion, to assign or transfer its rights, in whole or in part, under this Agreement. Owner shall provide City with written notice of any transfer or assignment at least thirty (30) days prior to the closing of any transaction.

12. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement. Nothing herein shall be construed as a waiver of the City's constitutional and statutory powers. Nothing herein shall be construed or implied that the City is contracting away its constitutional and statutory powers, except as otherwise authorized by law.

13. Authority. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.

14. Delays. If either Party is delayed in the performance of its obligations in this Agreement due to Force Majeure, then performance of such obligation shall be excused for the period of delay. Force Majeure means extraordinary natural events or conditions such as war, riot, labor disputes, pandemic (including but not limited to COVID-19 or its variants) or other similar causes beyond the reasonable control of the obligated party.

15. Notices. All notices, requests, demands, and other communications called for or contemplated by this Agreement shall be in writing, and shall be duly given by mailing the same by certified mail, return receipt requested; or by delivering the same by hand, to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid:

Owner: FIRST AVENUE SOUTH APARTMENTS LLC
C/O Weidner Apartment Homes
Attn: Kevin Colard
9757 NE Juanita Drive, Suite 300
Kirkland, WA 98034
Email: kevin@weidner.com

And to its Attorney: McCullough Hill Leary, P.S.
Attn: Ian Morrison
701 5th Avenue, Suite 6600
Seattle, WA 98104
Phone: 206-812-3380
Email: imorrison@mhseattle.com

City of Federal Way: Community Development Director
Attn: Brian Davis
33325 8th Ave South
Federal Way, WA 98003

Phone: 253-835-2612

Email: Brian.Davis@cityoffederalway.com

And to its Attorney: City Attorney's Office
Attn: Kent van Alstyne
33325 8th Ave South
Federal Way, WA 98003
Phone: 253-835-2562
Email: Kent.VanAlstyne@cityoffederalway.com

16. Dispute Resolution. It is the Parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

16.1. Settlement Meeting. If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) days after a Party's request for such a meeting. The City shall send the Community Development Director, or a designee with information relating to the dispute, and Owner shall send an owner's representative or person with technical information or expertise related to the dispute.

16.2. Mediation. If the Parties cannot resolve the issue within ten (10) days then they shall mediate the matter using a mediator from Judicial Dispute Resolution, LLC or if that entity fails or declines to serve, such other similar service or organization as agreed by the parties, or as appointed by the court if the parties cannot agree (collectively "JDR"), within seven (7) days of their failure to agree pursuant to Section 16.1. The Parties shall evenly split any fees charged by JDR, regardless of the outcome of the mediation. Each party shall bear its own attorneys' fees in connection with the mediation. If the Parties have still not resolved the matter following the mediation, then and only then shall judicial action be permitted.

17. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. To the extent permitted, venue for any judicial action arising out of or relating to this Agreement shall lie in King County Superior Court.

18. Specific Performance. The Parties specifically agree that damages are not an adequate remedy for breach of this Agreement and that the Parties are entitled to compel specific performance of all material terms of this Agreement by any Party in default hereof. All terms and provisions of this Agreement are material.

19. Attorneys' Fees. In any judicial action to enforce or determine a party's rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, including fees and costs incurred in the appeal of any ruling of a lower court.

20. No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

21. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

22. Cooperation in Execution of Documents. The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Agreement practically effective. This Paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

23. Exhibits. This Agreement includes the following exhibits which are incorporated by reference herein:

Exhibit A – Legal Description of Property

Exhibit B – Conceptual Plan

24. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents.

25. No Joint Venture. This Agreement is not intended to and nothing in this Agreement shall create any partnership, joint venture or other arrangement between the Parties.

26. Final and Complete Agreement. This Agreement is integrated and constitutes the final and complete expression of the Parties on all subjects relating to the development of the Property. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

FIRST AVENUE SOUTH APARTMENTS LLC,
a Washington limited liability company

By: _____
Name: _____
Its: _____

CITY OF FEDERAL WAY,
a Washington municipal code city

By: _____
Jim Ferrell, Mayor

ATTEST:

Stephanie Courtney, CMC, City Clerk

APPROVED AS TO FORM:

J. Ryan Call, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the _____ of First Avenue South Apartments LLC that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

GIVEN my hand and official seal this _____ day of _____, 20__.

Notary's signature _____
Notary's printed name _____
Notary Public in and for the State of Washington.
My commission expires _____

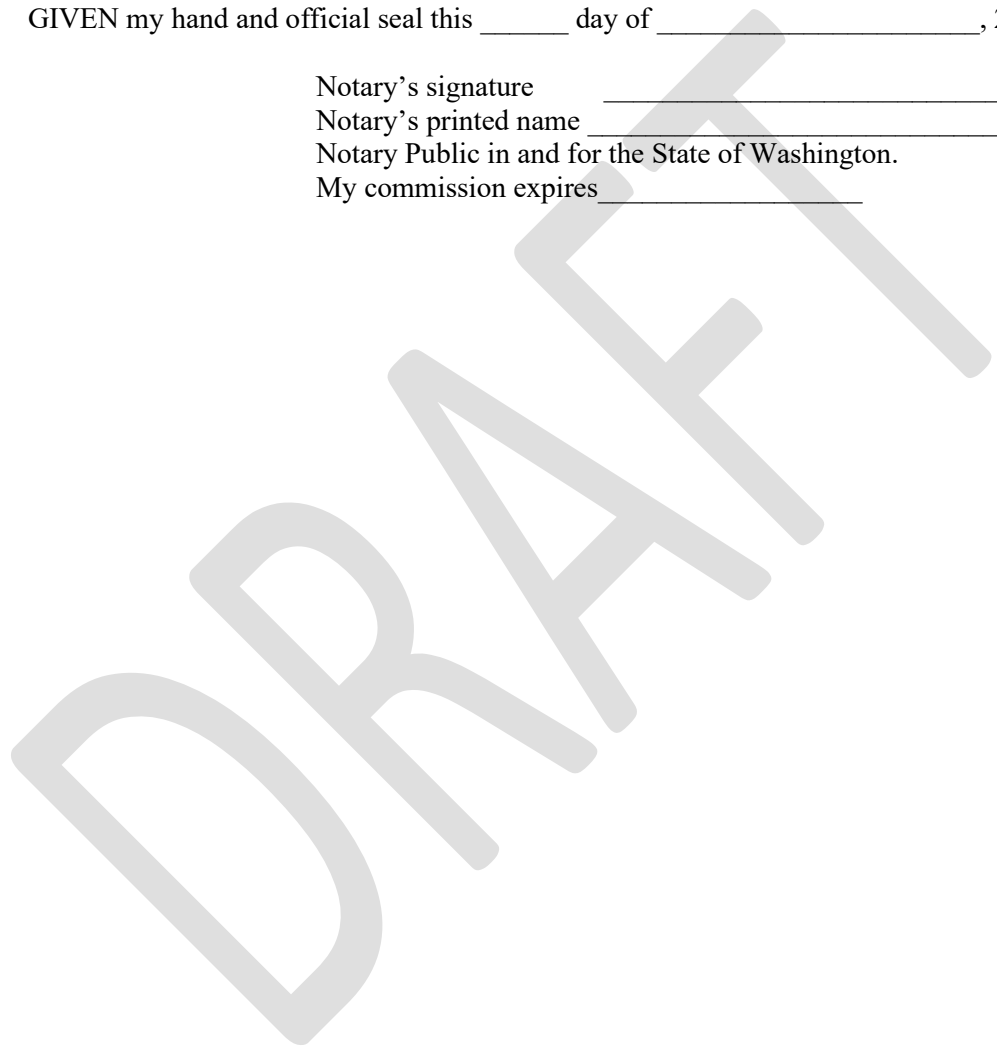


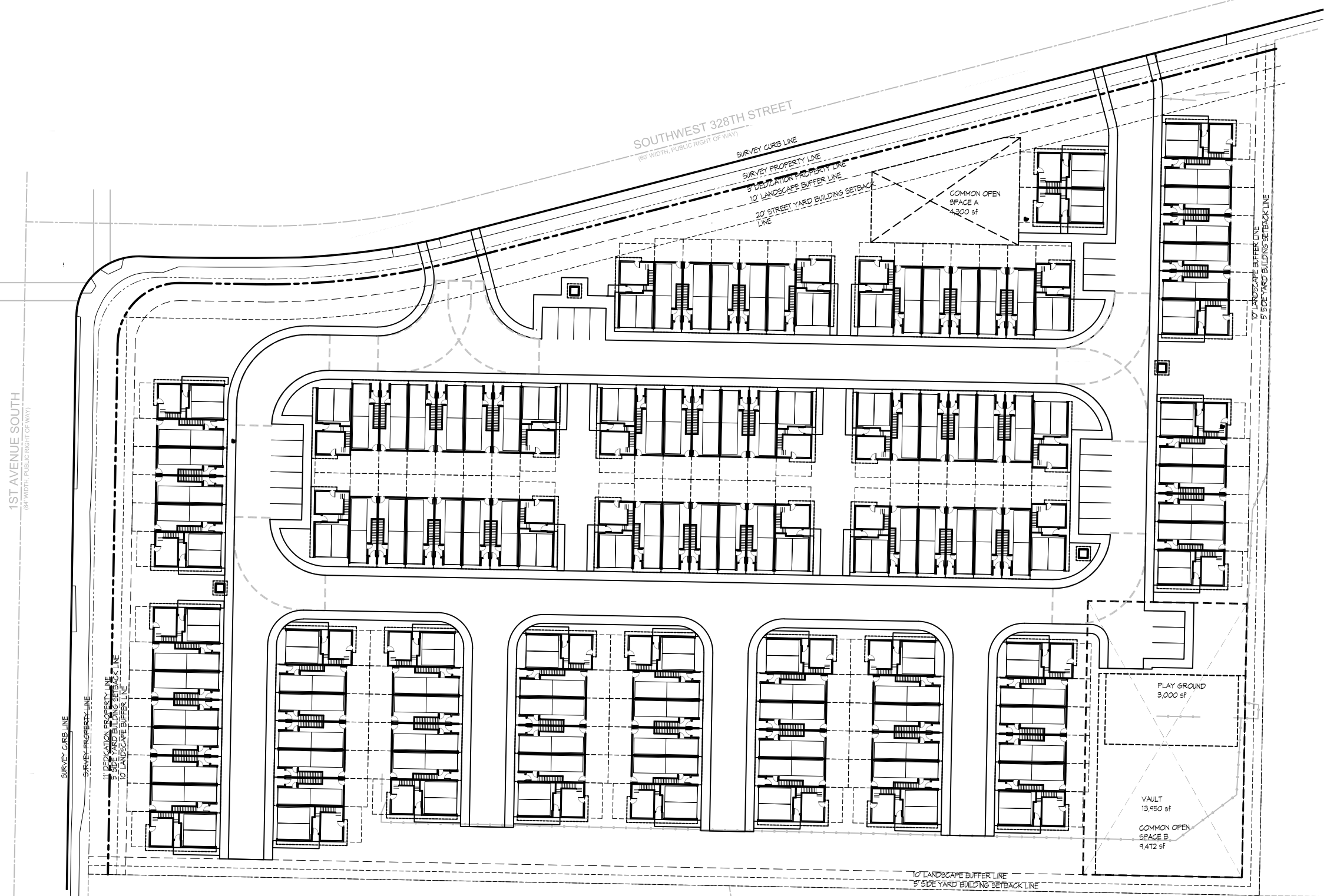
EXHIBIT A
LEGAL DESCRIPTION

Lot 1 of the revised King County Short Plat 1075046, Recording #7706100878.

DRAFT

EXHIBIT B
CONCEPTUAL PLAN

DRAFT



1ST AVENUE SOUTH
(84' WIDTH, PUBLIC RIGHT OF WAY)

SOUTHWEST 328TH STREET
(60' WIDTH, PUBLIC RIGHT OF WAY)

SURVEY CURB LINE
SURVEY PROPERTY LINE
11' DECK/PAVILION PROPERTY LINE
5' SIDE YARD BUILDING SETBACK LINE
10' LANDSCAPE BUFFER LINE

SURVEY CURB LINE
SURVEY PROPERTY LINE
3' DECK/PAVILION PROPERTY LINE
10' LANDSCAPE BUFFER LINE
20' STREET YARD BUILDING SETBACK LINE

10' LANDSCAPE BUFFER LINE
5' SIDE YARD BUILDING SETBACK LINE

10' LANDSCAPE BUFFER LINE
5' SIDE YARD BUILDING SETBACK LINE

SCALE: 1/64" = 1'-0"

