

**SOUTH
SALT LAKE**
PLANNING COMMISSION STAFF REPORT

MEETING DATE: March 18, 2021

REQUEST: Consideration of and possible recommendation to approve First Amended and Restated Development Agreement for the MODA-S Townhomes.

APPLICANT: JF S-Line Townhomes, LLC

MEMO:

In 2016, South Salt Lake City agreed to approve a PUD for 32 townhome lots and units on a little over an acre located at 2255 South, 400 East. The PUD approval was conditioned on execution of a Development Agreement, with a six-year term, that was intended to encourage individual home ownership, and owner-occupancy of the townhome units. The townhomes were developed as the MODA-S Line project and have been well managed as a rental complex since their completion. No units have been sold to individual owners. The owner attributes its inability to sell the units to the Project's close proximity to the South Park project.

The original Development Agreement is about to expire.

The owner has offered to extend its obligation to provide 24-hour project and tenant management for another 50 years, if the City is willing to release the owner from the remaining few months of the original Development Agreement.

Staff supports the owner's request and has drafted the First Amended and Restated Development Agreement for the S-Line Townhomes Project for your review and possible recommendation to approve.



WHEN RECORDED RETURN TO:

South Salt Lake City
Attn: Craig Burton, City Recorder
220 East Morris Avenue
South Salt Lake, UT 84115

**FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR THE S-LINE TOWNHOMES PROJECT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this ____ day of _____ 2021, by and among JF S-LINE TOWNHOMES, LLC, a Utah Limited Liability Company (“Developer”) and the CITY OF SOUTH SALT LAKE, a municipality and political subdivision of the State of Utah (the “City”). Developer and the City are hereinafter sometimes referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. Pursuant to a limited term Development Agreement (the “Prior Agreement”) and rezoning under the prior PUD Overlay Zone, Developer built a thirty-two (32) lot townhome project (the “Project”) on approximately 1.18 acres of real property located at 2255 South 400 East within the boundaries of the City as more particularly described in Exhibit A (the “Property”).

B. The Project was intended to be an owner-occupied development. However, Developer had the flexibility to rent individual townhomes while the Developer owned the individual lots and units.

C. The City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.*, has made certain determinations with respect to the Project and in the exercise of legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.

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 hereby agree as follows:

- 1. Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Agreement.
- 2. Conditions of Approval to Assure Long Term Project Management in Lieu of Owner Occupancy of the Project.** In exchange for the City’s release of certain Developer obligations arising from the Prior Agreement for the Moda S-Line Townhomes Project, Developer agrees to provide 24-hour management of the Project, including management of all tenancies within the Project. Upon the termination of Declarant’s rights, Developer shall reasonably cooperate with the City and a subsequent property manager, homeowners’ association or other similar entity or authority in the transition of Project and tenant management duties and obligations.

3. Term of Agreement. The term of this Agreement (the “Term”) shall be for a period of fifty (50) years following the date of its execution by the Parties.

4. Successors and Assigns.

4.1. Binding Effect. This Agreement shall be binding upon all successors and assigns of Developer in the ownership or development of any portion of the Project.

4.2. 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 without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any such request for assignment may be made by letter addressed to the City Attorney’s Office as provided herein. The assignment of the Project, including the sale of each lot and unit, shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Agreement.

5. Default.

5.1. Notice. If Developer or the City fail to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a default has occurred shall provide notice to the other Party as provided herein. If the City believes that the default has been committed by Developer, then the City shall also provide a courtesy copy of the notice to Developer.

6. 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 its address shown below:

To:

JF S-Line Townhomes, LLC
Attn: Glenn Girsberger
1148 W. Legacy Crossing Blvd., Suite 400
Centerville, Utah 84014

With copies to:

Mitchell Fielding, Esq.
1148 W. Legacy Crossing Blvd., Suite 400
Centerville, Utah 84014

Bruce R. Baird
Bruce R. Baird, PLLC
2150 South 1300 East, Suite 500
Salt Lake City, UT 84106

To City:

South Salt Lake City
Attn: City Attorney
220 East Morris Avenue
South Salt Lake, Utah 84115

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

GENERAL TERMS AND CONDITIONS

1. **Agreement to Run with the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Property.
2. **Entire Agreement.** This Agreement, together with the Exhibits hereto, integrates and constitutes 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. The Prior Agreement is hereby specifically novated and superseded and shall be of no effect.
3. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
4. **Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer, in the event of any default or breach by the City or for any amount which may become due to Developer, or its successors or assignees, for any obligation arising out of the terms of this Agreement.
5. **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 City and Developer. The City and Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.
6. **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.
7. **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.
8. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

9. Public Information. The Parties understand and agree that all documents related to this agreement will be public documents, as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

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

11. Counterparts. This Agreement may be executed in multiple counterparts which shall constitute one and the same document.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Agreement has been executed by South Salt Lake City, acting by and through the South Salt Lake City Council, Salt Lake County, State of Utah, pursuant to Resolution No. _____, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

SOUTH SALT LAKE CITY, a Utah municipality and political subdivision of the State of Utah.

By: _____
Cherie Wood
Mayor

ATTEST:

Craig Burton, South Salt Lake City Recorder

APPROVED AS TO FORM

Hannah Vickery, City Attorney

JF S-LINE TOWNHOMES, LLC, a Utah
limited liability company

By: _____
Owen Fisher, its Authorized Agent

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On the _____ day of _____, 2021, personally appeared before me Owen Fisher, who being duly sworn, did say that he is the Authorized Signer of JF S-Line Townhomes, LLC, and that the foregoing instrument was signed in behalf of said corporation and said Owen Fisher duly acknowledged to me that he executed the same for the purposes therein stated.

NOTARY PUBLIC