# CONFORMED COPY

# DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GLENWOOD SPRINGS AND SC GLENWOOD IV, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 15<sup>th</sup> day of November, 2021 by and between the CITY OF GLENWOOD SPRINGS, a Colorado home rule city ("City"), and Stoneleigh Companies, LLC ("Developer").

# RECITALS

WHEREAS, Developer has a legal interest in certain real property located on the south side of Wulfsohn Road between East Meadows Drive and Market Street in Glenwood Springs, Colorado, as more particularly described on Exhibit A, and known as Parcel Number 2185-081-38-008 (the "Property"); and

WHEREAS, Developer intends to construct 36 multi-family units in a four-story building with a lower level parking garage on the south side of Wulfsohn Road in Glenwood Meadows (the "Development"); and

WHEREAS, on July 27, 2021, after a duly-noticed public hearing, the City of Glenwood Springs Planning and Zoning Commission approved a special use permit allowing a 60' building height in the Mixed-Use Core (M2) District; and

WHEREAS, on July 27, 2020, after a duly-noticed public hearing, the City of Glenwood Springs Planning and Zoning Commission approved a variance from Section V.D.3.c of the Glenwood Meadows Zoning and Development Plan to allow for a maximum building length of 140 feet; and

WHEREAS, on September 2, 2021, after a duly-noticed public hearing, the City of Glenwood Springs City Council approved with conditions a Major Site/Architectural Plan for the Development; and

WHEREAS, on November 15, 2021, the Director of the Community Development Department administratively approved with conditions the Construction Plans for the Development as depicted on Exhibit B; and

WHEREAS, the City and Developer desire to set forth their rights and obligations with respect to the Development in this Amended Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

## TERMS

1. <u>Recitals</u>. The foregoing recitals are incorporated herein as material representations and acknowledgments of the Parties.

2. <u>Purposes</u>. The purpose of this Agreement is to set forth the terms and conditions to

be met by the Developer with respect to the Development; to set forth the fees to be paid by the Developer upon development of the Property; and to provide for the dedication of all public improvements made on the Property. All terms and conditions contained herein are in addition to all requirements of the Glenwood Springs Municipal Code, including Title 070 providing for the development and use of lands, as well as state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this Amended Agreement. The Developer agrees to bear all costs and responsibility for completion of the improvements servicing the Property as provided in this Amended Agreement. This Amended Agreement is not executed for the benefit of materialmen, laborers, or others providing work, services, or materials to the Property, or for the benefit of future lot Developers or occupants of the Property. The Developer agrees to comply with all terms and conditions contained in this Amended Agreement.

3. <u>Obligations of Developer</u>. The Developer agrees to satisfy the following obligations with respect to the Development.

3.1 The Development shall comply with the requirements of the Municipal Code except where specific variances have been granted. Developer shall comply with all applications and materials submitted to the City and verbal and written representations made by Developer or its representatives to the City in connection with the Development; the conditions of approval of the Major Site/Architectural Plan, Right of Way Encroachment License and Construction Plans shall all be considered "Conditions of Approval" with which Developer shall comply. In the event of conflict between this Amended Agreement and representations made during public hearings, the more specific term shall apply.

3.2 Developer shall submit any proposed future physical changes or improvements to the Property to the Community Development Director for review and approval.

3.3 Developer agrees that all work on the Development shall be performed by contractors who are licensed to work in the City of Glenwood Springs.

3.4 Developer agrees that construction of piles for the building foundation shall only occur Monday to Friday from 8:00 am to 5:00 pm.

3.5 Prior to issuance of a building permit for any building in the Development, the Developer shall satisfy all of the following conditions:

- 3.5.1 Comply with all requirements of the Municipal Code, other sections of this Amended Agreement and any requirements imposed by state, federal or local law.
- 3.5.2 Record an executed copy of this Agreement and the approved Major Site/Architectural Plan in the Office of the Garfield County Clerk and Recorder, pay all applicable recording fees, and provide recorded copies to the Office of the City Clerk.

- 3.5.3 Pay to the City of Glenwood Springs all applicable administrative fees and dedication and impact fees. An exact accounting of the fees due will be itemized on the building permit application.
- 3.5.4 Submit for review and approval an engineer's estimate of public improvements in accordance with Engineering Standards and post the required amount of security as set forth in Section 4.1 below.
- 3.5.5 Submit design for a 4-way stop at the intersection of Wulfsohn and East Meadows.
- 3.6 Prior to issuance of a certificate of occupancy, the Developer shall satisfy all of the following conditions:
  - 3.6.1 Comply with all requirements of the Municipal Code and state and federal law.
  - 3.6.2 Install all public improvements required by the Municipal Code, Engineering Standards and identified on the Construction Plans (the "Public Improvements"), provide as-built drawings of the installed Public Improvements and have the City approve and accept the installed Public Improvements pursuant to Section 4.3 below.
  - 3.6.3 Make or fund any replacement of Public Improvements if the City determines, in its sole discretion, that any of the Public Improvements require replacement.
  - 3.6.4 Make or fund any repairs to any public facilities damaged during construction of the Development or Public Improvements if the City determines, in its sole discretion, that any public facilities were damaged by Developer.
  - 3.6.5 Provide as-built drawings and an Improvement Survey Plat per the Engineering Standards.
  - 3.6.6 Pay a surcharge of \$814/EQR to offset the costs of necessary lift station upgrades to accommodate the development.
  - 3.6.7 Pay \$30,000 to the City for intersection improvements on Midland Avenue as outlined in the Traffic Study.
- 4. <u>Public Improvements.</u>

4.1 <u>Security for Public Improvements.</u> Developer shall post sufficient security to guarantee the installation, performance, or maintenance of any required Public Improvements in accordance with the Municipal Code and Engineering Standards. The total amount of required security for Public Improvements for the Development shall be 125% of the amount specified on Exhibit D, attached hereto and incorporated by this reference. The Parties agree that the amounts on Exhibits D does not necessarily reflect the City Engineer's estimate of what the actual cost to the

City would be if the City were required to fund construction of all the Public Improvements, repair or any damage to public facilities caused in connection with the Development. As Improvements and repairs are completed, Developer may apply to the City Manager for release for all or part of the security, which release shall be approved by the City Engineer or the City Attorney.

4.2 <u>Certification</u>. Developer shall retain, at its sole expense, a licensed professional engineer for on-site construction inspections to ensure that all Improvements installed by Developer are installed as required pursuant to City standards, specifications. The engineer shall certify to the City Engineer in writing that the Improvements were installed were completed in compliance with City standards, approvals, plans, specifications, Conditions of Approval and this Agreement.

4.3 <u>Acceptance</u>. Acceptance of Public Improvements shall be requested by the Developer of the City Manager and shall be granted only after the City approves the as-built drawings referenced in section 3.6.2 and the certification described in section 4.2 above. Developer shall be responsible for the maintenance of Public Improvements until the Public Improvements are accepted by the City. Prior to said acceptance, Developer shall post a bond or other security in an amount determined by the City Manager to cover the cost of maintenance of Improvements before acceptance by the City. Within 30 days of the acceptance date, Developer shall dedicate or convey to the City all rights-ofway and easements required for the operation, maintenance, repair and replacement of the Public Improvements free and clear of all liens and encumbrances that might adversely affect the use of the Public Improvements for their intended purpose. Developer shall also execute a bill of sale conveying the Public Improvements which are to be conveyed to the City pursuant to this Agreement free and clear of all liens and encumbrances.

4.4 <u>Warranty</u>. All Public Improvements accepted and conveyed to the City shall be guaranteed for two years from the date of the City's acceptance (the "Warranty Period"). Developer shall provide to the City a bond or sufficient warranty for any and all Public Improvements conveyed to the City pursuant for the Warranty Period in accordance with Engineering Standards. Specifically, but not by way of limitation, the Developer shall warrant that:

- (a) The title conveyed shall be good and its transfer rightful;
- (b) The Public Improvements conveyed shall be free from any security interest or other lien or encumbrance; and
- (c) The Public Improvements so conveyed shall be free of any defects in materials or workmanship for a period of two years, as stated above.

4.5 <u>Title Policy</u>. Developer shall provide the City a commitment for a title insurance policy indicating that the Property is free and clear of all encumbrances whatsoever which would impair the use of the Property for the approved Development. Further, said title commitment or an additional title commitment shall show that any property to be dedicated to the City is free and clear of all encumbrances which would make Public Improvements and dedications unacceptable as the City in its sole discretion determines. At the time the building permit is issued, the title insurance policy(s) shall be provided to the City, and the premium(s) for the title insurance shall be paid by the Developer. In the event the title commitment(s) reflect encumbrances which would impair the use of the Property as proposed or which would make the public dedications unacceptable, the City shall notify the Developer, who shall cure or otherwise remove or subordinate said encumbrances to the satisfaction of the City.

5. <u>Vested Rights</u>. In accordance with and subject to the provisions of C.R.S. §24-68-101 et seq., Developer shall have the vested right to develop the Development as set forth in the approved Site/Architectural Plan provided however that Developer shall have three (3) years to complete the improvements. This Agreement shall not preclude the application to Developer of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations. In the event changes in the law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with the law and according to the City's terms. In the event of a change of law, the Developer and City shall take action as may be reasonably required in good faith to meet the intent of this Agreement.

6. <u>Permitted Uses</u>. The permitted uses of the Development and the density and intensity of use of the Development, the maximum height, bulk and size of the proposed building, and the location of public improvements and public utilities, and other terms and conditions of development applicable to the Development shall be as set forth in the approved Site/Architectural Plan and Construction Plans.

Inspection. The City may enter and inspect any portion of the Development to 7. determine whether the Developer is in compliance with the obligations set forth in this Agreement. If the City determines that any Improvements as set forth in this Agreement have not been constructed and installed as required, the City shall furnish the Developer with a list of specific deficiencies. The City shall not be required to issue a building permit or certificate of occupancy so long as the listed deficiencies remain. If the City determines the Developer has not cured the deficiencies within thirty (30) days after presentation of the list to the Developer, the City may, but need not, cause such additional work to be done as it deems necessary to complete any public improvements or to cure any listed deficiencies. Developer shall be liable to the City for the entire cost of such additional work, whether performed by the City's employees or by others at the direction of the City. If the Developer does not pay the City the cost of such additional work including, as may be appropriate, the cost the City expended for materials, for services of those not employed by the City, and for the apportioned cost of wages and benefits paid for by the City for hours of the City employees, then the City may, upon ten (10) days' notice to the Developer, have a lien against all or any part of the Property. The City may certify the amount of such lien to the Garfield County Treasurer for collection, enforcement and remittance of general property taxes or assessments. In addition, if attorney's fees are incurred by the City to enforce this Agreement, they shall be paid by the Developer.

8. <u>Utility and Drainage Easements</u>. All utility and drainage easements shall be accessible to the City at all times. In the event any structure is constructed which obstructs partially or wholly City access to said easements, the City retains the right to remove such obstruction at the sole cost of the Developer. The City shall not be responsible for any costs associated with the replacement of said obstructions. The easements shown on the Site/Architectural Plan shall be modified to show the actual "as built" placement of utilities.

9. <u>Default: Termination</u>. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. Upon the occurrence of a default under this Agreement, the non-defaulting party may take action pursuant to the Code or institute legal proceedings to enforce the terms of this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of war, a pandemic for which a disaster emergency is declared by the Governor, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time, including an extension of applicable contract dates, for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

#### 10. Defense and Indemnity.

10.1. <u>Developer's Actions</u>. Developer shall hold harmless and indemnify City and its elected and appointed officers, agents, employees, and representatives from claims, costs, and liabilities for any personal injury, death, or physical damage (including inverse condemnation) which arises directly or indirectly, as a result of the construction of the Development, or of operations performed under this Agreement, by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, or any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors.

10.2. <u>City's Actions</u>. Nothing in this section shall be construed to mean that Developer shall indemnify or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from any act or omission of the City with regard to improvements that have been offered for dedication and accepted by City for maintenance. Nothing contained herein is intended to nor shall be construed as a waiver of the City's governmental immunity under state or federal law.

11. <u>No Agency, Joint Venture or Partnership</u>. It is specifically understood and agreed to by and between the parties that: (1) the subject Development is a private development; (2) the City has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the Current Approvals (as defined in the Recitals above); (3) Developer shall have full power over and exclusive control of construction of the Development on the Property subject to the approvals and Conditions of Approval of the City; and (4) the City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

#### 12 <u>Miscellaneous Provisions</u>.

12.1 <u>Assignment</u>. This Amended Agreement may not be assigned by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event the Developer desires to assign its rights and obligations herein, it shall so notify the City in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

12.2 <u>Waiver of Defects</u>. In executing this Amended Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the City to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Amended Agreement.

12.3 <u>Amendments</u>. This Amended Agreement shall not be amended, except by subsequent written agreement of the Parties.

12.4 <u>Release of Liability</u>. It is expressly understood that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the City of Glenwood Springs Municipal Code and Ordinances and the laws of the State of Colorado, and that the Developer, when dealing with the City, acts at its own risk as to any representation or undertaking by the City officers or agents or their designees which is subsequently held unlawful by a court of law.

12.5 <u>Captions</u>. The captions in this Amended Agreement are inserted only for the purpose of convenient reference and in no way defines, limits, or prescribes the scope or intent of this Amended Agreement or any part hereof.

12.6 <u>Binding Effect</u>. This Amended Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

12.7 <u>Invalid Provision</u>. If any provisions of this Amended Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Amended Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

12.8 <u>Governing Law</u>. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Amended Agreement. Should either party institute legal suit

or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

12.9 <u>Attorneys' Fees; Survival</u>. Should this Agreement become the subject of litigation, the substantially prevailing Party shall be entitled to, and the failing Party shall pay, all reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Amended Agreement.

12.10 <u>Authority</u>. Each person signing this Amended Agreement represents and warrants that he is fully authorized to enter into and execute this Amended Agreement, and to bind the Party it represents to the terms and conditions hereof.

12.11 <u>Counterparts</u>. This Amended Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

12.12 <u>Notice</u>. All notices required under this Amended Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

Notice to City:	City of Glenwood Springs 101 W. 8th Street Glenwood Springs, CO 81601\
With copy to:	Karp Neu Hanlon, P.C. P. O. Drawer 2030 Glenwood Springs, CO 81602
Notice to Developer:	SC Glenwood IV, LLC 760 W. Main St, Suite 140 Barrington, IL 60010 Attention: President
With a copy to:	Realty Capital Residential, LLC 909 Lake Carolyn Parkway, Suite 150 Irving, TX 75039 Attention: Alexander Brown

12.13 <u>Construction</u>. Each reference in this Agreement to any of the Current Approvals shall be deemed to refer to the Current Approval as it may be amended from time to time pursuant to the provisions of this Amended Agreement, whether or not the particular reference refers to such possible amendment.

12.14 <u>Covenants Running with the Land</u>. All of the provisions contained in this Amended Agreement constitute covenants running with the land. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property.

IN WITNESS WHEREOF, this Amended Agreement has been entered into by and between the City and Developer as of the date and year first above written.

CITY OF GLENWOOD SPRINGS

Jonathan Godes, Mayor

Muse, City Elerk

APPROVED AS TO FORM

Karl J. Hanlon, City Attorney

STATE OF ILLINOIS

COUNTY OF LAKE

The foregoing Development Agreement was acknowledged before me this  $\frac{100}{1000}$  day of 1000, 2021 by Richard F. Cavenaugh as President of Stoneleigh Companies, LLC, the Managing Member of Glenwood Manager III, LLC, the Manager of SC Glenwood III, LLC

) ss.

Witness my hand and official seal.

My commission expires: **OFFICIAL SEAL** KELLEY R LYNCH NOTARY PUBLIC - STATE OF ILLINOIS

By: Glenwood Manager III, LLC By: Stoneleigh Companies, LLC

SC Glenwood IV, LLC

By:

MY COMMISSION EXPIRES:09/17/24

Name: Richard F. Cavenaugh Title: President

## EXHIBIT A LEGAL DESCRIPTION

# LOT 8 GLENWOOD MEADOWS NO. 2, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 9, 2004 UNDER RECEPTION NO. 657439, COUNTY OF GARFIELD, STATE OF COLORADO









