

DEVELOPMENT AGREEMENT

BestWay2Store

THIS AGREEMENT is made and entered into this ____ day of April ,2020.

1. Parties

The parties to this Agreement are the City of Evans, a Colorado home rule municipality (“the City”) and S-S23 Holdings, LLC, a Colorado Corporation (“the Developer”).

2. Recitals

a. Developer is the owner of certain real property located in the City of Evans, Colorado, described on Exhibit "A" (Legal Description) attached hereto and incorporated herein (the “Property”)

b. Developer submitted to the City an application for a Special Use Permit to be known as BestWay2Store 19-SUP-02 and shown on the Special Use Permit Site Plan, (“the Plan”) attached as Exhibit B;

c. The Development subject to this Agreement shall be titled BestWay2Store c/o S-S23 Holdings, LLC or successors. The Development is an approximately 2.64 - acre site located in the area depicted on Exhibit B. The Developer contemplates the Development will be used for a Mini-Storage [Self-Storage] Facility.

d. Developer acknowledges that approval of the Special Use Permit along with the subsequent use of the Property will directly impact existing infrastructure and generate the need for both on-site and off-site improvements.

NOW, THEREFORE, in consideration of the premises, mutual covenants and obligations contained herein, the sufficiency of which is acknowledged, the parties mutually agree as follows:

3. Definitions. As used in this Agreement, unless specifically stated otherwise, the words and phrases used shall have the meaning as defined in the City Code. For the

purpose of this Agreement the following words and phrases shall have the definitions provided for below:

- a. The term “Agreement” refers to this Development Agreement.
- b. The term “City Code” refers to the Municipal Code of the City of Evans, as adopted and as amended from time to time by the City Council.
- c. The term “City Official” refers to and includes the City Manager, City Attorney, City Treasurer, Public Works Director, Community Development Director, and their designated representatives.
- d. The term “Developer” initially refers to S-S23 Holdings, LLC, its agents, representatives, successors, or any other party authorized by Developer to provide services, construction, or maintenance of any Improvements, as well as any entity that subsequently acquires a fee simple interest of record in any portion of the Property as a transferee, grantee, assignee or successor of Developer. “Developer” shall include, collectively, all of the foregoing persons or entities, all of whom shall be jointly and severally liable for the obligations and liabilities of the Developer to the extent such liability relates to the portion of the Property they purchase or otherwise obtain. Notwithstanding the foregoing, the term “Developer” shall not include (1) purchasers of individual subdivided lots or individual residential lots or units or individual non-residential space in an approved Final Plan or Final Plat or (2) holders of a security interest in the Property or a portion thereof.
- e. The term “Development” refers to the overall plan of the Developer to develop the Property represented in Exhibits B and C.
- f. The Term “Improvements” refers to the improvements more particularly described in Exhibit C, that the Developer is obligated to design, construct, and install at Developer’s sole cost in connection with the development of the Property.
- g. The term “Plans and Specifications” shall refer to the engineering and design documents that have been reviewed and approved by the City in connection with the Development and are denoted as the BestWay2Store Special Use Permit map set prepared by Land One Engineering dated April 3, 2020.

4. Effect of Agreement

- a. Effective date. The effective date of this Agreement shall be _____, 2020
- b. This Agreement and the other provisions incorporated as part of the Special Use Permit Conditions of Approval and Development Standards are intended to prescribe a general plan for the use and development of the Property. However, except as expressly provided herein and in the Resolution authorizing the Special Use Permit, they do not supplant the City's land use regulations and other ordinances and regulations as they relate to the Property and shall not be construed to limit the authority of the City to adopt different ordinances, resolutions, regulations, rules, policies or codes so long as they apply throughout the City uniformly or to classes of individuals or properties uniformly.
- c. The provisions of this Agreement and the Special Use Permit Conditions of Approval and Development Standards reflect the requirements of the City's utilities as of the effective date of the Agreement. These provisions shall not be construed as a limitation upon the authority of the City to adopt different ordinances, rules, regulations, resolutions, policies or codes which change the charges or costs for any service or class of service or any other charges so long as they apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly.
- d. Except as otherwise expressly provided in this Agreement or the Special Use Permit Conditions of Approval and Development Standards , the establishment of vested property rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes) as all of such regulations exist on the date of this Agreement or as they may be enacted or amended after the date of this Agreement. The Developer does not waive its right to oppose the enactment or amendment of any such ordinance, resolution or regulation on the same basis that any other member of the public could present such opposition.

5. Term of Agreement

The term of this Agreement shall be five (5) years after the Development Agreement has been accepted by the City of Evans. Should the site not be fully constructed according to the Special Use Permit map and site plan contained in Exhibits B and C attached hereto, within the five-year period, an extension to this Development Agreement may be needed. After the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect (a) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (b) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

6. Vested Rights

- a. Sections 24-68-101, et seq., C.R.S. , (“the Vested Rights Statute”), provides for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Rights Statute has been implemented by the City through the procedures set forth in Sections 18.01.100, et seq., of the City Code.
- b. Pursuant to the provisions of the Vested Rights Statute and Sections 18.01.100, et seq., of the City Code, the parties find that the Special Use Permit is a site specific development plan for the purposes of developing the Property, vesting in the Developer the right to develop the Property in the manner depicted in the Special Use Permit application materials, as approved by the Planning Commission and the City Council.
- c. The vested rights associated with the Development, as set forth in this Section 6, shall run with the land and shall remain in effect throughout the term of this Agreement. No other vested rights are created or intended to be created by this Agreement, the Special Use Permit, or any of the other documents relating to the Property. Upon expiration or termination of this Agreement all vested rights shall expire, except as otherwise specifically

provided by Section 5, above.

- d. Any provisions of this Agreement or the Special Use Permit to the contrary notwithstanding, the City reserves the right to declare a moratorium upon a reasonable finding by the City Council that such moratorium is necessary to protect the public health, safety or welfare, but a moratorium cannot be declared with respect to the Development for planning purposes.
- e. The City finds the five (5) year duration of such vested property rights to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the Development, economic cycles and market conditions.

7. Improvements. The public improvements associated with the development of the Property are described in Exhibit C, Developer Improvements, (“the “Improvements”). Exhibit C includes but is not limited to (1) description of Improvements, (2) Engineer’s estimate of probable costs of Improvements, (3) Schedule of completion of Improvements, and (4) Improvements Map. From time to time and upon the City’s request, Developer agrees to keep the City informed of the progress of its work and provide a projection of when Improvements will be installed as well as the approximate cost of the remaining Improvements.

8. Developer’s Obligations to Construct Improvements. Developer shall design, construct and install at its own expense, the Improvements on or before the Estimated Completion Date set forth in Exhibit C, subject to extension as provided for delays due to Force Majeure. Construction of the Improvements shall be in substantial and material conformance with the Plans and Specifications, as reviewed and approved by the Public Works Director or a designated representative, and shall be in compliance with all policies, ordinances, standards and specifications adopted by the City relating thereto in effect at the time of such construction. The City’s review and approval of the Plans and Specifications shall not impose any liability on the City and shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Improvements. Developer agrees to save and hold the City harmless from any claims, fault or negligence attributable to such design, construction and installation.

a. Acquisition of easements. Before commencing the construction of any Improvements the Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances except permitted encumbrances to which the City has consented in advance and in writing, on all lands and facilities, if any, traversed by the Improvements.

b. Operation Standards during construction

1) Hours of operation of construction equipment. The operation of construction equipment outside an enclosed structure (i.e. grading, other surface improvements, underground utilities, either public or private) shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. In situations of need, and upon written request, the hours of operation may be altered by the Public Works Director.

2) Debris in public rights-of-way. The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material or rubbish caused by its operation. Developer shall remove such rubbish no less than weekly and, at the completion of its work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way caused by its operation.

3) Erosion control requirements. Developer shall install temporary and permanent erosion control in the Development to control erosion by both wind and water. Developer shall maintain said erosion controls on a routine basis. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions and/or other devices. In the event that the Developer fails to perform erosion control maintenance, Developer shall have 20 days upon receiving written notice to bring the Development into compliance.

4) Other nuisance mitigation. Developer shall mitigate any nuisance caused by construction activities in connection with development of the Property, including but not limited to noxious odors, excessive dust, particularly on days with high winds, and artificial light intrusion.

5) Standards for subcontractors. Developer hereby agrees that it shall require its subcontractors to comply with the operations standards as set forth in this Section, including but not limited to cooperating with the City's construction inspectors, and ceasing operations when winds are of sufficient velocity to create blowing dust which, in the inspector's opinion, is hazardous to the public health and welfare.

6) Remedies for failure to comply with operation standards. Failure to comply with the Operation Standards set forth in this Section shall be sufficient cause for the City to withhold building permits and/or certificates of occupancy or other approvals or permits until corrected to the satisfaction of the Public Works Director or designee.

9. Development standards. Developer shall comply with all applicable standards related to the following items as reflected in the Plans and Specifications:

- a. Easements and dedications
- b. Culverts
- c. Access and egress requirements
- d. Sewer lines
- e. Water lines
- f. Storm water and drainage ditch management systems and piping systems
- g. Fencing
- h. Mailbox locations
- j. Non-potable water system
- k. Lighting
- l. Landscaping and landscape removal
- m. Landscaping and irrigation

10. Security For Construction of Improvements. The Developer's construction and completion of the Improvements shall be assured by Developer providing a Performance

Guarantee in the amount of 115% of the estimated cost of the Improvements prior to the earlier of (1) issuance of the first permit associated with the Development or (2) commencement of work on the Property. The Developer shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee. In the event that prior to the City's initial acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying or the cost of the Improvements is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee or augment the deficient security to achieve 115% of the cost of the Improvements. If such Performance Guarantee is not timely furnished, then development activities including but not limited to the issuance of building permits and certificates of occupancy, may be suspended by the City pending compliance with the provisions of this Section.

11. Testing and inspection.

Developer shall employ (at its own expense) a qualified independent testing company to be approved by the Public Works Director or a designated representative in its reasonable discretion, to perform all testing of materials or construction that may be reasonably required by the City. Developer shall furnish certified copies of test results to the Public Works Director and, upon request by the Public Works Director, release and authorize full access to the Public Works Director of all work-up materials, procedures and documents used in preparing the test results. Developer will provide special inspections team resume's for City approval and furnish all certified copies of test results to the Public Works Director.

At all times during construction of the Improvements and until final acceptance by the City, the City shall have the right, but not the duty, to inspect materials and workmanship utilized for the Improvements at Developer's cost, provided the City's inspector is accompanied by Developer or its designated representative. All materials and work must conform to the approved Plans and Specifications and all applicable regulations. Any material or work not conforming to the Plans and Specifications or other applicable regulations shall be promptly removed, repaired or replaced, at Developer's expense and to the reasonable satisfaction of the Public Works Director.

12. Initial Acceptance of Improvements. Developer shall make written application to

the Public Works Director for initial acceptance of the Improvements (“Initial Acceptance”) within 30 days of their completion. Such Improvements will be described on a "Developer's Contribution Worksheet" provided by the City Engineer. The Developer shall be responsible for the accuracy and completeness of all information provided. The affidavit, lien waivers and other materials may be reviewed by the City, but the City assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided. Developer’s application for initial acceptance shall be accompanied by the following information and materials:

- a. As Built Drawings: One (1) set of surveyed Mylar and one digital/CAD file of the “as built” drawings, certified as to accuracy by the Developer or its architect or Engineer;
- b. Engineer's Certification: Written certification by the Developer’s Engineer that the Improvements have been fully constructed and installed in substantial conformance with the Plans and Specifications;
- c. Cost Affidavit: A final affidavit of the Improvements’ construction cost including verification reasonably satisfactory to the City Public Works Director;
- d. Improvements Affidavit: Developer shall provide a signed affidavit that the Improvements have been paid for in full;
- e. Lien Waivers: Developer shall provide lien waivers from its general contractor and from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the Improvements.

After the receipt of Developer’s written application for initial acceptance, the Public Works Director (or a designated representative) will use reasonable efforts to promptly inspect the Improvements and prepare a detailed written description of all Improvements that are not in compliance with the requirements of the City or the Plans and Specifications and deliver that description to the Developer. After curing such defects as are noted on the written statement provided by the Public Works Director to the Developer, the Developer shall make written application to the City for re-inspection of the Improvements, and the Public Works Director will use reasonable efforts to promptly re-inspect such Improvements. No Improvements shall be deemed to be initially accepted by the City until the Public Works Director has certified, in writing, that the Improvements appear to have been completed in

accordance with the applicable Plans and Specifications. This shall then constitute Initial Acceptance.

13. Warranty period for Improvements Following Initial Acceptance. Developer shall remain fully responsible for maintenance, repairs, and replacement of the Improvements for a period of two (2) years after their Initial Acceptance by the City. If any of the Improvements fail or are in need of repair or replacement, such failed, repaired, or replaced portions shall be replaced with similar Improvements deemed satisfactory by the Public Works Director in the exercise of his reasonable discretion and the two-year warranty shall begin anew as to the repaired or replaced Improvement upon completion by the Developer, and inspection and approval by the Public Works Director, and the Maintenance Guarantee shall remain in place during such extended warranty period.

14. Maintenance Guarantee During Warranty Period. Developer's application for Initial Acceptance shall be accompanied by a Maintenance Guarantee in a form deemed acceptable to the City in the amount of fifteen percent (15%) of the total costs of the Improvements. The Maintenance Guarantee shall be subject to the same conditions as those set forth for the Performance Guarantee. Until Final Acceptance of the Improvements by a Certificate of Completion reviewed and approved by the Public Works Director Developer agrees that (a) the Maintenance Guarantee shall not be released; and (b) the Developer shall bear all risks and liability related to any loss, damage, or claims due to defects or failures of any of the Improvements; and (c) the Developer shall perform all maintenance and make all repairs and replacements of all defects or failure of Improvements at Developer's expense which, in the reasonable opinion of the Public Works Director, may be necessary. If, within fifteen (15) days after the Developer's receipt of written notice from a City Official requesting such reasonably required maintenance, repairs, and/or replacements of the Improvements, the Developer shall not have undertaken with due diligence to make same, the City, after providing written notice to Developer, may make such maintenance, repairs, and/or replacements at the Developer's expense. The City shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the City may charge the Developer for the costs thereof if such charges are not paid by the Maintenance Guarantee. In case of emergency, such written notice shall be waived and the City may proceed as it reasonably deems necessary, at the expense of the Developer or the issuers of the Maintenance Guarantee.

15. Final Acceptance of Improvements. The Developer shall make a written request to the Public Works Director (or a designated representative) for a final inspection of the Improvements no sooner than two (2) years after the City's Initial Acceptance of all of the Improvements for such Phase of Development. Upon receipt of such request the City may, but shall not be obligated to, conduct a final inspection of the Improvements. If the Developer fails to have the Improvements finally accepted as provided in this Section within two years and six months after the City's Initial Acceptance, the City shall have the right, but not the obligation, at any time thereafter to conduct a Final Inspection of the Improvements. If, pursuant to a final inspection requested by the Developer or initiated by the City, any Improvement is found to not conform to this Agreement, the Plans and Specifications, or other applicable regulation or requirement, then the City shall have the rights set forth in this Agreement to remedy such defects. Nothing herein shall be construed or deemed as requiring the City to finally accept and release from the Maintenance Guarantee any Improvement that is defective or damaged. After receipt of satisfactory evidence that the Improvements fully conform to this Agreement, the Plans and Specifications, all applicable regulations and requirements, and that all of the maintenance, repairs, and replacements reasonably requested by City Officials pursuant to the terms of this Agreement have been completed to the reasonable satisfaction of the City, the Public Works Director shall issue a Certificate of Completion, evidencing completion and Final Acceptance of such Improvements. The Maintenance Guarantee provided by the Developer shall be released after the Final Acceptance of all of the Improvements has been granted and the Certificate of Completion has been issued by the City.

16. Conveyance of rights-of-way, easements and improvements to City. All rights-of-way and easements associated with development of the Property, and the Improvements shall be conveyed to the City at the time of initial acceptance. The documents of conveyance shall be in a form acceptable to the City and shall be furnished to the Public Works Director or their designee for recording. Developer shall reimburse the City for all costs of recording. At the City's request, the Developer shall provide, at its expense, a policy of title insurance insuring title in the City, free and clear of all liens and encumbrances, for all land, property, and easements dedicated or conveyed (except those easements that do not affect the City's use of the property) to the City or for public use.

17. Commitments to Serve From Service Providers. Prior to commencement of construction, Developer shall provide will serve letters or other evidence deemed

acceptable by the City's Director of Public Works, indicating the willingness and ability of service providers to supply their respective services to the Development in an amount reasonably needed for the Development, including but not limited to water, waste water, electrical, and natural gas service.

18. Developer Dedications and Impact fees. Developer shall comply with the City Code regarding dedication of impact fees, including but not limited to Section 3.20.010, et seq.

19. Additional Developer Obligations. In addition to its obligations related to the Improvements, Developer further agrees to fulfill its obligations with regard to the items and matters set forth in Exhibit E, attached.

20. Additional Developer Liabilities.

a. Indemnification. To the extent permitted by law, Developer hereby agrees to indemnify and hold the City, City Officials, its employees, agents, representatives, and insurers (collectively, "City Parties") harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees, and expenses (including reasonable attorney's fees) resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of the Developer, its employees, agents, consultants, representatives, or subcontractors except to the extent caused by negligence, gross negligence or willful misconduct of the City or one or more City Parties. Developer shall promptly investigate, handle, respond to and provide defense for and defend against any such liability, claims, or demands at the sole expense of Developer. Developer also agrees to bear all reasonable costs, expenses, and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent unless they are caused by negligence, gross negligence or willful misconduct of the City or one or more of its officers, agents or employees.

b. Insurance. Developer shall (for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements) maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability, worker's compensation insurance and sufficient public liability insurance as will protect the City, City Officials, City's employees, agents and representatives against any and all potential liability, claims,

damage, demands, losses and expenses, that may be incurred or asserted. Liability insurance shall be in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S. as it may be amended. Whenever reasonably requested by City or City Officials, the Developer agrees to submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the City, City Officials, its employees, agents, and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

c. Drainage Liability. To the extent permitted by law, Developer shall indemnify and hold the City harmless from any liability the City may have on account of any change in the nature, direction, quantity or quality of drainage flow, resulting from the Development. In addition, Developer shall reimburse the City for any and all costs, fees, and expenses, including reasonable attorney's fees, that the City incurs in acquiring any rights of way or easements that the City deems necessary or is required to acquire or condemn or that the City is held to have acquired or condemned for drainage or as a result of or relating in any manner to the Development.

d. Tax Liability. Developer shall pay any outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the City prior to or at the time of such dedication or conveyance, and shall indemnify and hold the City harmless from any and all encumbrances, obligations, or tax liability incurred prior to the dedication or conveyance to the City.

e. Use Tax. Any and all use tax due on construction and building materials for public facilities shall be paid as provided under Municipal Code including but not limited to Section 3.04.200.

f. Cost Reimbursement to City. Developer shall reimburse City for all reasonable costs incurred for professional consultants including but not limited to engineers, testing companies, contractors, and attorneys reasonably used by the City in connection with the

preparation or implementation of this Agreement and in the review and processing of the Application, as well as the design, construction, review, testing, completion, repair, replacement, and approval of the Development.

21. Breach and Remedies

a. Breach of Agreement by Developer. If at any time this Agreement (or any part hereof) has been materially breached by Developer or if satisfactory progress substantially in accordance with Exhibit C, Developer Improvements, has not been made on the design, construction, installation, repair, replacement or maintenance of the Improvements the City may, after 30 days' prior written notice to Developer or such additional period as may reasonably be agreed to by the City in writing in light of the nature of the alleged breach, draw on the Performance Guarantee or Maintenance Guarantee and the City may withhold approval of any or all building permits, certificates of occupancy, water meters, or tap hook-ups for any area within the Development, or other approvals or permits, if Developer then fails to make reasonable progress as reasonably determined by the City, unless such failure is caused by Force Majeure. Notwithstanding these rights and remedies, the City may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity, or pursuant to this Agreement. The City's remedies shall be cumulative.

b. Breach of Agreement by City. If at any time the Developer believes the City is in breach of this Agreement, the Developer shall provide the City with 20 days prior written notice. In the event the City fails to remedy the alleged breach within 20 days or such additional period as may be necessary in light of the nature of the alleged breach, then the Developer remedies are limited to specific performance of this Agreement and shall not include any claim for damages or other monetary relief.

22. Miscellaneous.

a. No Waiver. Delays by the City or Developer in enforcement or the waiver of any one or more breaches of this Development Agreement shall not constitute a waiver of any of the remaining terms or obligations or any future breaches.

b. Severability. If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair,

or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

c. Recording of Agreement and Encumbrance on the Property. This Agreement shall be recorded with the Weld County Clerk and Recorder at Developer's expense and shall be a covenant running with and against all the Property, property rights, and improvements contained within the Development in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the Property on notice as to the terms and obligations herein.

d. Binding Effect. Unless otherwise provided herein, this Development Agreement shall be binding upon Developer's heirs, successors, assigns, transferees, and any other person or entity acquiring or purchasing any interest in any part of the Property.

e. Transfer or assignment. In the event of a sale or transfer by Developer of any portion of the Property, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written Agreement delineating and allocating the various rights and obligations for the Improvements, has been approved and executed by the City Council. Notwithstanding anything herein to the contrary, Developer shall have the right to transfer and/or assign its rights and interests in this Agreement to any entity that controls, is controlled by, or is under common control with Developer without the approval of the City or City Council, provided the City is given written notice within 10 days of such transfer.

f. Title and Authority. Developer expressly warrants and represents to the City that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Development Agreement. Developer understands that the City is relying on the representations and warranties contained herein, in its consideration of the application and in entering into this Agreement.

g. Notices. Any notice to Developer or the City, which may be given under the terms of this Agreement, shall be in writing and shall be deemed sufficiently given on the third (3rd) business day following the date such notice is sent by certified or registered U.S. Mail, postage prepaid, return receipt requested, or as of the immediately following business

day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

TO CITY:

TO DEVELOPER:

on: City Manager
1100 37th Street
Evans, CO 80620-2036

With a copy to
Scotty P. Krob
Krob Law Office LLC
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

With a copy to: Dennis Rubba
S-S32 Holdings, LLC: Dennis Rubba
1848 Sundance Drive
Longmont CO, 80504

Any party may change its notice address by providing the other party(ies) notice as set forth in this section.

h. Force Majeure. Whenever a period of time is herein prescribed for an action to be taken or performed by any Party, that Party will not be liable to so perform within such time period due to, and there will be excluded from the computation of such period of time, any delays due to, strikes, riots, acts of God, shortages of labor and materials, war, or any other cause which is beyond the reasonable control of the Party required to take or perform such action.

i. Cooperative drafting and Consultation with Attorney. This Agreement is the product of a cooperative drafting effort by the City and the Developer and shall not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it. Both parties acknowledge that they understand this Agreement contains legal rights and obligations and further acknowledge that they have had the opportunity to and have consulted with an attorney to the extent they desire to do so.

j. Amendment. This Agreement cannot be modified or revoked except by an instrument in writing signed by the City and the Developer or the then owner of the

Property or any portion thereof if there has been an assignment as it relates to the specific Property.

k. No third party beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.

[Signatures on next page]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this SUP Development Agreement, the parties have set their hands below on this __ day of _____, 2020.

S-S23 Holdings, LLC (DEVELOPER)

By: _____
Signature Title Date

ATTEST:

Secretary/Member Date

STATE OF COLORADO

COUNTY OF _____ ss.

SUBSCRIBED AND SWORN to before me this __ day of _____, 20__, by

_____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

(SEAL)

CITY OF EVANS, COLORADO

A Municipal Corporation

By: _____

Mayor

ATTEST:

By: _____

City Clerk

Exhibits

A – Legal Description

B – Graphic (Special Use Permit)

C – Developer Improvements

C-1 – Description of Improvements

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

C-4 - Improvements map and final approved Constructions Documents and Drainage letter.

D – Letter of Credit

E – Resolution approving development

Exhibit A – Legal Description

Parcel #: 095925021013 Evans, Colorado
Legal: EVS WB TRACT A WILLOWBROOK
County of Weld, State of Colorado
Section 25
Township: 5N
Range: 095925021013
Acres: 2.64 acres
Square Ft: 114,998
Owner: S-S23 Holdings, LLC

Exhibit B – Special Use Permit

Exhibit C - Developer Improvements

C-1 – Description of Improvements

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

C-4 - Improvements map, final approved Constructions Documents and Drainage email

Exhibit D - Letter of Credit

Exhibit E – City Council Resolution