



W2963970

AGREEMENT # _____

EH 2963970 PG 1 OF 15
LEANN H KILTS, WEBER COUNTY RECORDER
04-FEB-19 1023 AM FEE \$38.00 DEP DC
REC FOR: TYSON LUND

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, ("Agreement"), is made and entered into this 7th day of September, 2018, by and among HAVEN COVE TOWNHOMES, a Utah limited liability company, ("Developer") as the owner and developer of certain real property in West Haven City, Weber County, Utah, at approximately 1628 West 2100 S, and WEST HAVEN CITY, (the "City"), a Utah Municipal Corporation. Developer and the City shall be collectively referred to as "Parties" and sometimes individually as a "Party".

RECITALS:

A. Developer is the owner of approximately 13.34 acres of real property ("Property") in West Haven City, Weber County, Utah, which it intends to develop as a Mixed-Use Development. A property overview is shown in Exhibit "B"

B. SITE INFORMATION

Tax Lots: 150690005, 150690031, 150690008
Current Zoning: Mixed Use ZC & C2
General Plan: Mixed Use ZC & C2
Location: The subject property is within the West Haven City limits. The proposed Project is on the north side of 2100 South (Wilson Lane) at approx. 1628 West.

C. The subject Property ("Property" or "Development" or "Project") is zoned Mixed Use ZC & C2 on the Zoning Map.

D. The Parties desire to enter into terms relevant to Developer's proposed Development as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and City agree:

1. **Recitals.** The above recitals are incorporated herein by reference and made a part hereof.
2. **Zoning.** Development is to remain as currently zoned – Mixed Use ZC & C2
3. **Intended Use.** The Developer agrees that only the proposed Mixed-Use Development will be allowed or authorized under this Agreement or on parcels outlined in Exhibit “A” as approved by the City.
4. **Development Terms.** The following constitutes terms for development of the previous defined parcel(s) as shown in Exhibit “A”
 - a. Concept Approval. The West Haven City Council has approved the Developer’s proposed concept (Exhibit “B”) and has entered into this Agreement to facilitate the development of the Property as proposed.
 - b. Compliance with Subdivision Standards. Developer agrees to comply with all of the conditions of approval, and the ordinances, rules, regulations, requirements and standards of the City regarding the preparation, submission, and recording of subdivision applications, all preliminary and final plats, and the construction and completion of the Development.
5. **Vesting.** The Developer shall have the vested right to develop Property in accordance with the applicable land use ordinances of West Haven City as established on the date of this Agreement as well as per the terms of this Agreement.
 - a. Exceptions. Restrictions on the applicability of the City’s Future Laws to the Project as specified in Section 5 are subject to only these exceptions:

- i. Developer Agreement. City's Future Laws agreed to, in writing, by the Developer as being applicable to the Project;
- ii. State and Federal Compliance. City's Future Laws which generally apply to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
- iii. Building Codes. City's Future Laws and safety standards that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the IRC, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet countervailing public safety concerns related to public health, safety or welfare;
- iv. Roads. Reasonable requirements for roadway grades, widths, access points, maintenance, and standards.
- v. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
- vi. Fees. Any agreements entered into by the Parties that include waived City fees for the purpose of helping pay for public infrastructure that is being built in and around the Development.
- vii. Compelling, Countervailing Interest. Laws, rules or regulations that

the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code or judicial decision.

6. **Existing On-Site Conditions.** The approx. 13.34-acre subject property is largely undeveloped, with approx. 2-acres developed originally as a single-family dwelling and commercial building.
7. **Density.** The number of multi-family dwelling units in this Development shall be not more than 156 units. Density shall be generally construed and constructed in the manner identified in the attached Exhibit "B."
8. **Design.** Developer shall provide a variety and mixture of unit types and densities in a coordinated neighborhood layout. Developer wishes to design the buildings similarly to those shown in Exhibit "C." The following building materials will be in place on all buildings within the Property.
 - a. All exterior colors used shall be consistent with those schemes depicted in Exhibit "C".
 - b. All building exterior frontages shall have a minimum 30% of wall area (excluding doors) covered in brick or stone.
 - c. All remaining exterior finishes (excluding windows) shall be a Cementous board material, stucco, or like material. Vinyl siding products shall not be used.
 - d. Roads, required parking areas, aisles, and alleyways shall be paved with asphalt, concrete or comparable surfacing.

9. **Signage.** Developer will place signage along 2100 S (Wilson Lane). The signage will follow all local and state laws and must be pre-approved by City Staff.
10. **Streets.** Streets to be dedicated as public will meet all state and local laws. Private streets will be designed and built in accordance with industry standard best practices and will also conform to the City's Public Works Standards.
11. **Access.** The proposed Development shall include a main road access point from 2100 S (Wilson Lane)
12. **Vehicle Parking.**
 - a. **Parking Space Count:** Parking spaces in the Project may include spaces in garages, parking lots, private side streets and/or driveways if vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes).
 - b. **Parking Locations:** Vehicle parking is allowed only within garages, carports and other structures, on driveways or parking lots, or on approved streets areas that have been developed and specifically designated for parking – As outlined in Exhibit “B”
 - c. **Parking rules and regulations** to be enforced by on-site management company
13. **Storm Drainage Improvements.** Drainage facilities shall be designed and constructed to accommodate increased runoff such that discharge rates existing before the proposed Development shall not be increased, and accelerated channel erosion will not occur as a result of the proposed land disturbance or development activity.

14. **Site Lighting.** All outdoor lighting fixtures for the Development shall be subject to this section and shall be designed and maintained as full cut-off fixtures or have a shielding method to direct light emissions down onto the site and not shine direct illumination or glare onto adjacent properties.
15. **Fencing.** Fencing is no longer required along the Hooper Canal as it was placed into pipping.
16. **Amenities Offered.** The Development wishes to have the following amenities on-site placed in a manner similar to that found in Exhibit "B". The amenities offered are anticipated to include: Pool/Spa area, club house, BBQ grilling area, tot lot, and a pet park.
17. **Preliminary Grading and Drainage Plan.** A preliminary grading and drainage plan will be prepared by a registered professional engineer. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. This plan shall be reviewed by and subject to approval of the City Engineer.
18. **Building Permits.** The City will process building permits under established policy. The City shall not unreasonably delay issuance of building permits.
19. **Commercial Development.** The Developer is proposing that Lot 3 will develop under C2 Zoning.
20. **Construction.** Developer shall provide the contact name and number of the on-site foreman for the Project who shall respond immediately to issues and concerns raised by the City. All local and states laws as well as industry best practices will

be adhered to for the duration of the construction of the proposed Project.

21. **Easement.** Parties wish to place a public road on land currently owned by The United States Government (Parcel IDs: 150690006 & 150690003) as shown in “Exhibit A” and “Exhibit B.” City agrees to work with Developer and The United States Government to obtain these easements. The remaining area on these parcels not used for roadway will be landscaped and maintained by the on-site management company.
22. **Payback Agreement.** Parties wish to enter into a payback agreement for infrastructure installed by the Developer that will directly benefit surrounding land as it develops. The payback agreement is outlined as follows:
 - a. Developer will provide a road, to be dedicated as public, stubbed both to the east and west of Developer’s property on the north side of the canal, as shown in Exhibit “A”.
 - b. Developer will be reimbursed for the cost of said public road by City as the surrounding area develops. The City grants Developer rights and interest to the road impact fees collected for adjacent properties as they develop. This right and interest shall exist until all funds relative to payback, as set out in the Payback Agreement, have been tendered to Developer. At that time Developer relinquishes all rights to the collected impact fees.
 - c. Adjacent properties to be included in this payback agreement is shown in Exhibit “D”.
 - d. Total cost to be reimbursed to Developer shall be outlined as follows

- i. Total City approved cost estimate (Exhibit "E"): One-million, two-hundred thousand dollars (\$1,200,000)
 - ii. Percentage of infrastructure cost to be paid back to Developer: Fifty Percent (50%)
 - iii. City participation will not exceed six-hundred thousand dollars (\$600,000)
 - e. The road impact fees for Development will be waived as part of City's participation and will be applied to the cost sharing outlined above.
23. **Parcel A.** Developer is maintaining ownership of Parcel A (As outlined in Exhibit "A") and will provide upkeep to it until ownership is transferred to a separate party. Developer grants West Haven City the first right of refusal to purchase Parcel A. Developer may gift Parcel A to West Have City if the below conditions are meant.
- a. West Haven City enters into an agreement with Hooper Canal Co. to utilize the Hooper Canal as a trail system
 - b. A trail has been placed from subject property to 1900 W along the Hooper Canal
24. **Secondary Water.** Bona Vista Water shall provide water to irrigate up to 15% of the Project until an agreement can be made between the Developer and the surrounding land owners to provide secondary water to the area (At which time the project will abandon Bona Vista Water for irrigation purposes). Water control structures to be used will adhere to all applicable local and state laws as well as industry best practices

25. **Successors and Assigns.**

- a. Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project.
- b. Assignment. This Agreement, any of its provisions, terms or conditions, including all rights as well as responsibilities, may be assigned to any other party (individual or entity).

26. **General Terms and Conditions.**

- a. Term.
 - i. This agreement shall be in effect until December 31, 2025 excluding Section 22 Payback Agreement.
 - ii. Section 22 Payback Agreement shall remain effective until December 31, 2035.
- b. Construction of Agreement. This Agreement shall be construed to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling public interest.
- e. State/Federal Law. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be amended in writing by the Parties as to that provision. Should the Parties be unable to agree upon

a modification of the condition, covenant, or provision the Agreement becomes voidable by either Party, subject only to the provisions of Section "d", immediately below.

- d. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- e. Relationship of Parties and No Third-Party Rights. This Agreement creates no joint venture, partnership, undertaking, or business arrangement between the Parties nor, unless otherwise stated, create any rights or benefits to third parties.
- f. Attorney's Fees. If this Development Agreement or any requirements or rights of the exhibits are breached, the Party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breeching Party.
- g. Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to refer to laws of West Haven City and the State of Utah.
- h. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior

conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties.

- i. Counterparts. This Agreement and any exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original, but all of which shall constitute one and the same instrument.
- j. Applicable Law. This Agreement is entered into under, and is to be construed and enforceable in accordance with, the laws of the State of Utah.
- k. Arbitration. All disputes under this Agreement shall be resolved through binding Arbitration. If the City and Developer cannot resolve an issue through discussions, the Parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the Parties cannot agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual expert. These two experts shall, between them, choose the single arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the Parties regarding the arbitration issue and render a decision. The arbitrator shall assign the prevailing Party to draft a proposed order for consideration and review or objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both

Parties.

1. Notices. Any notices, requests or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally or by certified mail or express courier delivery to the Parties at these addresses:

If to WEST HAVEN CITY:

West Haven City
4150 S 3900 W
West Haven, UT 84401

If to HAVEN COVE TOWNHOMES, LLC

Eric Thomas
2637 North 400 East #127
North Ogden, UT 84414

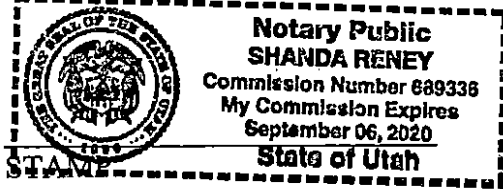
Any party may change their address by giving written notice to the other party in accordance with the provisions of this section.

HAVEN COVE TOWNHOMES, LLC

Dated: 9-19-18 By: [Signature] Member Manager
PRINTED NAME: Eric Thomas TITLE

STATE OF UTAH
COUNTY OF WEBER

On this 19 day of Sept, 2018, personally appeared before me ERIC THOMAS (Notary Public), whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a member of Haven Cove Townhomes, LLC, and that said document was signed by him in behalf of said Corporation by Authority of its Bylaws, or (Resolution of its Board of Directors), and said member acknowledged to me that said Corporation executed the same.



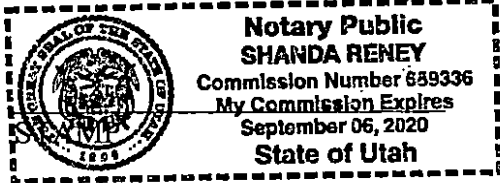
[Signature]
NOTARY PUBLIC

WEST HAVEN CITY

Dated: 9/19/2018 By: [Signature] West Haven City Mayor
PRINTED NAME: Mayor Sharon A. Bolos TITLE

STATE OF UTAH
COUNTY OF WEBER

On this 9 day of Sept, 2018, personally appeared before me Sharon Bolos (Notary Public), whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that she is the Mayor of West Haven City, and that said document was signed by her in behalf of West Haven City.



[Signature]
NOTARY PUBLIC

Exhibit A – Boundary Description

A PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 6 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 2100 SOUTH STREET LOCATED 823.24 FEET NORTH 89°27'43" WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER AND 725.48 FEET NORTH 00°54'29" EAST FROM THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER;

RUNNING THENCE IN A WESTERLY DIRECTION TO THE LEFT OF A NON-TANGENT 11492.20 FOOT RADIUS CURVE, A DISTANCE OF 129.67 FEET, CHORD BEARS NORTH 88°23'52" WEST 129.67 FEET, HAVING A CENTRAL ANGLE OF 00°38'47" ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE SOUTHEAST CORNER OF THE DAVID E. SMITH PROPERTY FILED AS ENTRY NO. 1524151 IN THE FILES OF THE WEBER COUNTY RECORDER, SAID POINT ON THE PROJECTION OF AN EXISTING FENCE LINE; THENCE NORTH 00°23'44" EAST 330.00 FEET ALONG SAID FENCE PROJECTION AND THEN FENCE TO A FENCE CORNER BEING THE NORTHEAST CORNER OF SAID DAVID E. SMITH PROPERTY; THENCE NORTH 88°19'55" WEST 132.00 FEET ALONG AN EXISTING FENCE TO THE NORTHWEST CORNER OF SAID DAVID E. SMITH PROPERTY, SAID POINT BEING ON THE PROPERTY LINE ESTABLISHED BY THE BOUNDARY LINE AGREEMENT FILED AS ENTRY NO. 2834692; THENCE ALONG SAID BOUNDARY LINE AGREEMENT LINE THE FOLLOWING THREE (3) COURSES; (1) NORTH 00°36'28" EAST 225.38 FEET; (2) NORTH 00°51'14" EAST 287.22 FEET; AND (3) NORTH 01°54'06" EAST 118.70 FEET; THENCE ALONG AN EXISTING FENCE LINE AND SAID BOUNDARY LINE AGREEMENT THE FOLLOWING NINE (9) COURSES; (1) SOUTH 86°10'41" EAST 47.42 FEET; (2) SOUTH 83°21'28" EAST 80.38 FEET; (3) SOUTH 82°34'55" EAST 276.86 FEET; (4) SOUTH 85°20'32" EAST 37.29 FEET; (5) SOUTH 38°52'37" WEST 38.64 FEET; (6) SOUTH 18°42'18" WEST 31.42 FEET; (7) SOUTH 03°59'22" WEST 102.54 FEET; (8) SOUTH 00°25'29" WEST 565.04 FEET; AND (9) SOUTH 00°07'55" WEST 42.30 FEET TO THE NORTHEAST CORNER OF THE U.S.A. PROPERTY, RECORDED IN BOOK 521 AT PAGE 399 IN THE FILES OF THE WEBER COUNTY RECORDER, SAID POINT DESCRIBED OF RECORD AS BEING LOCATED 1216.6 FEET SOUTH 35°37' WEST FROM THE NORTH QUARTER CORNER OF SAID SECTION 25; THENCE ALONG THE BOUNDARY LINE OF SAID U.S.A. PROPERTY THE FOLLOWING THREE (3) COURSES; (1) NORTH 89°05'25" WEST (WEST BY RECORD) 130.20 FEET; (2) SOUTH 00°54'35" WEST (SOUTH BY RECORD) 86.50 FEET; AND (3) SOUTH 66°20'41" EAST (SOUTH 67°21' EAST BY RECORD) 28.75 FEET; THENCE SOUTH 54°43'53" EAST 21.05 FEET; THENCE TO THE RIGHT ALONG THE ARC OF A 333.00 FOOT RADIUS CURVE A DISTANCE OF 4.28 FEET, CHORD BEARS NORTH 31°54'13" EAST 4.28 FEET, HAVING A CENTRAL ANGLE OF 00°44'12" TO THE SOUTHERLY BOUNDARY LINE OF SAID U.S.A. PROPERTY; THENCE ALONG THE BOUNDARY LINE OF SAID U.S.A. PROPERTY THE FOLLOWING THREE (3) COURSES; (1) SOUTH 66°20'41" EAST (SOUTH 67°21' EAST BY RECORD) 69.52 FEET; (2) SOUTH 00°55'18" WEST (SOUTH BY RECORD) 267.50 FEET; AND (3) SOUTH 89°04'42" EAST (EAST BY RECORD) 20.00 FEET; THENCE SOUTH 00°55'18" WEST 71.00 FEET TO THE NORTHEAST CORNER OF THE JIMMIE B. STEWART PROPERTY FILED AS ENTRY NO. 1659442 IN THE FILES OF THE WEBER COUNTY RECORDER; THENCE NORTH 89°04'42" WEST (WEST BY RECORD) 60.00 FEET TO THE NORTHWEST CORNER OF SAID JIMMIE B. STEWART PROPERTY; THENCE SOUTH 00°55'18" WEST 423.21 FEET (SOUTH 419 FEET BY RECORD) ALONG THE WEST BOUNDARY LINE OF SAID JIMMIE B. STEWART PROPERTY TO THE NORTH RIGHT-OF-WAY LINE OF 2100 SOUTH STREET; THENCE NORTH 87°53'58" WEST 70.21 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. CONTAINING 13.311 ACRES.

Exhibit D – Area Included Payback Agreement (Section 22)

