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**AMENDMENT NO. 2
TO THE COLONY PARTNERS, LLC, DEVELOPMENT AGREEMENT
EXECUTED ON FEBRUARY 5TH 2008**

THIS SECOND AMENDMENT (herein the "Amendment") is entered into this 4th day of December, 2012, by and between Colony Partners, (herein "Developer") for the land to be included in or affected by the project located at approximately 2606 S. Anna Caroline Drive in West Valley City, Utah, and West Valley City, a municipal corporation and political subdivision of the State of Utah (herein the "City").

RECITALS

WHEREAS, Developer and the City entered into that certain Development Agreement dated February 5th, 2008, and approved under Resolution 08-038 (the "Agreement"), which included both commercial and residential developments; and

WHEREAS, Developer and the City amended the Agreement on November 4, 2008, under Resolution 08-277 (the "First Amendment"), which reflected changes in the residential development portion of the Agreement; and

WHEREAS, Developer and the City desire to amend the Agreement a second time to reflect additional changes to the residential development portion of the Agreement; and

WHEREAS, The City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, U.C.A. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Second Amendment to the Agreement;

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

1. Additional Provisions. The following Sections are hereby added to the Developer's obligations under the Agreement:

A. Monetary Contribution to the Cross Towne Trail System.

- i. The Developer shall contribute \$96,000 for the construction of the Cross Towne trail system. The payment of \$96,000 shall be due

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 ISAPRY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 WEST VALLEY CITY
 3600 CONSTITUTION BLVD
 WVC UT 84119-5720
 BY: LDT, DEPUTY - MA 12 P.

within thirty days of the issuance of certificates of occupancy for more than fifty percent (50%) of the total units to be constructed in the Project.

B. Monetary Contribution to Riter Canal Bridge.

- i. Developer shall contribute an additional \$250,000 for the construction of a bridge over the Riter Canal to extend Anna Caroline Drive (5715 West) north (the "Bridge"), which shall facilitate the traffic from the residential development. Of this contribution, \$125,000 shall be due within thirty days of the issuance of certificates of occupancy for more than fifty percent (50%) of the total units to be constructed in the Project.
- ii. The remaining \$125,000 shall be due when any two of the following conditions have been met:
 - a. The City begins construction of the Bridge;
 - b. The City has issued the certificate of occupancy for the final unit to be constructed in the Project;
 - c. Five years have elapsed from the execution of this Amendment.
- iii. If the actual cost of constructing the bridge is less than \$250,000, the City shall refund the difference between \$250,000 and the actual cost of construction to the Developer.

C. Payment Bond.

- i. Prior to the City issuing the first building permit for the Project, the Developer shall file with the City a good and sufficient payment bond in the sum of not less than \$125,000 guaranteeing payment of the \$125,000 described in Section 1(B)(ii) above.
- ii. The payment bond shall be executed by the Developer and secured by a company duly and regularly authorized to do a general surety business in the State of Utah and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring

Companies as published in current Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, with an underwriting limitation equal to or greater than \$125,000 which the payment bond guarantees or with a current "A-" rating or better in A.M. Best Co., Inc.'s Best Insurance Reports, Property and Casualty Edition.

- iii. Said payment bond shall guarantee the faithful performance of this Agreement and all Amendments by the Developer. They shall inure by their terms to the benefit of the City. Neither this nor any other provision requiring a payment bond shall be construed to create any rights in any third party Claimant as against the City relating to the Agreement or to any Amendments.
- iv. If the surety on any payment bond furnished by Developer is subject to any proceeding under the Bankruptcy Code (Title 11, United States Code) or becomes insolvent or its right to do business is terminated in the State of Utah or it ceases to meet the requirements of this Amendment, Developer shall, within 15 days thereafter, substitute another payment bond and surety, both of which must be acceptable to the City.

B. **Recreational Easement in Favor of the City.** The Developer shall grant to the City a public recreational easement, which shall include, at a minimum, the following Developer obligations:

- (i) The easement shall include the entire cross hatched area shown in Exhibit D.
- (ii) The easement shall include public access for bicycling, walking, jogging and any other form of public recreation identified by the City.
- (iii) The easement shall include a duty of the Developer to maintain the easement in a condition acceptable to the City and in a safe condition for public recreation (Developer's statutory protection notwithstanding).
- (iv) The Developer shall also grant a public access easement in favor of the City. This public access easement shall include the northernmost private drive shown in

Exhibit B, which connects Anna Caroline Drive to public trailhead parking within the public recreational easement.

(v) The easements shall allow access every day, beginning one half hour prior to dawn and ending one half hour after sunset.

(vi) The easements shall be granted within thirty days of the issuance of certificates of occupancy for more than fifty percent (50%) of the total units to be constructed in the Project.

C. **Exhibit B.** The attached Exhibit “B” is hereby added to Exhibit “B” of the Agreement and replaces all references to residential development. If there is any conflict regarding the provisions applicable to residential development between this Amendment and the Agreement, this Amendment shall govern.

D. **Exhibit D.** The attached Exhibit “D” is a Concept Plan for the residential development and is hereby added to the Agreement. The Concept Plan is preliminary only and remains subject to the approvals from different City Departments.

E. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

2. **Amendments to existing Sections:**

Paragraph 8 of the Agreement is hereby replaced with the following:

8. **Integration, Modification, and Entire Agreement.** 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 hereto. Exhibits A, B, C, and D are hereby incorporated into this Agreement.

Paragraph 10 of the Agreement is hereby replaced with the following:

10. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding

this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

3. Other Terms and Conditions Remain in Effect. All other terms and conditions of the Agreement not specifically amended herein shall remain unchanged and in full force and effect.

This Agreement shall be effective on the date upon which the last party executes this written Agreement.

IN WITNESS WHEREOF, the parties have executed this SECOND AMENDMENT on the day and year first above written.

WEST VALLEY CITY



[Signature]
MAYOR

ATTEST:

[Signature]
CITY RECORDER

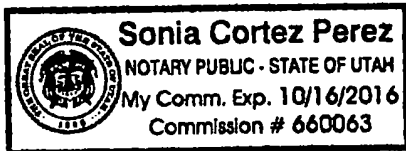
APPROVED AS TO FORM
WVC Attorney's Office
By: [Signature]
Date: 12/6/12

DEVELOPER

By: Colony Partners LLC
[Signature]
Title: manager

State of UTAH)
County of SALT LAKE) :SS

On this 20 day of DECEMBER, 2012, personally appeared before me WALTER PLUMB, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who that he is the MANAGER [title], of COLONY PARTNERS [name of corporation], a corporation, and that the foregoing instrument was signed by him in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.



[Signature]
Notary Public

EXHIBIT "A"

Legal Description

LOTS 101 THROUGH 111, HARKERS LANDING PUD PH 1.

PARCEL A, WEST VALLEY PAVILION SUB. LESS & EXCEPTING BEG N 89°50'22" W 692.34 FT & N 0°09'38" E 1047.97 FT FR SE COR SEC 23, T1S, R2W, SLM; N 89°47'22" W 80.89 FT; S 0°16'17" W 7.46 FT; N 89°45'02" W 45 FT; N 0°15' E 149.84 FT; NW LY ALG A 19.51 RADIUS CURVE TO L 30.65 FT; B 89°43'29" W 102.01 FT; N 0°15'06" E 113.90 FT; S 89°44'18" E 248.41 FT; S 0°27'41" W 275.73 FT TO BEG. 12.57 AC M OR L.

EXHIBIT "B"

Specific Design Conditions

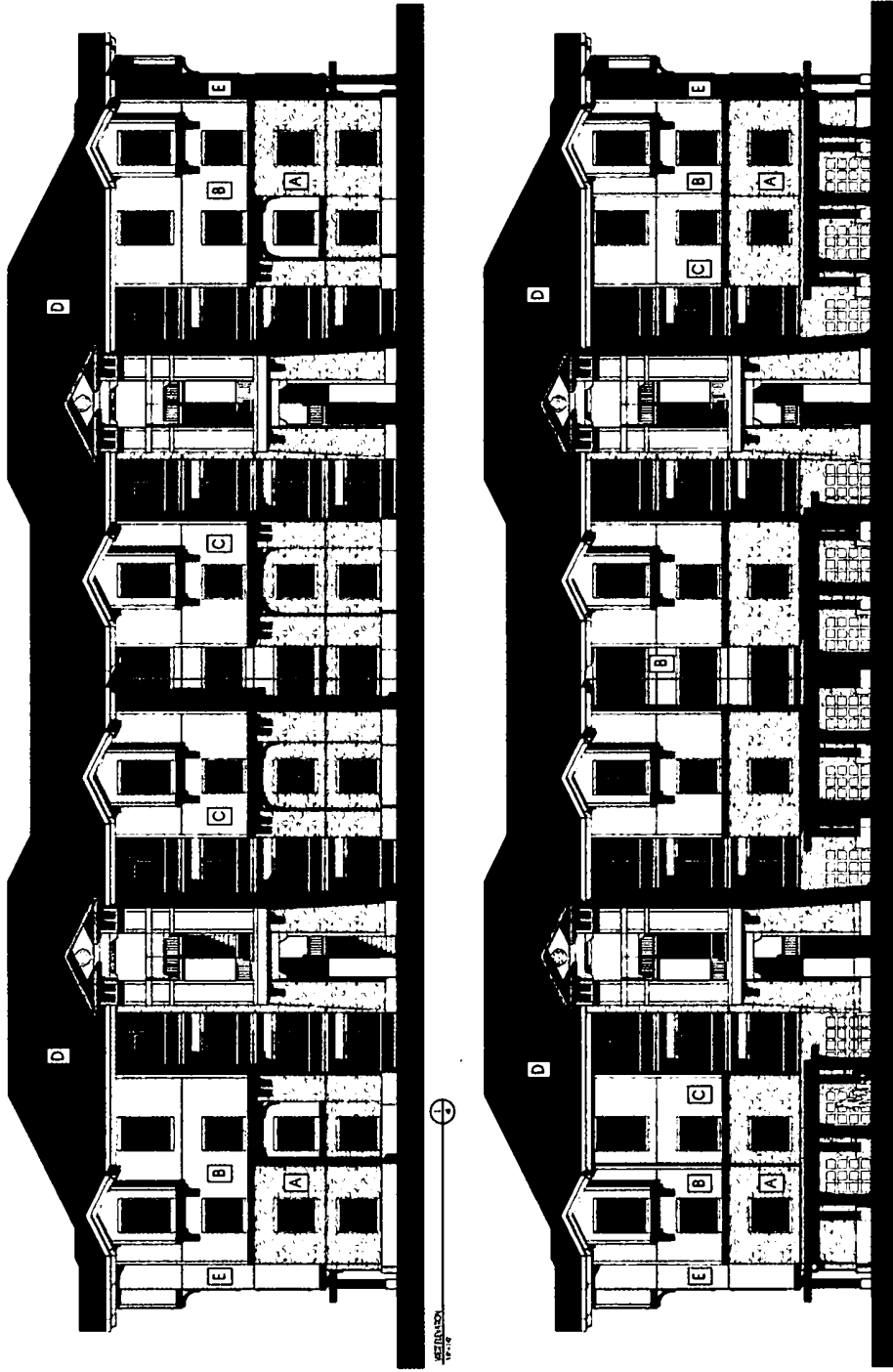
1. The project shall meet or exceed, in every category, the requirements of West Valley City for multi-family housing.
2. The Project shall be known as Sage Gate at Haynes Landing.
3. The Project shall consist of no more than 278 multi-family apartment units located upon the property. The unit mix for the Project shall be as follows:

	Style	Number of Units	Bedrooms	Baths	Square Footage	Percentages
1.	Townhomes	30	3 bedrooms	2 baths	1,400	10.8%
2.	Townhomes	10	4 bedrooms	2 baths	1,510	3.6%
3.	Attached tuck-under garage – 4 story buildings*	42	1 bedroom	1 bath	817	15.1%
4.	Attached tuck-under garage – 4 story buildings*	42	2 bedrooms	1 bath	985	15.1%
5.	Attached tuck-under garage – 4 story buildings*	84	2 bedrooms	2 baths	1,015	30.2%
6.	Attached tuck-under garage – 4 story buildings*	70	3 bedrooms	2 baths	1,165	25.2%
*Not all units in the 4 story buildings will have access to a garage						

4. The apartment Project shall comply with the following requirements:
 - a. All construction within the Project is to be Class A quality construction with all exterior building materials to be maintenance free, and consisting of masonry (i.e., fiber cement composite siding, stucco, stone and brick) and metals for trim, fascia and soffit only.
 - b. All of the 192 garages to be included within the Project are to have either direct access or convenient access with garage door openers.
 - c. There are to be walking trails throughout the Project connecting to amenities as well as public sidewalks as shown on the Preliminary Site Plan in Exhibit D.
 - d. A clubhouse is to be provided with a fitness center, an entertainment/party room with big screen television, and fully equipped kitchen.
 - e. A swimming pool and hot tub will be provided adjacent to the clubhouse with a deck area.
 - f. Full time onsite management and maintenance staff are to be provided for the Project.
 - g. There are to be not less than 2 parking spaces per unit (some of which spaces are provided within the garages). At least one covered parking stall is to be provided for each unit that does not have garage parking.
 - h. All apartment units shall have a private patio or deck with a secure exterior storage closet.
 - i. All units shall have a minimum of 9 foot ceilings with vaulted ceilings in all 4th floor units.
 - j. All units shall accommodate full size washers and dryers.
 - k. The open space in the Project shall be approximately 47%.
 - l. At least 1 tot lot and 1 barbeque area shall be located conveniently in the Project.

- m. Kitchens in each unit will be open to living area creating a “great room” configuration.
 - n. High Speed internet and TV service, bundled together, shall be available to each unit.
 - o. Each kitchen unit shall be equipped with upgraded hardwood veneer cabinets, granite counter-tops, a four-burner self-cleaning electric range and oven, a microwave oven, a dishwasher and a frost-free refrigerator with ice-maker.
 - p. The master bedroom in each unit shall have a walk-in closet.
5. The Developer shall construct a portion of the “Cross Towne Trail”, a 10’, asphalt, public recreational trail, upon the north of the Project, including an open-space park area of approximately 1.1 acres as designated on the Preliminary Site Plan (including non-exclusive use of a pavilion located on site) in Exhibit D, the use of which trail and park shall be defined in a recreational easement granted pursuant to this Agreement. The Developer shall maintain the recreational trail and park at its own expense.
 6. Project entrance features shall be provided at the main entrance to the Project. The details of the entrance features shall be determined during the site plan review process.
 7. The apartment buildings shall be built substantially like the elevations in Exhibit "C" with the exception that all of the requirements in Chapter 7-14 Part 3 of the Zoning Ordinance shall apply to all the residential buildings within the development as well as the site layout/design and open space requirements.
 8. Upon completion of all of the on-site improvements, the Developer shall provide a letter to the City from an independent engineering firm which certifies that all of the on-site improvements are completed as shown on the plans approved by the City. For the purposes of this agreement, on-site improvements shall include landscaping; irrigation; private streets; roundabouts; sidewalks; trails; parking; lighting; entrance features; fencing; outdoor recreational amenities such as playground equipment, picnic tables, benches, and pavilions; and other similar improvements.
 9. Prior to occupancy of the last building, the Developer shall arrange an on-site meeting with staff. The purpose of the meeting shall be to inspect the on-site improvements for completeness and conditions.
 10. The responsibility for maintenance of the on-site improvements shall not be transferred from the Developer.
 11. Developer shall retain off-duty police officers to patrol the project for security purposes.
 12. Developer shall participate and maintain good standing in City’s Good Landlord Program as implemented by West Valley City.

Exhibit C

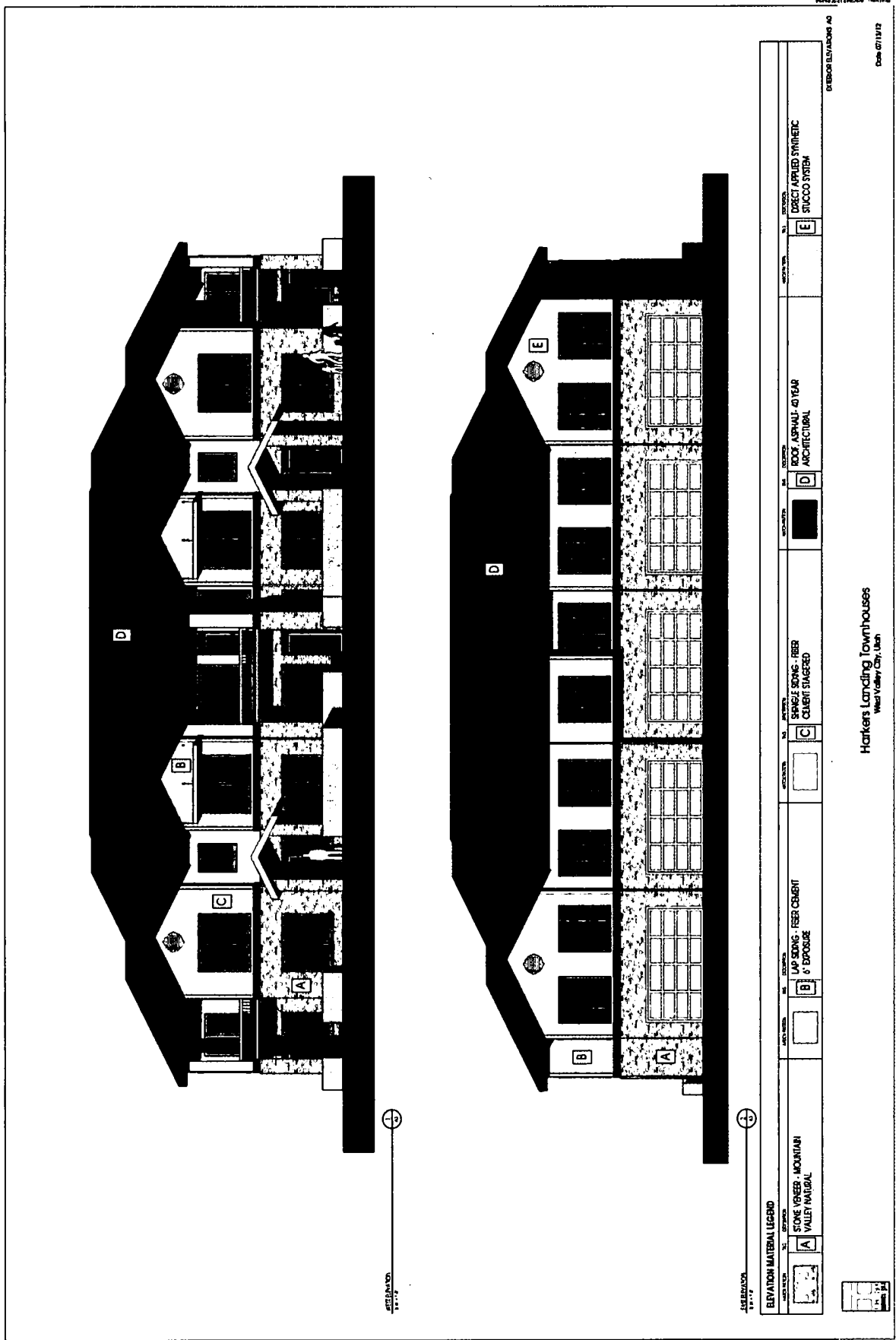


NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION	NO.	DESCRIPTION		
1	STONE VENEER - MOUNTAIN VALLEY NATURAL	2	LAP SIDING - FIBER CEMENT	3	SINGLE SIDING - FIBER CEMENT STAGED	4	ROOF - ASPHALT - 40 YEAR ARCHITECTURAL	5	OBJECT APPLIED SYNTHETIC STUCCO SYSTEM
A		B		C		D		E	

ELEVATION MATERIAL LEGEND

Harkers Landing Apartments (4 Story Option)
 West Valley City, Utah
 Date: 07/13/12
 PROJECT: BR/AV/NDG 40

Exhibit C




Site Summary

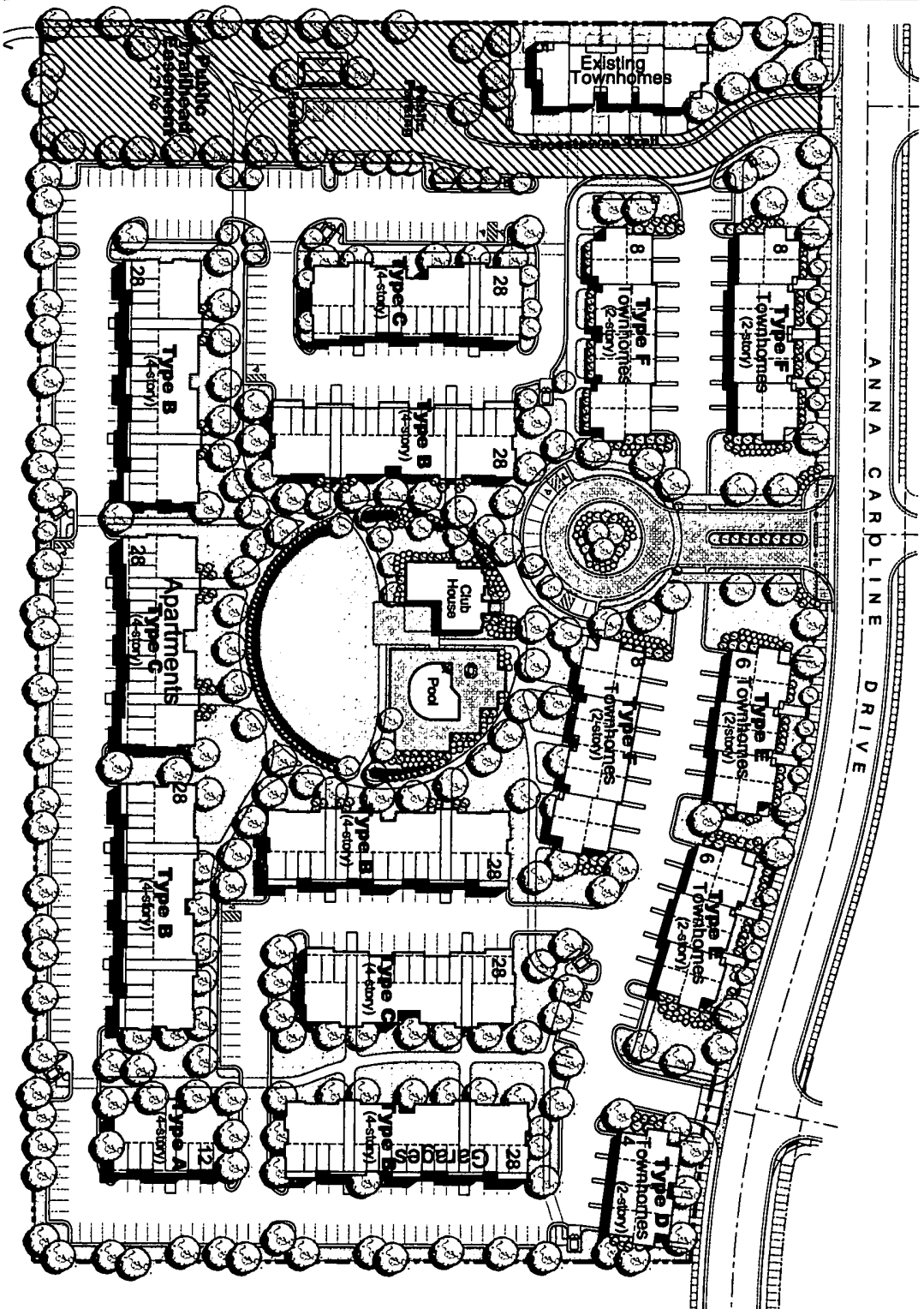
Site Area	14.05 Ac
Existing Townhomes	0.15 Ac
Net Project Area	13.90 Ac
Residential Units	
Proposed Townhomes	40
Apartments (Tuck-under)	238
Total Units	278

Parking Required		
Unit Type	Qty	Total
1 Bedroom	15	42
2 Bedrooms	175	128
3/4 Bedroom	2	110
Total Required Parking		504

Parking Provided		
Townhomes (2-car Garage)		80
Townhomes (2-car Terrace)		80
Tuck-under Garages		112
Tandem Spaces		112
Surface Spaces		218
Public Parking		14
Total Parking	(222 spaces)	616

Open Spaces		
Total Open Spaces	5.42 Ac	
Public Open Spaces	1.21 Ac	
Total Open Spaces	6.63 Ac	(47.59%)

 Publicly Accessible Trailhead
Approximately 1.7 acres



THINK
ASWD 182

November 13, 2012




EXHIBIT D
Preliminary Site Plan
Sage Gate at Haynes Landing, West Valley City, Utah