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RICHARD T. HAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/12/2021 11:07 AM
FEE \$0.00 Pgs: 21
DEP RT REC'D FOR CENTERVILLE CITY

When recorded, return to:

Centerville City
Attn: City Recorder
250 North Main Street
Centerville, Utah 84014

RETURNED
APR 12 2021

Effects Parcels: 02-024-0027 ✓

**INFRASTRUCTURE DEVELOPMENT AGREEMENT
(PRIOR TO RECORDING FINAL SUBDIVISION PLAT)
BETWEEN CENTERVILLE CITY AND CW THE HIVE, LLC**

THIS INFRASTRUCTURE DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 12th day of April, 2021, by and between **CENTERVILLE CITY**, a Utah municipal corporation ("City") and **CW THE HIVE, LLC**, a Utah limited liability company ("Developer").

RECITALS:

A. Developer owns approximately 6.63 acres of real property located at approximately 555 North 400 West in Centerville City, Davis County, State of Utah, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"); and

B. Developer has received conditional final plat approval for subdivision of the Property into 1 commercial lot, 18 single-family residential lots, and 50 multifamily units as more particularly shown in the approved, but not yet recorded, The Hive P.U.D. Subdivision, conditionally approved by the City Council on April 6, 2021, as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference ("Final Plat" or "Subdivision"); and

C. Centerville City Ordinances currently require subdivision developers to record the final subdivision plat and to post a bond with required security for the estimated cost of all public improvements and other required utilities and infrastructure improvements within the subdivision prior to any construction or development of the subject property; and

D. Pursuant to Utah Code § 10-9a-604.5, developers may begin construction of required utilities and infrastructure within the proposed subdivision prior to recording the final subdivision plat; and

E. In accordance with the provisions of Utah Code § 10-9a-604.5, Developer desires to commence construction of the required utilities and infrastructure for the Subdivision, both within the Subdivision and within portions of the public rights-of-way, prior to recording of the Final Plat; and

F. The City is willing to allow Developer to commence construction of the required utilities and infrastructure for the Subdivision, both within the Subdivision and within portions of the public rights-of-way, prior to recording the Final Plat, subject to the terms and conditions of this Agreement and compliance with all applicable City Ordinances; and

G. The purpose of this Agreement is to contractually reduce to writing the respective agreements and understandings of the parties regarding the installation of the required utilities and infrastructure improvements for the Subdivision, both within the subdivision and within portions of the public rights-of-way, prior to recording the Final Plat.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Subdivision and Planned Development Overlay Approval.** All development within the Subdivision and use of the Property shall be subject to and shall comply with the terms and conditions of the Planned Development Overlay ("PDO") approval as set forth in Ordinance No. 2020-12, the Final Plat approval and applicable provisions of the Centerville City Subdivision Ordinance or other applicable ordinances or construction standards. Nothing herein shall impact or affect the City's administrative decision-making authority with respect to approval of the Final Plat. The purpose of this Agreement is merely to address and allow installation of utilities and infrastructure prior to recording the Final Plat in accordance with Utah Code § 10-9a-604.5.

3. **Authority to Commence Installation of Infrastructure and Utilities.** Subject to and conditioned upon the terms and conditions of this Agreement and compliance with applicable City Ordinances and permit requirements, Developer is authorized to install certain infrastructure and utilities for The Hive P.U.D. Subdivision, both within the Subdivision and within portions of the adjacent public rights-of-way. Such infrastructure and utilities include those Improvements more particularly set forth in the Engineer's Estimate ("Engineer's Estimate"), as attached hereto and incorporated herein by reference as **Exhibit C**, including, but not limited to, street construction, irrigation, storm drains, and street lights ("Infrastructure and Utilities").

4. **Assumption of Risk.** Developer acknowledges that City Ordinances currently require final subdivision plats to be recorded prior to installation of infrastructure and utilities and a bond to be posted or provided to the City for the estimated cost of all such improvements. Developer acknowledges that it is requesting the City to allow Developer to proceed with the installation of Infrastructure and Utilities prior to recording the Final Plat pursuant to authority under Utah Code § 10-9a-604.5, and Developer acknowledges it is proceeding at its own risk. Developer further understand that before the Final Plat can be recorded, Developer shall be required to comply with all conditions precedent as provided herein and as otherwise required by PDO approval, subdivision approval, and City Ordinances. Developer further acknowledges that the Engineer's Estimate for Infrastructure and Utilities as set forth herein are merely estimates and that Developer is required to install and pay for the actual cost of such improvements, whether such costs exceed the Engineer's Estimate or not.

5. **Infrastructure and Utilities within Public Rights-of-Way.** The installation of any Infrastructure and Utilities within the existing public rights-of-way or affecting City infrastructure shall comply with all approved Construction Drawings, City Ordinances, and Standard Specifications and Drawings regarding construction within the public right-of-way. Developer shall be required to obtain an Excavation Permit for construction within or the installation of any Infrastructure and Utilities in existing public rights-of-way. Developer shall be required to enter into the City's standard Improvements Agreement and to post an acceptable bond for the estimated amount of any and all Infrastructure and Utilities within the public rights-of-way or affecting City infrastructure, plus contingency and fees, as more particularly described in the Engineer's Estimate set forth in **Exhibit C**. As set forth in the Engineer's Estimate, Developer shall be required to post an acceptable bond relating to Utilities and Infrastructure within the public rights-of-way or affecting City Infrastructure and pay applicable fees. A fully signed and executed Improvements Agreement and acceptable bond shall be provided to the City prior to issuance of an Excavation Permit for any work within the existing public rights-of-way.

6. **Infrastructure and Utilities within Subdivision.** The installation of any Infrastructure and Utilities within the Subdivision shall comply with all City Ordinances, Standard Specifications and Drawings, and permitting requirements regarding construction of public improvements and subdivision infrastructure. Installation of such improvements shall comply with approved Construction Drawings for the project. Except as otherwise provided herein or in the Engineer's Estimate, such as for the culinary water line improvements, the Developer shall not be required to bond for or enter into an Improvements Agreement for Infrastructure and Utilities located solely within the Subdivision prior to recording the plat.

7. **Culinary Water Improvements.** The City installs its own culinary water line improvements for all subdivisions or developments. The City shall, prior to installation of its culinary water line improvements, provide Developer with an estimated schedule in order for Developer to efficiently track its development progress on the Property. In accordance with applicable City Ordinances, Developer shall be

required to pay to the City the estimated cost of construction of the culinary water line improvements as more particularly described in the Engineer's Estimate set forth in **Exhibit C**. The estimated culinary water line costs shall be paid to the City prior to commencement of construction of Infrastructure and Utilities within the Subdivision or issuance of an Excavation Permit for installation of Infrastructure and Utilities in the public rights-of-way, whichever is sooner. The estimated cost of the culinary water line improvements is merely an estimate and Developer shall be required to pay for the actual cost of construction which shall be determined by the City after completion of the improvements. The City shall send Developer an invoice for any additional costs and/or return to Developer any excess funds from the estimated amount.

8. **Culinary Waterline Easements.** Developer shall grant to the City a temporary construction easement on a mutually acceptable form in accordance with Section 13 for purposes of construction of the culinary waterline improvements within the Project. Developer shall provide the City with permanent easements, including legal descriptions to be prepared by Developer, for the installed culinary water line improvements within the Subdivision. Such permanent easements shall be provided to the City prior to or concurrent with the recording of the Final Plat.

9. **Inspection and Development Fees.** Developer shall be required to pay all required inspection, development, and impact fees as more particularly described in the Engineer's Estimate, set forth in **Exhibit C**. The inspection and impact fees shall be paid prior to commencement of installation of Infrastructure and Utilities within the Subdivision or issuance of an Excavation Permit for installation of Infrastructure and Utilities in the public rights-of-way, whichever is sooner. Additional inspection, development and/or impact fees shall be due at the time of issuance of a building permit for construction of buildings within the Subdivision, in accordance with applicable City Ordinances.

10. **Utility Disconnect and Site Unwinding Deposit.** Developer agrees to provide a \$25,000 bond acceptable to the City for the purpose of securing site reclamation, erosion control, utility disconnect, and other necessary issues ("Site Unwinding Deposit"), should Developer fail to record the Final Plat within the time frame set forth in Section 18 and/or fail to complete all Infrastructure and Utilities in accordance with City Ordinance requirements and deadlines. The Site Unwinding Deposit shall be provided to the City prior to commencement of construction of Infrastructure and Utilities within the Subdivision or issuance of an Excavation Permit for installation of Infrastructure and Utilities in the public rights-of-way, whichever is sooner. If Developer fails to record the Final Plat within the time frames set forth in Section 18, the City shall issue a stop work order prohibiting further installation of the Infrastructure and Utilities and/or development within the Subdivision. In addition to the stop work order and any other remedy allowed by law or City Ordinance, the Site Unwinding Deposit, or any portion thereof, may be used by the City to restore the Property and/or to remedy any breach of this Agreement or Ordinance violation. The Site Unwinding Deposit is included as part of the Engineer's Estimate set forth in **Exhibit C**.

11. **Construction Drawings.** Developer shall submit final project plans, profiles, design, specifications and construction drawings ("Construction Drawings") for all Infrastructure and Utilities for review and approval by the City Engineer. Construction Drawings must be approved by the City Engineer prior to commencement of any development activity on the Property and prior to issuance of any permits for development. All Infrastructure and Utilities shall be constructed and installed in accordance with approved Construction Drawings and applicable City Ordinances and specifications as determined necessary by the City Engineer. Any installation or construction of Infrastructure and Utilities that materially deviates from the approved Construction Drawings shall be deemed a breach of this Agreement in addition to any applicable Ordinance violation or bond security. Construction Drawings shall also be approved by applicable utility providers as more particularly set forth in Section 12.

12. **Approval from Affected Utilities.** Developer shall obtain any required permits or approvals from affected utility providers, local districts, water authority, canal companies or other affected entities, including approval of applicable Construction Drawings, prior to installation of any Infrastructure and Utilities for the Subdivision. Developer shall provide the City with letters or other reasonably requested evidence of approval from affected utilities prior to issuance of an Excavation Permit for the installation of Infrastructure and Utilities within the public rights-of-way and prior to commencement of construction or installation of the Infrastructure and Utilities within the Subdivision.

13. **Construction Easements.** Developer hereby grants to the City a temporary construction and access easement on and over all of the Property and grants its permission to the City, its agents, inspectors, contractors, franchisees, or applicable providers to install, complete, repair, and inspect the construction of the culinary water line, the Infrastructure and Utilities, and any other public improvements within the Subdivision. Developer shall be required to provide separately recorded easements for waterline, sewer, or other infrastructure to be installed within the Subdivision, as approved by the City or other applicable provider. Any separately recorded easements shall be shown on the Final Plat prior to recording.

14. **Erosion Control and SWPP.** Developer shall provide all required erosion control and SWPP plans and approvals prior to commencement of construction of any Infrastructure and Utilities. Developer shall comply with all requirements of such plans and permits and shall comply with all required storm water protection BMPs.

15. **Pre-Construction Meeting.** Prior to any commencement of construction of Infrastructure and Utilities, within the public rights-of-way or the Subdivision, Developer shall attend a Pre-Construction Meeting with City staff to coordinate work and required inspections on the Project and to review required payment of fees.

16. **Commencement of Infrastructure and Improvements.** Developer shall not commence construction of any Infrastructure and Utilities within the Subdivision until and unless Developer has paid all required inspection and impact fees, paid for the estimated cost of the culinary water line installation, paid the Site Unwinding

Deposit, obtained approved Construction Drawings, submitted approved erosion control plan and SWPPP, held pre-construction meeting with City, and met all other applicable City Ordinance requirements, including applicable permitting.

17. **Inspections.** Developer shall request and City shall timely comply with all required inspections and approvals of Infrastructure and Utilities as required under City Ordinances, standards and permits. Failure by Developer to obtain and pass required inspections and testing for Infrastructure and Utilities will affect final approval and acceptance of such improvements and may require removal or excavation for inspection or re-inspection at Developer's sole cost and expense. If Developer fails to obtain or pass required inspections and testing for Infrastructure and Utilities, the City shall issue a stop work order for development within the Subdivision, and Developer shall be required to obtain the required inspections or conduct the testing and fix or remedy any deficiencies in improvements. Subject to Section 19 herein, Developer cannot record the Final Plat until and unless all required inspections and testing have been conducted and any deficiencies have been remedied for any and all Infrastructure and Utilities installed to date. Alternatively, any deficiencies discovered during said inspections and tests may be bonded for by Development and remedied in accordance with applicable provisions of the bond documents and as soon as commercially reasonable following recordation of the Final Plat.

18. **Deadline for Recording Final Plat.** The Final Plat was conditionally approved by the City Council on April 6, 2021. Pursuant to Section 15.04.120 of the City Subdivision Ordinance, the Final Plat is required to be recorded within 12 months from the date of final plat approval or such approval shall be null and void. The Subdivision Ordinance does allow for one six-month extension for the recording of the Final Plat. In order to qualify for an extension, the Developer must petition the City Council in writing for an extension prior to the expiration of the original 12 months. The City Council may grant an extension "for good cause shown." Based on the provisions of Section 15.04.120, Developer must record the Final Plat or submit a request for an extension of the Final Plat by April 7, 2022. Developer agrees to accept all risk and liability for expiration of Final Plat approval, including any improvements and installation of Infrastructure and Utilities, should Developer fail to record the Final Plat by April 7, 2022 or other applicable date if an extension is granted by the City Council. If Developer fails to record the Final Plat within the time frames set forth herein the City may issue a stop work order prohibiting further installation of the Infrastructure and Utilities and/or development within the Subdivision.

19. **Bonding for Remaining Infrastructure.** Prior to recording the Final Plat, any Infrastructure and Utilities that have not been completed shall be bonded for in accordance with City Subdivision Ordinance requirements, including entering into an Improvements Agreement and submitting an acceptable bond. Developer shall notify the City and request City Engineer inspection of completed and partial completed improvements at least 14 days prior to Final Plat recording. The City Engineer shall determine the extent and adequacy of the completed or partially completed Infrastructure and Utilities and determine what improvements need to be bonded for prior to Final Plat recording. The City Engineer shall prepare a revised Engineer's

Estimate for remaining improvements. Only fully completed Infrastructure and Utilities will be excused from bonding with Final Plat.

20. **Acceptance of Improvements.** The City shall not accept any Infrastructure and Utilities until all Infrastructure and Utilities for the entire Subdivision are complete. Upon completion of all Infrastructure and Utilities, Developer shall request final inspection and approval by the City Engineer. The City shall not accept any Infrastructure and Utilities until and unless the Final Plat has been recorded. The City may permit bond releases for completed Infrastructure and Utilities in accordance with applicable City Ordinances and terms and conditions of the Improvements Agreement.

21. **Location of Utilities and Utility Company Approval.** Developer shall verify to the City the location of all installed Infrastructure and Utilities, including public improvements and streets and private utilities located in the public rights-of-way and within the Subdivision. As applicable, Developer shall submit to the City approval letters or other evidence of approval from all utilities companies verifying acceptance of the improvements prior to recording the Final Plat.

22. **Lien Waiver and Release.** Developer hereby agrees to indemnify and hold the City harmless from any and all liens and encumbrances for the Property, the Infrastructure and Utilities, and any other potential mechanics liens or encumbrances, including, but not limited to any lien or right to a lien for services, labor, or materials furnished.

23. **Final Plat Recording.** Developer shall comply with all applicable City Ordinances regarding recording of final plats. Developer shall be required to provide the City with a title report (current within 30 days of submission) for review with the Final Plat.

24. **Warranty.** Developer shall warrant all workmanship for completed and accepted Infrastructure and Utilities for a period of one (1) year, which warranty period shall not commence until all Infrastructure and Utilities have been completed and accepted by the City and the Final Plat is recorded. Except to the extent caused by the City during installation of its culinary water line improvements, the City shall not be held responsible or liable for any accident, loss or damage to Infrastructure and Utilities prior to completion and acceptance of the same by the City. Developer shall post an acceptable bond as security during the warranty period in an amount of ten percent (10%) of the lesser of the Engineer's Estimate for the cost of all improvements or the Developer's reasonable proven cost of completion of improvements. Alternatively, the City may retain the required ten percent (10%) warranty security from the existing bond and deposit.

25. **No Sale of Lots or Property.** Until and unless the Final Plat is recorded, Developer shall not sell any lot or property within the Subdivision; provided, however, Developer shall have the ability to advertise or market the Property for sale prior to recordation of the Final Plat. This restriction shall not apply to the proposed sale of the

entire project and Property or the purchase and sale of property within the project by and between Developer and its related entities.

26. **Building Permit Restrictions.** Except as otherwise allowed by City Code, building permits shall not be issued until the Final Plat is recorded and all applicable conditions of Final Plat approval have been met.

27. **Compliance with City Ordinances.** The Property and all portions thereof shall be developed in accordance with the City Ordinances, PDO approval, Final Plat approval, Construction Drawings, and this Agreement. All applicable City, State and Federal construction standards and specifications shall be met.

28. **Time Frames and Deadlines.** Nothing in this Agreement is intended to extend or waive any applicable time frame or deadline as set forth in applicable City Ordinances. Commencement and completion of construction within the Property shall comply with all applicable City Ordinance provisions.

29. **Reserved Legislative Powers.** Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power preserved by law.

30. **Indemnification.** Developer hereby agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorney fees and court costs arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur within the Property or occur in connection with any off-site work done for or in connection with the Subdivision or any subsequent phase thereof and which shall be caused by acts done thereon, or any errors or omission of the Developer, its agents, servants, employees or contractors. In addition, Developer shall indemnify and hold the City and its officers, employees and representatives harmless from and against any claims, liability, costs and attorney fees incurred on account of any change in the nature, direction, quantity or quality of historical drainage flows resulting from the Property or the construction of any improvements therein. Notwithstanding the foregoing, Developer shall not be liable for any liability, loss, damage, costs, or expenses, including attorney fees and court costs, resulting from the gross negligence, recklessness, or willful misconduct of the City, its officers, employees, agents, and representatives.

31. **Insurance.** During the period from commencement of the work on the Property and ending on the date when Infrastructure and Utilities have been accepted, Developer, its contractors, agents and representatives, shall furnish, or cause to be furnished, to the City, satisfactory Certificates of Insurance from reputable insurance companies evidencing death, bodily injury and property damage insurance policies in the amount of at least \$3,000,000 single limit naming the City as an additional insured. Developer shall require all contractors and other employees performing any work on

the Property or in connection with development of the Property to maintain adequate workers compensation insurance and public liability insurance. Developer, its contractors, agents and representatives, shall provide such Certificates of Insurance to the City as a condition of and prior to issuance of an Excavation Permit for installation of the Infrastructure and Utilities within the public rights-of-way and/or the commencement of construction or installation of Infrastructure and Utilities within the Subdivision.

32. **Inspection and Approval by the City.** The City may, at its option, perform periodic inspections of the Infrastructure and Utilities being installed and constructed by the Developer. No work involving excavation shall be covered until the same has been inspected by the City's representatives and the representatives of other governmental entities having jurisdiction over the particular improvements involved.

33. **Use and Maintenance During Construction.** During construction, the Developer, and any permitted subsequent developers, shall keep the Property and all affected public streets and public easements free and clear from any unreasonable accumulation of debris, waste materials and any nuisances and shall contain construction debris and provide dust control so as to prevent scattering via wind and water or otherwise. Such construction maintenance and control of construction debris shall be conducted in accordance with applicable City, State and Federal laws, regulations and permits, including, but not limited to applicable Utah Department of Environmental Quality regulations and permitting requirements, and in accordance with applicable best management practices.

34. **Default.** The City may pursue any enforcement action deemed necessary and appropriate for any violation of City Ordinances in accordance with applicable enforcement provisions as set forth in City Ordinances or otherwise permitted by law. Nothing herein shall limit the City's right to issue a stop work order for failure to record the Final Plat (as set forth in Section 18) or failure to obtain inspection or testing (as set forth in Section 17) and no notice of default is required for such action. Notwithstanding and in addition to the City's right to pursue any enforcement action for violation of City Ordinances, in the event any party fails to perform its obligations hereunder or to comply with the terms of this Agreement, the non-defaulting party may have the following enforcement remedies. Prior to invoking the remedies provided herein, the non-defaulting party shall provide the defaulting party written notice of default and a ten (10) day cure period. All notices of default shall be provided in accordance with the Notice provisions set forth in Section 38. In the event the defaulting party does not cure the default within the required ten (10) day cure period or enter into a written agreement for curing the default within a reasonable time, acceptable to the non-defaulting party in its reasonable discretion, the non-defaulting party may, at its election, have the following remedy or remedies:

a. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and specific performance, but not including damages as provided in Section 49.

b. The right to withhold all further approvals, licenses, permits or other rights associated with the particular lot, parcel or building to which the default is applicable until such default has been cured.

c. The right to draw on any security posted or provided in connection with the Property or project.

d. The right to terminate this Agreement with respect to the particular lot, parcel or building to which the default is applicable.

e. The rights and remedies set forth herein above shall be cumulative.

35. **Insolvency or Misrepresentation.** Developer shall be in default under the terms of this Agreement under the following circumstances if not cured within twenty (20) days after notice of default is given: (i) Developer is adjudicated bankrupt or makes any voluntary or involuntary assignment for the benefit of creditors, or bankruptcy, insolvency, reorganization, arrangement, debt adjustment, receivership, liquidation or dissolution proceedings shall be instituted by or against Developer; and, if instituted adversely, the one against whom such proceedings are instituted consents to the same or admits in writing the material allegations thereof, or said proceedings shall remain undismissed for 150 days; or (ii) Developer has made a materially false representation or warranty in any agreement with or application to the City.

36. **Assignment.** Developer shall not assign its obligations under this Agreement or any rights or interests herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. No party shall transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this Agreement separate from that party's interest in the Property. Unless otherwise provided, in the event of a sale or transfer of the Property, or any portion thereof, the buyer or transferee ("Subsequent Developer") shall be liable for the performance of each of the obligations contained in this Agreement as it relates to that portion of the Property it is buying, and acceptance of a deed to any portion of the Property shall constitute an agreement to assume and to be bound by the provisions of this Agreement as it relates to the Property covered by the deed. Each buyer or transferee shall sign an assignment and assumption agreement in a form reasonably acceptable to the City agreeing to be bound by the terms and conditions of this Agreement as provided herein. Any reference to Developer or Developers herein shall be construed to refer to any Subsequent Developer with respect to the portion of the Property owned by such Subsequent Developer.

37. **Ownership and Recording.** Developer hereby warrants and represents that it is the legal owner of record of the Property as described herein, it has the right to develop the Property, and it has full authority to enter into the terms of this Agreement encumbering the Property. Developer hereby agrees and acknowledges that this

Agreement shall be recorded against the Property. Prior to recording this Agreement, Developer shall provide the City with a current and accurate title report regarding the Property. Developer shall be required to cure or subordinate any unacceptable encumbrances on the Property, as determined by the City, prior to recording of this Agreement. All persons or entities with an ownership interest in the Property as shown on the title report shall sign and be a party to this Agreement.

38. **Notice.** All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been provided on the date of personal service upon the party for whom intended or upon receipt if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the parties at the following addresses:

To Centerville City: Centerville City
 Attn: City Manager
 250 North Main Street
 Centerville, Utah 84014

To Developer: CW The Hive, LLC
 1222 West Legacy Crossing Blvd, Suite 6
 Centerville, Utah 84014

Any party may change its address for notice under this Agreement by giving written notice to the other party in accordance with the provisions of this paragraph.

39. **Attorneys' Fees.** Each party agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah.

40. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, documents referenced herein, and all regulatory approvals given by the City for the Property, contain the entire agreement of the parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the parties which are not contained in such agreements, regulatory approvals and related conditions.

41. **Construction of Agreement.** This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest. For purposes of this Agreement and the construction of its terms, the parties acknowledge that both participated in the drafting of this Agreement and neither shall be considered the drafter.

42. **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent or employee of the City shall be personally liable to the

Developer or any successor in interest or assignee of the Developer in the event of any default or breach by the City, or for any amount which may become due Developer, or their successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

43. **No Third Party Rights.** Unless otherwise specifically provided herein, the obligations of Developer and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.

44. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns, as permitted herein. The covenants contained herein shall be deemed to run with the Property and a copy of this Agreement shall be recorded in the office of the Davis County Recorder, State of Utah. The persons signing for and on behalf of Developer warrant and represent that they are duly authorized and empowered to enter into this Agreement for and on behalf of Developer, and that by their signatures, they do bind Developer to the terms of this Agreement.

45. **Governing Law and Jurisdiction.** The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The parties to this Agreement agree that any judicial action associated with the Agreement shall be taken in the Utah state or federal court of competent jurisdiction.

46. **No Waiver.** Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

47. **Severability.** If any portion of this Agreement is held to be unenforceable by court of competent jurisdiction, any enforceable portion thereof and the remaining provisions shall continue in full force and effect.

48. **Time of Essence.** Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

49. **Knowledge and Covenant Not to Sue.** The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to consult with legal counsel of their choice. Developer agrees not to sue or initiate any claim or other administrative or legal action against the City for an exaction, takings claim, impact fee challenge, or other claim with respect to the development of the Property or any other provision of this Agreement as associated with the Property. The parties acknowledge that they enter this Agreement voluntarily and with the intent to address and establish issues and procedures for the installation of Infrastructure and Utilities prior to recording the Final Plat. Notwithstanding the foregoing, if litigation is pursued, no monetary damages shall be awarded and sole remedy for either party shall be specific performance or

injunction. In the event of conflict between the provisions of this Section and other provision of this Agreement, the provisions of this Section shall govern.

50. **Supremacy.** In the event of any conflict between the terms of this Agreement and those of any document referred to herein, this Agreement shall govern.

51. **No Relationship.** Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

52. **Amendment.** This Agreement may be amended only in writing signed by the parties hereto.

53. **Force Majeure.** Neither party hereto shall be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to acts of God, acts of the United States Government or the State of Utah, fires, floods, or other casualties or causes beyond the reasonable control and without the fault or negligence of the party obligated to perform hereunder; provided the party seeking relief under the provisions of this Section: (1) notifies the other party in writing of a force majeure event within fifteen (15) days following the affected party's knowledge of the occurrence of the claimed force majeure event, and (2) promptly resumes the keeping and performance of the affected obligations after such cause has come to an end. Each party shall make every reasonable effort to keep delay in performance as a result of such a cause to a minimum.

54. **Termination.** This Agreement shall terminate upon completion and fulfillment of all the obligations and terms of this Agreement; provided, Sections 30, 31 and 49 shall remain in full force and effect until expiration of the warranty period for public improvements and any bonded improvements, such as landscaping, and expiration of any applicable statute of limitation for contractual claims, takings issues, impact fee challenges, or other claim with respect to the terms and conditions of this Agreement ("Termination").

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

[Signature page to follow]

"CITY"

CENTERVILLE CITY

ATTEST:

Jennifer Hansen
Jennifer Hansen, Deputy City Recorder

By: Clark A. Wilkinson
Mayor Clark A. Wilkinson

"DEVELOPER"

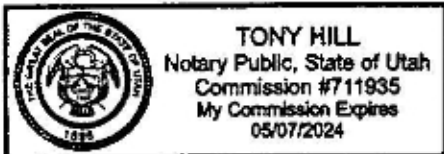
CW THE HIVE, LLC

By: Darlene Carter
Its: MANAGER

HIVE ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On the 7 day of APRIL, 2021, personally appeared before me DARLENE CARTER, who being duly sworn, did say that (s)he is the MANAGER of CW THE HIVE, LLC, a Utah limited liability company, and that the foregoing instrument was signed on behalf of the limited liability company, and that said liability company freely and voluntarily executed the same.



My Commission Expires:
05-07-2024

Tony Hill
Notary Public
Residing at:
KANGVILLE, UTAH

EXHIBIT A

Property Description

**Parcel No. 02-024-0027
555 North 400 West**

BEG AT A PT ON THE W'LY R/W OF 400 WEST STR; SD PT BEING THE SE COR OF APPLEWOOD ESTATES PLAT I; SD PT ALSO BEING S 1810.21 FT & W 3560.01 FT FR THE NE COR OF SEC 7-T2N-R1E, SLB&M; & RUN TH S ALG SD W'LY R/W LINE OF 400 WEST STR 254.30 FT TO A PT ON THE N'LY BNDRY LINE OF CENTERVILLE CORPORATE PARK; TH S 89°46'44" W ALG THE N'LY BNDRY LINE OF CENTERVILLE CORPORATE PARK & THE N'LY BNDRY LINE OF CENTERVILLE CORPORATE PARK AMD 1048.47 FT TO A PT ON THE E'LY R/W LINE OF A FRONTAGE ROAD; TH ALG SD E'LY R/W LINE THE FOLLOWING TWO (2) COURSES: N 32°39'47" W 289.95 FT TO A PT ON A 778.51 FT RADIUS CURVE TO THE RIGHT; TH 16.41 FT ALG SD CURVE THROUGH A CENTRAL ANGLE OF 01°12'28" (CHORD BEARS N 32°03'33" W 16.41 FT) TO A PT ON THE S'LY BNDRY LINE OF SD APPLEWOOD ESTATES PLAT I; TH N 89°59'01" E ALG SD S'LY BNDRY LINE 1213.65 FT TO THE POB. CONT. 6.633 ACRES

EXHIBIT B

Proposed The Hive P.U.D. Subdivision Final Plat

EXHIBIT C
Engineer's Estimate



ESI Engineering, Inc.
3500 South Main, Suite 205
Salt Lake City, Utah
Phone (801) 263-1752
Fax (801) 263-1780

Consulting Engineers & Land Surveyors

Project:	The Hive P.U.D.	Sheet No. 1 of 3
Owner:	Centerville City	Project No. 20-048
Estimated by:	BWN	Date: 3/11/21
Checked by:	KLC	Date: 3/11/21

PRELIMINARY - BOND ESTIMATE AND FEE SCHEDULE

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
STREET CONSTRUCTION & UNWINDING (A)					
1	Asphalt demolition & Unwinding	1	LS	\$25,000.00	\$25,000.00
2	Asphalt	20	TN	\$75.00	\$1,500.00
3	Slurry Seal	0	SY	\$2.00	\$0.00
4	Curb and gutter	200	LF	\$25.00	\$5,000.00
5	Sidewalk and ped ramps	1,200	SF	\$6.00	\$7,200.00
6	Import untreated base course	40	TN	\$25.00	\$1,000.00
7	Import granular borrow	0	TN	\$20.00	\$0.00
	Subtotal A (Items 1-7)				\$39,700.00
IRRIGATION (B)					
8	6" PVC	50	LF	\$30.00	\$1,500.00
9	Tapping tees	2	EA	\$2,000.00	\$4,000.00
10	6" gate valves	2	EA	\$450.00	\$900.00
11	6" bends	0	EA	\$350.00	\$0.00
12	6" x 1" saddle	0	EA	\$250.00	\$0.00
13	6" x 1.5" saddle	0	EA	\$250.00	\$0.00
14	6" x 2" saddle	0	EA	\$250.00	\$0.00
15	1" poly water service	0	LF	\$20.00	\$0.00
16	1.5" poly water service	0	LF	\$25.00	\$0.00
17	2" poly water service	0	LF	\$30.00	\$0.00

PRELIMINARY - BOND ESTIMATE AND FEE SCHEDULE					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
18	1" Meters	0	EA	\$500.00	\$0.00
19	2" Meters	0	EA	\$500.00	\$0.00
20	Double Meter	0	EA	\$1,000.00	\$0.00
21	Import granular backfill	20	TN	\$20.00	\$400.00
22	Import sand bedding	20	TN	\$20.00	\$400.00
	Subtotal B (Items 8-22)				\$7,200.00
STORM DRAIN (C)					
23	18" HDPE	30	LF	\$40.00	\$1,200.00
24	15" HDPE	40	LF	\$35.00	\$1,400.00
25	Inlet box	2	EA	\$2,500.00	\$5,000.00
26	60" MH	1	EA	\$3,000.00	\$3,000.00
27	Combo Box	0	EA	\$5,000.00	\$0.00
28	Detention Facility	0	EA	\$5,000.00	\$0.00
29	Drainage Fabric	0	SF	\$1.00	\$0.00
30	Import gravel backfill	20	TN	\$25.00	\$500.00
31	Import granular backfill	20	TN	\$20.00	\$400.00
	Subtotal C (Items 23-31)				\$11,500.00
SANITARY SEWER (D)					
32	8" PVC sewer main	0	LF	\$40.00	\$0.00
33	4" PVC sewer lateral	0	LF	\$35.00	\$0.00
34	8" X 4" tee	0	EA	\$300.00	\$0.00
35	48" sewer manhole	0	EA	\$3,000.00	\$0.00
36	60" sewer manhole	0	EA	\$4,500.00	\$0.00

PRELIMINARY - BOND ESTIMATE AND FEE SCHEDULE					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
37	Cleanout	0	LF	\$100.00	\$0.00
38	Import gravel backfill	0	TN	\$25.00	\$0.00
39	Import granular backfill	0	TN	\$20.00	\$0.00
	Subtotal D (Items 32-39)				\$0.00
MISCELLANEOUS ITEMS (E)					
40	Street Lights on 400 West & Frontage Road	4	EA	\$7,500.00	\$30,000.00
	Subtotal E (Item 40)				\$30,000.00
	Subtotal A-E (Items 1-40)				\$88,400.00
41	Contingency	20%			\$17,680.00
	Total Bond Estimate (Items 1-41)				\$106,080.00
FEES					
42	Inspection Fees	2.05%			\$19,806.81
43	Storm Drain Impact Fee	6.655	AC	\$3,911.00	\$26,027.71
44	Video Inspections of storm drains	70	LF	\$1.50	\$105.00
45	2" Water Development Fee (Total 2" Fee = \$20,270.00, Developer required to pay 50% up front and 50% at building permit)	1	EA	\$10,135.00	\$10,135.00
46	3/4" Water Development Fee (Total 3/4" Fee = \$2,026.00, Developer required to pay 50% up front and 50% at building permit)	68	EA	\$1,013.00	\$68,884.00
47	Culinary Waterline Construction Fee (see separate estimate for itemized schedule)				\$242,400.00
	TOTAL FEES				\$367,358.52

Note: These estimates were prepared as an opinion of cost based on current trends and construction activity in the area of the project at the time of plan preparation. This estimate is for the City's use to establish a basis for bonding and represents an opinion of what it may cost if the City is required to bid out and construct the project in the future. This estimate is based on plans prepared by the Developer and does not include all costs for the project.