

**WHEN RECORDED RETURN TO:**

South Salt Lake City  
Attn: Craig Burton, City Recorder  
220 East Morris Avenue  
South Salt Lake, UT 84115

**DEVELOPMENT AGREEMENT**

DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and among the undersigned entities involved in the development and construction of the subject project (collectively, the “Developer”) and SOUTH SALT LAKE CITY, a municipality and political subdivision of the State of Utah (the “City”). Developer and the City are hereinafter sometimes referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

A. Developer is the owner, developer and/or builder of real property located at approximately 3453 South State Street, located within the boundaries of the City as more particularly described in “Exhibit A” (the “Property”).

B. A subdivision plat has been approved by the City to divide the Property into 61 lots with cross-access easements as more fully described in the subdivision plat attached hereto as “Exhibit B.”

C. Developer desires to proceed with a project that will consist of a mixed-use condominium building, 15 residential-only townhome buildings (containing a total of 60 townhome units), and related improvements as depicted on the site plan attached hereto as “Exhibit C” (the “Project”).

D. The City desires to ensure realization of a product substantially the same in architectural style, color palate, and configuration as was proposed in application materials (shown in the images below):



Fig. 1 Rendering of the Mixed-Use Building.



Fig. 2 Rendering of Townhome Building option 1.



Fig. 3 Rendering of Townhome Building option 2.



Fig. 4 Rendering of Townhome Building option 3.

E. The City Council desires to ensure that the residential component of the Project does not generate offsite parking impacts—as other developments have caused—by requiring

two-car garages for every Townhome Unit and additional Commercial tenant parking within the project.

F. In order to accomplish their respective goals and objectives, the Parties hereby agree as follows:

## **AGREEMENT**

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

1. **Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Agreement.
  
2. **Project Aesthetics.** Developer agrees to construct a Project substantially the same in architectural style, color palette, and configuration as depicted in Recital D, above. The City acknowledges that: the proposed mixed-use condominium building to be constructed on Lot 1 will be 3 stories (on and above grade), comprising eight (8) residential dwelling units and four (4) ground-floor commercial units; and 15, 3-story residential-only townhome buildings, comprising 60 townhome units on individual lots. The Parties acknowledge that all applicable requirements of the South Salt Lake City Municipal Code apply to the Project.
  
3. **Residential Parking.** Developer agrees to require—in a form reasonably satisfactory to the City Attorney—that each of the residential tenants of the Project has use of the attached two-car garage as part of their residential lease, in order to discourage tenants from parking offsite in the areas surrounding the Project.
  
4. **Recordation of Plat.** In exchange for Developer’s promised adherence to the proposed Project aesthetics as set forth in Section 2 above and the residential parking restrictions set forth in Section 3 above, the City shall record the final approved subdivision plat for the Project.
  
5. **Successors and Assigns.**
  - 5.1. **Binding Effect.** This Agreement shall be binding upon all successors and assigns of Developer in the ownership or development of any Lot or other portion of the Project or Property, as applicable.
  
  - 5.2. **Assignment.** Except as provided herein, none of the provisions, terms, conditions, benefits or burdens contained in this Agreement may be severed from this Agreement and any assignment to any other party, individual, or entity may not be made without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, nothing herein shall preclude: (a) a collateral assignment of this Agreement to first priority mortgage lenders providing construction and development financing for the Project, or portion thereof, or (b) the sale or transfer of one or more Lots to affiliates of the Developer or others; provided, that the obligations contained in this Agreement and

applicable to such Lot or Lots sold or transferred shall be binding upon the successor owners thereof. Any such request for assignment may be made by letter addressed to the City as provided herein and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns. The assignment of the Project shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Agreement.

**6. Default.**

**6.1. Notice.** If Developer or the City fail to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a default has occurred shall provide notice to the other party as provided herein. If the City believes that the default has been committed by Developer, then the City shall also provide a courtesy copy of the notice to Developer.

**6.2. Contents of the Notice of Default.** The Notice of Default shall:

**6.2.1. Claim of Default.** Specify the claimed event of default;

**6.2.2. Identification of Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this Agreement that is claimed to be in default;

**6.2.3. Specify Materiality.** Identify why the default is claimed to be material; and

**6.2.4. Optional Proposed Cure.** If the City chooses, in its discretion, it may propose a method and time for curing the default which shall be of no less than sixty (60) days duration.

**6.3. Meet and Confer.** Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

**6.4. Remedies.** If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may have the following remedies:

**6.4.1. Legal Remedies.** The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance and termination, but not including damages or attorney's fees.

**6.4.2. Enforcement of Security.** The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular default.

**6.4.3. Withholding Further Development Approvals and Suspending Business License.** The right to withhold all further reviews, approvals, licenses, building permits, and/or other permits for future development on the Property.

**6.5. Extended Cure Period.** If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

**6.6. Cumulative Rights.** The rights and remedies set forth herein shall be cumulative.

**6.7. Force Majeure.** All time periods imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) a period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Project; or (b) events reasonably beyond the control of Developer including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of the Developer or its successors.

**7. Notices.** Any notices, requests, and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended or if mailed by certified mail, return receipt requested, postage prepaid to such Party at its address shown below:

To Developer:

Hamlet Development Corporation  
Attn: Michael Brodsky  
84 West 4800 South Ste 300  
Murray, UT 84107

To City:

South Salt Lake City  
Attn:  
City Attorney  
220 East Morris Avenue, Suite 200  
South Salt Lake, Utah 84115

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

**8. General Terms and Conditions.**

**8.1. Agreement to Run with the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Property.

**8.2. Entire Agreement.** This Agreement, together with the Exhibits hereto, integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective Parties hereto.

**8.3. Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

**8.4. Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer, in the event of any default or breach by the City or for any amount which may become due to Developer, or its successors or assignees, for any obligation arising out of the terms of this Agreement.

**8.5. No Third-Party Rights.** The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City, Developer, and the Developer's authorized successors, together with one or more first priority mortgage lenders of the Project, or portions thereof who shall be deemed third-party beneficiaries of this Agreement. The City, Developer, successors to the Developer, and the third-party mortgage lender identified above, alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

**8.6. Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

**8.7. Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.

**8.8. Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

**8.9. Public Information.** The Parties agree that all documents related to this agreement will be public documents, as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

**8.10. Satisfaction of Obligations.** At such time as the obligations of the Developer contained in this Agreement have been satisfied, including the implementation of provisions required by this Agreement into other agreements, declarations and/or covenants approved by the City Attorney, upon the request of the Declarant and/or its authorized successors, the City shall acknowledge in a form approved by the City Attorney suitable for recordation, that Declarant has satisfied its obligations as set forth in this Agreement.

**8.11. Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

**8.12. Counterparts.** This Agreement may be executed in multiple counterparts which shall constitute one and the same document.

**IN WITNESS WHEREOF**, this Agreement has been executed by South Salt Lake City, acting by and through the South Salt Lake City Council, Salt Lake County, State of Utah, pursuant to Resolution No. \_\_\_\_\_, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

**THE CITY:**

**SOUTH SALT LAKE CITY**, a Utah municipality and political subdivision of the State of Utah.

By: \_\_\_\_\_  
Chair, City Council

ATTEST:

\_\_\_\_\_  
Craig Burton, South Salt Lake City Recorder

APPROVED AS TO FORM

\_\_\_\_\_  
Josh Collins, City Attorney

**DEVELOPER:**

**HAMLET DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Michael Brodsky, President

**ABERLOUR LLC**, a Utah limited liability company

By: Hamlet Development Corporation, its Manager

By: \_\_\_\_\_  
Michael Brodsky, its President

**PRESTWICK SSL, LLC**, a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH                    )  
  :ss.  
COUNTY OF SALT LAKE    )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared before me Michael Brodsky, who being duly sworn, did say that he is the President of **Hamlet Development Corporation**, and that the foregoing instrument was signed in behalf of Hamlet Development Corporation for itself and as Manager of **Aberlour LLC**, and that Michael Brodsky duly acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
NOTARY PUBLIC

