WEST HAVEN PLANNING COMMISSION AGENDA
Wednesday, January 25, 2023 6:00 PM
City Council Chambers
4150 South 3900 West, West Haven, UT 84401

NOTICE IS HEREBY GIVEN THAT ON JANUARY 25, 2023 THE WEST HAVEN PLANNING COMMISSION WILL HOLD THE FOLLOWING PUBLIC MEETINGS: 5:00 PM WORK SESSION 6:00 PM REGULAR PLANNING COMMISSION MEETING. JOIN US DIGITALLY ON ZOOM HTTPS://US06WEB.ZOOM.US/J/86539464549 OR WATCH US LIVE ON YOUTUBE AT HTTPS://WWW.YOUTUBE.COM/CHANNEL/UCEEQNQBTFZJWTGOPHMCNCBA

5:00 COMMISSION WORK SESSION – In City Council Chambers

NO ACTION CAN OR WILL BE TAKEN ON ANY PLANNING COMMISSION MEETING AGENDA ITEMS DISCUSSED DURING PLANNING COMMISSION WORK SESSION - DISCUSSION OF SUCH ITEMS IS FOR CLARIFICATION OF AGENDA ITEMS.

MEETING TO ORDER: CHAIRMAN DEEM

REPORTS AND DISCUSSION AS FOLLOWS:

1. Discussion of an ordinance adopting standards for areas of mandatory commercial overlay in the Mixed-Use Zone
2. Discussion of an ordinance amending the mixed-use zone in West Haven City.
3. Discussion of an ordinance amending the provision for holding strips in West Haven City.
4. Discussion-Agenda items
5. Discussion-Staff Items

6:00 REGULAR PLANNING COMMISSION MEETING

1. CALL TO ORDER
Chairman Deem

2. OPENING CEREMONIES
A. Invocation- Commission Member Reed
B. Pledge of Allegiance- Commission Member Reyna

3. ACTION ON MINUTES
Approve minutes for the meeting of January 11, 2022

4. REPORT
Actions taken by City Council on Planning Commission recommendations

5. DISCUSSION AND ACTION
To consider a Master Development Agreement for West Haven Villas, a patio home project located at approximately 2000 West 2200 South (Applicant: Leisure Villas)

6. DISCUSSION AND ACTION

To consider a Master Development Agreement for 21 South, a mixed-use project located at approximately 2000 South 1350 West (Applicant: Ponderosa Capital/Jordan Watson)

7. DISCUSSION
To consider an ordinance amending West Haven Zoning Code §157.630-640, "Parking and Loading Space, Vehicle Traffic, and Access Regulations"

8. ADJOURNMENT

Charis Sully

Charis Sully, Deputy Recorder

In compliance with the Americans with Disabilities Act, persons needing special accommodations, including auxiliary communicative aids and services, for this meeting should notify the city recorder at (801) 731-4519 or by email: emilyq@westhavencity.com at least 48 hours in advance of the meeting.

CERTIFICATE OF POSTING

The undersigned, duly appointed city recorder, does hereby certify that the above notice and agenda has been posted in the West Haven City Recorder's office; at the West Haven City Complex on the Notice Board and at westhavencity.com; emailed to the Standard-Examiner with a request that it be posted In their Wednesday night meeting section; mailed and emailed to each West Haven City Planning Commission Member who has email capacity and to the city attorney.

Planning Commission Meeting Minutes
January 11, 2023 6:00 PM

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

Present:	*Darin Deem*	*Chairman*
	Becky Roundy	*Vice-Chairman*
	Andrew Reyna	*Commission Member*
	Melinda Stimpson	*Commission Member*
	Natalie Wilson	*Commission Member*
Staff Present:	*Charis Sully*	*Deputy Recorder*
	Amy Hugie	*City Attorney*
	Alika Murphy	*City Planner*
	Shari Phippen	*Community Development Director*

5:00 WORK SESSION
Newly appointed Planning Commission members Matt Nece and Jeff Reed introduced themselves.
Shari explained that the two new members would not be participating in the January 11, 2023, meeting because per state statute they are required to do 1 hour of training before they are allowed.
Planning Commission discussed agenda items.

The Planning Commission met at their regularly scheduled meeting at the City Office.

1. CALL TO ORDER
Chairman Deem called the meeting to order at 6:02

2. OPENING CEREMONIES
A. Invocation was offered by Commission Member Roundy
B. Pledge of Allegiance was offered by Commission Member Stimpson

3. ACTION ON MINUTES
Approve minutes for the meeting of December 14, 2022

Commission member Roundy a motion to approve the minutes. Commission member Wilson seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

4. REPORT
Actions taken by City Council on Planning Commission recommendations

Shari stated that there was nothing to report from the previous City Council meeting.

5. APPOINTMENTS
A. Chairman
Commission member Wilson nominated Darin Deem as chairman. Commission member Roundy seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

B. Vice Chairman
Commission member Roundy nominated Andrew Reyna as vice chairman. Commission member Wilson

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seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

C. Temporary Chairman

Commission member Stimpson nominated Natalie Wilson as temporary chairman. Commission member Roundy seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

The commission moved item 12 up

12. PRELIMINARY SITE PLAN APPROVAL
Kum and Go convenience store located on the North-east corner of Midland Drive and Hinkley Drive

Megan Walter was present for this item.

Ms. Walter stated that this building would be the smaller prototype that is offered.

Shari stated that both points of access are controlled by UDOT. They have met all landscaping requirements, parking requirements and all design review standards.

Ms. Walter stated that UDOT has given approval for the 2 accesses.

Commission member Roundy a motion to grant preliminary site plat approval with the provisions that they provide a will-serve letter from the Hooper Water Improvement District and Finalized elevations showing the distribution of architectural materials across the building to ensure compliance with the design criteria. Commission member Wilson seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

The commission moved back to item 6

6. PUBLIC HEARING
To consider an amendment to WHZC 157.400, Residential Patio Home Zone

Commission member Wilson made a motion to enter into a public hearing. Commission member Roundy seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous

Andy Davis expressed his happiness about removing the zero lot lines. Does not like the language that references empty nest style housing and believes that the housing should be open to all groups. Expressed concern about how many levels are allowed. Believes the patio home zone should be changed to a regular single family.

Commission member Roundy made a motion to leave public hearing. Commission member Reyna seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

7. DISCUSSION AND ACTION ON PUBLIC HEARING
To consider an amendment to WHZC 157.400, Residential Patio Home Zone

Shari stated that we are prohibited from the state of Utah to impose regulation on design criteria.

There was a discussion about the phrase "Empty Nest Style Housing".

Shari stated that in order to do 55 and older you have to go through the Federal Government.

Commission member Wilson made a motion to recommend approval of the Patio Home Ordinance as shown in the packet. Commission member Reyna seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

8. PUBLIC HEARING
To consider an update to the West Haven City Moderate Income Housing Plan

Shari stated that our Moderate-Income Housing Plan was not compliant with State requirements along with about 75% of

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other cities in Utah and were notified. If the plan is not compliant with state code, it has the potential to jeopardize the ability of the city to receive federal or state grants.

Shari stated that there was some verbiage that had changed in the last Legislative Session that needs to be corrected and the city needs to set new goals.

This amendment proposed the verbiage change in section 10-9-a and it also sets new goals along with strategies and timelines for their implementation.

Commission member Roundy made a motion to enter into a public hearing. Commission member Wilson seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous

Justin Nielsen expressed his support for a balanced city and support for responsible growth.

Commission member Wilson made a motion to leave public hearing. Commission member Roundy seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous

9. DISCUSSION AND ACTION ON PUBLIC HEARING
To consider an update to the West Haven City Moderate Income Housing Plan

> **Commission member Wilson made a motion to recommend approval of the West Haven City Moderate Income Housing Plan. Commission member Reyna seconded the motion.** Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

10. PUBLIC HEARING
To consider a request to rezone property located at approximately 3675 S Midland Drive from A-1 to C-3

Mitch Morris was present for this item.

Mr. Morris stated that they are requesting this property to be rezoned to C-3. He stated that this property is shaped differently, it is a very deep lot. Retail users want the frontage with high visibility and the lot won't allow that in the back half.

Chairman Deem asked if they were wanting retail in the front and something different in the back half.

Mr. Morris said that is correct.

Chairman Deem asked if C-3 would be required for the businesses that would be in the back.

Mr. Morris said that they envision a flex office/warehouse user and that is allowed in a C-3 but not a C-2.

Commission member Roundy made a motion to enter into a public hearing. Commission member Reyna seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous

Justin Nielsen stated that the property surrounding this piece is zoned at C-2 and believes this piece should be C-2 as well to stay consistent with the area.

Andy Davis stated that the city should stick to what the general plan says.

Commission member Roundy made a motion to leave public hearing. Commission member Wilson seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous

11. DISCUSSION AND ACTION ON PUBLIC HEARING
To consider a request to rezone property located at approximately 3675 S Midland Drive from A-1 to C-3

Chairman Deems stated that city staff recommends they stay at C-2.

Alika Murphy stated that C-2 follows the General Plan and makes sense to keep it consistent.

Commission member Stimpson, Roundy and Reyna stated they believe the city should stick with the General Plan.

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Commission member Wilson made a motion to recommend approval of the application for rezone for property located at 3675 S Midland Drive from A-1 to C-2. Commission member Roundy seconded the motion.

There was a discussion about whether or not the applicant would like to move forward with the recommendation of C-2 or recommendation of denial.

The applicant stated they would like to move forward to City Council with the denial recommendation.

Commission member Wilson withdrew her motion.

Commission member Wilson made a motion to recommend denial of the rezone from A-1 to C-3 for parcel 08-022-0001 located at 3675 S Midland Drive. Commission member Roundy seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

13. ADJOURNMENT

Commission member Roundy made a motion to adjourn at 7:00PM. Commission member Wilson seconded the motion. Commission member Deem, aye; Commission member Roundy, aye; Commission member Stimpson, aye; Commission member Reyna, aye; Commission member Wilson, aye. The vote was unanimous.

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Charis Sully
Charis Sully
District Recorder

Date Approved: _____

Planning Commission
Staff Review Memo

January 9, 2023

Shari Phippen, Community Development Director

West Haven Villas- Patio Home MDA and Concept

Property Address: Approx 2050 W 2200 S
Property Zone: Patio Home (PH)
Property Size: 16.28 acres
Applicant: Leisure Villas, LLC (Keith Lindstrom)

Governing Document(s):	General Plan, WHZC 157.410-419
Decision Type:	Administrative
Staff Recommendation:	Denial, based on the comments herein

Background

Leisure Villas, LLC is under contract to purchase and develop the Kosoff property located at approximately 2050 W 2200 S. The property was zoned Patio Home in August 2021 (Ordinance 31-2021).

Similar to other projects Applicant has developed, they have requested that the City permit them to construct attached patio home, sometimes referred to as "zero lot line" projects. WHZC 157.415 requires a legislative MDA for this type of project, a draft of which is prepared and included in this packet.

This project was previously before the Commission and Council and was denied. The applicant appealed to the West Haven City Administrative Hearing Officer, who determined that that action was administrative rather than legislative as had previously been stated by staff. The AHO stated that the Planning Commission is the land use authority the concept and the MDA, rather than being a recommending body as is often the case.

The City and developer have gone back and forth on various concepts and MDA drafts since the time this previously appeared before the Commission. The attached concept and MDA are those which the developer has prepared and for which they are seeking approval from the Commission.

As the developer is seeking a total approval of the concept, and based on comments and concerns they have expressed, staff has revised its prior report and recommendation as found herein.

Density

Developer has stated that they are entitled to 5 units per acre. Five units per acre is not a guaranteed number. That is the maximum and is contingent on other standards and specifications being met, which has not been done in this case. They have removed one four-

plex and are now at 4.5 units per acre. While they are under the density limit, there are outstanding issues which are likely to affect the total number of units on the property

Setbacks
This revised concept does not show setbacks from the property lines. City Code 157.410-419 (Patio Home Ordinance) does not wave setback requirements for zero-lot line projects except for a single side-yard setback.

Lot Widths
Based on previous concepts, the lots appear to be 73x50. Corner lots will need to be addressed/oriented to that the lot width is 73'.

Landscaping
No landscaping plan has been provided.

Traffic Circulation
The turning templates which were previously provided by the developer show that the required turning radii cannot be accomplished without emergency vehicles going out of the paved surface and onto curbs/sidewalks. Emergency vehicles have to be able to complete their turning movements without leaving the asphalt.

Building Height
Developer has stated that they want their clubhouse to exceed the 25' maximum. They have provided no drawings or guarantees otherwise.

Dahl Property
This project needs to provide a road stub into the Dahl property. The City cannot approve a project that cuts off access to an adjoining parcel.

# of Stories
Developer has proposed having bonus rooms in all or a portion of the 4-plexes. City Code 157.415 specifically states that only single-level, single-family homes would be allowed. The IRC defines a bonus room as a story. The City has no guarantee or other assurance that the homes will comply with this prohibition against bonus rooms.

Off-Street Parking
Due to the narrow width of the right of way, there can be no parking on at least one side of the road. Developer has provided no guarantee or other assurance that they will put this into place.

Developer also must prohibit parking on the shared driveways, owing to the fact that they also must serve as fire accesses. Developer has not provided information on how they intend to enforce this.

Developer should be required to provide a minimum of 1 guest parking space per 4 units. As currently proposed, they have provided 10 guest parking spaces and 18 spaces for the clubhouse. Developer should be required to increase the number of guest parking spaces.

Additionally, the guest parking cannot interfere with the pedestrian sidewalks, which the included concept shows will happen.

Further, the parking for the clubhouse needs separated from the access to Lots 47 and 48, in order to prevent potential blocking of access to those units by visitors to the clubhouse.

Canal Encroachment

The concept plan shows that the cul-de-sac will either encroach into easements and canals owned by various canal companies. Developer has not provided the City with any letters or other communication from the owners of those canals showing that they have reviewed the concept and approve the encroachment into their easement.

Sound Study

The Planning Commission has previously stated that they would like to see a sound study conducted, as this abuts industrial property. Developer has made no representation that the sound study has been undertaken.

Findings of Fact/Conclusions of Law

Based on the above, staff finds that the project is materially deficient, for the reasons outlined below.

Findings of Fact:

1- Proposed setbacks are not shown and thus, not compliant with the terms of WHZC 157.414
2- No landscaping plan has been submitted, as required by WHZC 157.417
3- No guarantees or representations have been made regarding:
    a. Clubhouse height
    b. Bonus room construction is prohibited
    c. Guest parking must not interfere with pedestrian sidewalks
    d. Guest parking independent of that provided for the clubhouse
    e. No parking on at least one side of the right of way
    f. No parking in the shared driveways, owing to their need to serve as fire access roads.
4- Vehicle tracking shows that a fire truck is likely to breach the curb upon turning- this is prohibited by the International Fire Code. Roadway design must be adjusted so that fire trucks remain within the curve of the asphalt.
5- No distances are shown between the garage and shared driveways are shown. These must be a minimum of 20' in order to ensure that the shared driveways are not blocked by vehicles in the portion of the driveway immediately adjacent to the garage.
6- No evidence has been submitted that developer has provided information to the following service providers regarding the project:
    a. Wilson Irrigation Company
    b. Bona Vista Water Improvement District
    c. Weber Basin Water Conservancy District
7- Access to clubhouse parking must be separate from access to Lots 47 and 48

8- No sound study has been provided, as previously requested by the Planning Commission.

Conclusions of Law

1- The concept does not comply with the standards of West Haven Zoning Code 157.410-419, the International Fire Code, and West Haven City Engineering Design Standards and Specifications. Accordingly, the concept and supporting MDA should be denied.

Should the Commission agree with staff's findings and conclusions, staff recommends a motion which states "I move that we deny this project for the reasons outlined in the findings of fact and conclusions of law in the January 19, 2023 staff memo."

DEVELOPMENT AGREEMENT
WEST HAVEN VILLAS, A MASTER-PLANNED PATIO HOME COMMUNITY

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 20___(the "Effective Date"), by and between the WEST HAVEN CITY, a Utah municipal corporation, hereinafter referred to as "City," and Snow Pass LLC, a Utah limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. WHEREAS, Developer is the owner of approximately 16.28 acres of land located within the West Haven City as is more particularly described with a legal description on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property"); and

B. WHEREAS, on August 18, 2021, the City Council adopted Ordinance 31-2021, which changed the zoning of the Property to Patio Homes; and

C. WHEREAS, Developer has proposed a site plan, see EXHIBIT B; and

D. WHEREAS, Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning regulations, and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below; and

E. WHEREAS, development of the Property pursuant to this Agreement is acknowledged by the parties to be consistent with Land Use Development Management Act of the Utah State Code ("LUDMA") and the Zoning Ordinance and to operate to the benefit of the City, Developer, and the general public; and

F. WHEREAS, the Planning Commission has reviewed this Agreement, including all exhibits, and determined that it is consistent with LUDMA, the Zoning Ordinance, and development of the Property; and

G. WHEREAS, the Planning Commission accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting for the zoning be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Weber County Recorder; and

H. WHEREAS, the Planning Commission further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City; and

I. WHEREAS, the City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances; and

J. WHEREAS, this Agreement is consistent with the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations; and

K. WHEREAS, all preliminary and final plats within the Property are subject to and shall conform with this Agreement, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations; and

L. WHEREAS, the Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement; and

M. WHEREAS, the Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102; and

N. WHEREAS, the Parties intend to be bound by the terms of this Agreement as set forth herein.

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 City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Patio Home zone, (ii) all other features as generally shown on the Site plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the attached Site plan in EXHIBIT B as permitted by the aforementioned zoning designations for the Property.

   a. "Material deviations" are defined as any deviation that affects the density, amount of open space, or unit type that is shown on the Site plan.

b. A Developer may request a material deviation, but it can only be approved in writing by the (~~City Council after those deviations have been reviewed and received a recommendation by the~~) City Planning Commission.

c. The Planning Commission is not required to approve material deviations and can deny the request.

3. Governing Standards. The Site plan and this Agreement including all exhibits (together the "Approval Documents") establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Approval Documents. All Developer submittals must comply with the Approval Documents. Non-material variations to the Site plan, such as exact building locations, location of local roadways, exact locations of open space, and parking may be varied by the Developer with Planning Commission approval. Such variations, however, shall in no way change the maximum density, use, intensity, and amount and type of open space of the development of the Project.

4. Development Standards. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

a. Density and Uses. City specifically acknowledges that at build-out Developer shall be entitled to a total overall density of **72 patio homes**. All dwelling units in the Project are to be single-family attached, owner-occupied. No dwelling unit in the Project may be used for a short-term rental.

b. Amenities. Developer shall construct a clubhouse for the exclusive use of the Project.

c. Parking. In addition to two-car garages for each dwelling unit, Developer shall provide 2 off-street parking spaces per unit, as well as 1 off-street guest parking spot per 4 units.

d. Roads. Roads within the Project shall be constructed to City standards but shall be owned and maintained by Developer and any HOA which Developer may set up for the operation and maintenance of common spaces in the Project.
   i. City standards include any requirements for road design and maintenance which may be imposed by the Weber Fire District, or their designee.

e. Phasing. If the Developer chooses to phase the project, Developer shall provide the City with a site plan and table showing how the project will be phased and how many units will be in each phase.

f. Height Maximum. In accordance with the Patio Home zone, all dwelling units and other buildings on the Project may be constructed to a height no greater than 25'.

g. Setbacks. The City recognizes that Developer is proposing attached patio homes, sometimes referred to as zero lot line patio homes. In consideration of this, and in accordance with provisions of the Patio Home ordinance, City agrees to waive required interior side setbacks, as well as rear setbacks. Project setbacks shall be in accordance with the attached site plan, and shall be calculated from the edge of the nearest right-of-way.

h. Impact and Building Permit Fees. Impact fees and building permit fees shall be calculated and charged based on the fees in effect at the time the Developer is issued a building permit for any unit or group of units.

5. Construction Standards and Requirements. All construction on the Property, at the direction of the Developer, shall be conducted and completed in accordance with the City Ordinances and Design Standards, including, but not limited to infrastructure construction, setback requirements, minimum lot sizes, building height requirements, lot coverage requirements, and all other zoning requirements.

a. The City shall accept all improvements which are intended for public use and which have been constructed by Developer or its agents in accordance with the City's standards and as shown on the approved construction drawings.

b. Unless otherwise specifically approved by the Planning Commission and clearly labeled on the final subdivision plat, all roads within the Project shall be public roads. Upon final acceptance of such roads as having been constructed in conformity with all approved plans and City standards, City shall be responsible for maintenance of the roads at the same level of maintenance applicable to other similar roads within the City. City shall not be responsible for maintenance of any private road within the Project.

6. On-Site Processing of Natural Materials. Notwithstanding anything to the contrary herein, Developer and its agents shall be permitted to extract and process the natural materials located on the Project, such as aggregate (rock, sand or gravel), for temporary purposes and in connection with the grading, excavation, and other ordinary and customary development processes for the Property. Such natural materials may be used in the construction of infrastructure, homes, or other buildings or improvements located on the Property and other locations outside the Property. No extraction, processing, or other form of mining activity shall occur on the Property unless the party desiring to conduct such activity has, prior to the commencement of such activity, obtained all necessary permits and approvals from City.

7. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Approval Documents, subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. Notwithstanding the foregoing, the Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

a) Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
b) Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
c) Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
d) 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.
e) Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
f) Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed, and collected.

b. Reserved Legislative Powers. The 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 that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date.

8. Default. A "Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due.

9. Specific Acts of Default. The Parties hereto agree that any of the following occurrences, acts, or failure to act (which list is not all inclusive) shall constitute a Default by Developer, for which City may elect to terminate the Agreement in accordance with the section above:

a. the filing of a petition in bankruptcy by Developer;

b. foreclosure on any portion of the Property which has the effect of creating an unapproved or illegal subdivision under Utah law or City ordinances;

c. The Developer's failure to comply with the requirements of this Development Agreement; or

d. Developer's failure, without good cause as determined in good faith by City, for a period of two (2) years to commence construction of improvements in any new development phase or new Development Parcel.

Upon such termination, all approvals or development rights granted hereunder to Developer shall lapse and all obligations of City hereunder shall cease.

10. Notice of Default. If Developer or the City fails 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.

a. Contents of the Notice of Default. The Notice of Default shall:

i. Specific Claim. Specify the claimed event of Default;

ii. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this Agreement that is claimed to be in Default;

iii. Materiality. Identify why the Default is claimed to be material; and

iv. Optional 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 thirty (30) days duration.

b. Meet and Confer and Mediation. Upon the issuance of a Notice of Default the parties shall engage in "Meet and Confer" and Mediation processes as follows:

i. Meet and Confer Regarding Defaults. The City and Developer shall meet within fifteen (15) business days of a Notice of Default to resolve the issue(s) specified in the Notice of Default. If the parties cannot resolve the issue(s), the parties shall participate in mediation as outlined below.

ii. Mediation of Defaults.

(a) Mediation Process.

(1) If the City and Developer are unable to resolve an issue regarding Default, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute.

(2) If the parties are unable to agree on a single acceptable mediator they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator.

(3) Developer shall pay the fees of the chosen mediator.

(4) The chosen mediator shall, within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties.

(5) If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

c. Remedies. If the parties are not able to resolve the Default by "Meet and Confer" or by Mediation, then the parties may have the following remedies:

i. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

ii. Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

iii. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project.

d. Public Meeting. Before any remedy in Section 17(c) may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

e. Emergency Defaults. Anything in this Agreement notwithstanding, if the City Council finds on the record that a Default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a Default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 17(c) without the requirements of Sections 17(b). The City shall give Notice to Developer of any public meeting at which an emergency Default is to be considered, and the Developer shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

f. Extended Cure Period. If any Default cannot be reasonably cured within thirty (30) days, then the City may extend such cure period to a different time period as long as the defaulting party is pursuing a cure with reasonable diligence. If the City decides to extend the cure period, then the City shall designate what that extended time period is.

g. Limitation on Recovery for Default- No Damages. Anything in this Agreement notwithstanding, no party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto. The sole remedy available to Developer or the City shall be that of specific performance.

11. Notices. Any notices, requests, and demands required or desired to be given hereunder shall be in writing, emailed to the Developer and also 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 the Developer:

Address: 791 N 100 E, Lehi, UT 84043
Phone: 801-699-2869
Email: Keith@leisurevillas.com

To the City: West Haven City

12. General Term and Conditions.

a. 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.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements.

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Weber County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt, or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy, or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah. The parties stipulate that jurisdiction lies with the Second District Court in Ogden, Utah, or the Utah District Federal Court.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license, or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license, or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully

authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Weber County Recorder within two (2) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

13. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the written consent of the Planning Commission as provided herein:

a. Notice. Developer shall give Notice to the Planning Commission of any proposed assignment and provide such information regarding the proposed assignee that the Planning Commission may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

c. Grounds for Denying Assignment. The Planning Commission may only withhold its consent if the Planning Commission is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.

d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

14. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

15. No Waiver. Any party's failure to enforce any provision of this 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.

16. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

17. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; acts of nature; federal governmental restrictions, regulations, or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay, or stoppage.

18. Amendment. This Agreement may be amended only in writing signed by the City Council and the Developer hereto.

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 hereinabove written.

CITY:

WEST HAVEN CITY

ATTEST:

By: _____
City Recorder

By: _____
Mayor

DEVELOPER:

By: _____
Name:
Title: _____

STATE OF UTAH)
:ss
COUNTY OF UTAH)

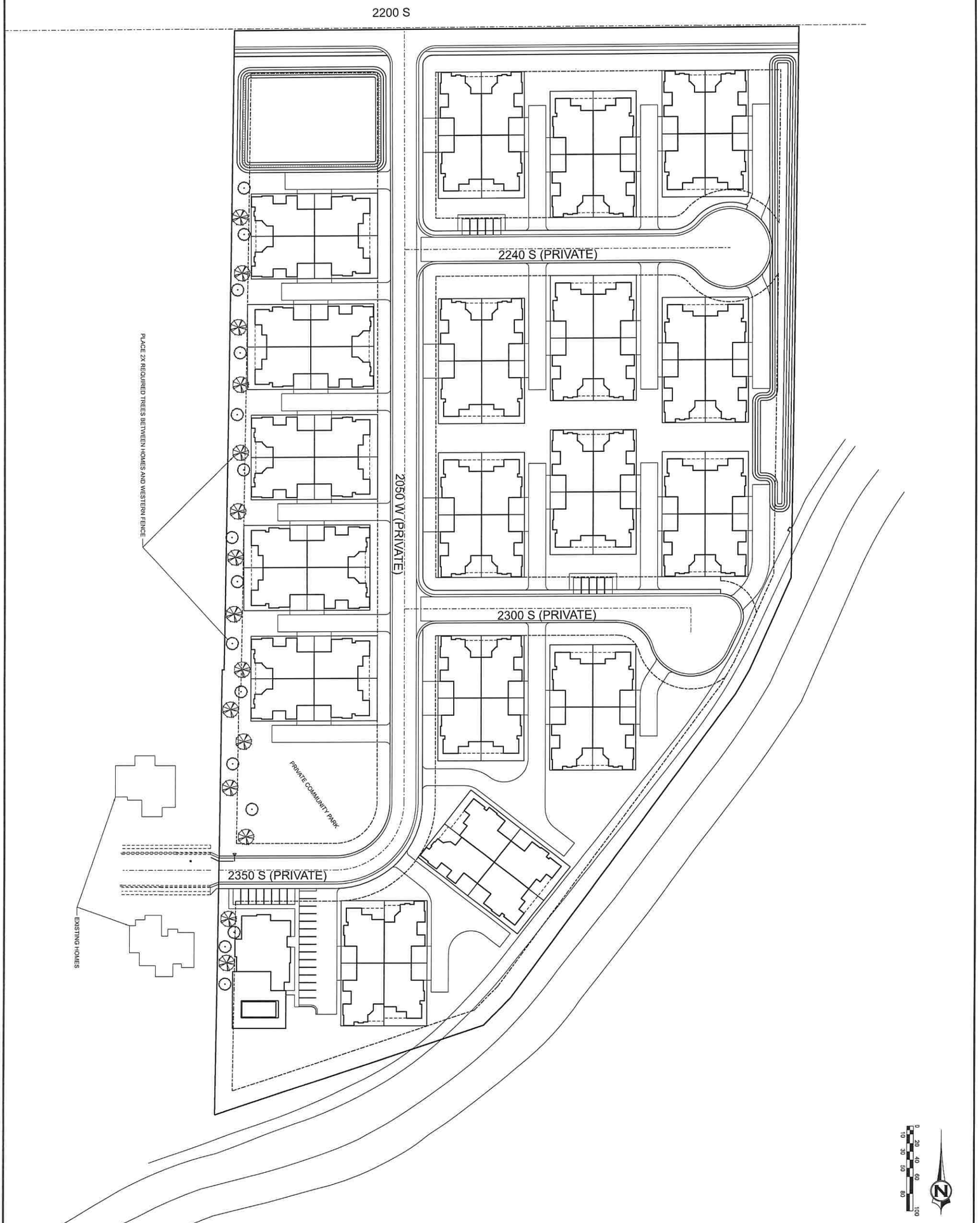
On the ____ day of _____, 2022, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of_____, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

_____
Notary Public
Residing at:

EXHIBIT A
Legal Description Parcel

PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 6 NORTH,RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:BEGINNING AT A POINT 40 RODS WEST OF THE NORTHEAST CORNER OFSAID QUARTER SECTION AND RUNNING THENCE WEST 40 RODS, THENCESOUTH 1282.90 FEET, MORE OR LESS, TO THE NORTH LINE OF THELAYTON CANAL, THENCE FIVE COURSES ALONG SAID LINE AS FOLLOWS:NORTH 71D17' EAST 330.8 FEET, NORTH 44D33' EAST 45 FEET, NORTH36D11' EAST 440.2 FEET, NORTH 29D59' EAST 33 FEET AND NORTH23D58' EAST 113.4 FEET TO A POINT SOUTH OF BEGINNING, THENCENORTH TO THE PLACE OF BEGINNING. SUBJECT TO RIGHT OF WAY FOR COUNTY ROAD ALONG THE NORTHLINE THEREOF.

EXHIBIT B
Site Plan



WEST HAVEN VILLAS
CONCEPT REVISION 7

REVISION PER PC REQUEST

PROJ. # 2022091
CAD FILE: 2022091MP 7.dgn
DRAWN BY: PSJ
DESIGN BY: PSJ
SCALE OF SHEET
HOR SCALE: 1"=30'
VER SCALE:
SHEET
OF

DRAWING REUSE STATEMENT
THIS DOCUMENT AND THE INFORMATION HEREIN ARE THE PROPERTY OF MUSTANG DESIGN AND IS NOT TO BE REPRODUCED, MODIFIED OR USED IN WHOLE OR IN PART, FOR ANY OTHER PROJECT OR EXTENSION OF THIS PROJECT EXCEPT BY WRITTEN AUTHORIZATION OF MUSTANG DESIGN, LLC.

REVISION			
NO.	DESCRIPTION	BY	APR. DATE

MUSTANG DESIGN, LLC
787 NORTH 1000 WEST
LEHI, UTAH 84043

Mustang DESIGN

Planning Commission
Staff Review Memo

January 25, 2023
Shari Phippen, Community Development Director

Mixed Use Master Development Agreement- 21 South

Project Location:	2000 South 1350 West (approx.)
Project Size/Zone:	9.5 acres – Mixed-Use
Parcel ID:	150660096 & 150660071
Applicant[1]:	Ponderosa Capital, LLC (Jordan Watson)
Governing Document(s):	General Plan, WHZC 157.310-315
Decision Type:	Legislative Recommendation
Staff Recommendation:	Recommend approval to the Council, based on the comments herein.

Background

The City has received an application for redevelopment of the Stevens-Henegar/Independence University site. The project will involve the demolition of the building and development of a mixed-use high density residential project on that parcel and the parcel to the south. They intend to call the project 21 South.

The project will be comprised of 285 apartments (or 30 units per acre), as well as recreational amenities and landscaped open space between the buildings. The specifics of the proposed density can be found in Section 4.5 of the draft MDA.

The property has been mixed-use for some time now, so no rezone is necessary. Staff has presented the draft MDA to the applicant for their review. The applicant has had the opportunity to review and provide feedback on the MDA, which is now before the Commission for review and recommendation.

A couple of things to note:

1- Review and action on the MDA does NOT alleviate the developer of the responsibility to go through the site plan approval process.
   a. The process for this type of project is two-fold:
      i. Review and action on the MDA, which includes the density, amenities and other relevant provisions of a concept
      ii. Site plan and design review process, which gets into the specifics of how the project will look and flow

[1] In this staff report, the terms Applicant and Developer are used interchangeably and both refer to Ponderosa Capital, LLC

2- While the Commission will soon be reviewing and making significant updates to commercial overlays and the mixed-use zone, as will be discussed in the 1/25 work session, the applicant submitted a complete application for this review prior to the City formally initiating those updates, so they are entitled to review under the ordinances that exist as presently written.
3- This type of project is one where staff would strongly encourage the Commission and Council to require a traffic impact study as part of the site development. The applicant has already taken steps to begin that and should be discussed with the Commission.

Staff Review

Below are the relevant portions of City Code and how this concept meets or falls short of the standards imposed (staff comments are in bold). Not all portions of the mixed-use zone, found in 157.310-315, but I have included the entire ordinance and will indicate which sections don't apply, and the reasons they don't.

§ 157.310 PURPOSE; DEFINITION.

(A) (1) The Mixed Use Zone is characterized as a pedestrian-friendly Zone made up of developments which are required to contain two or more of the following elements: commercial, residential, open space, recreational, cultural, and institutional uses.

- **The project proposes residential, recreational and open space elements, satisfying this requirement.**
- **The recreational elements they are including are: pickleball courts, a clubhouse, a swimming pool, and a fitness facility.**

(2) To wit, the Zone may include:

(a) Areas of mandatory commercial overlays as designated on the general plan map;

(b) Developments with combined commercial and residential uses, such as a corner store with house attached, a main floor home business with a residence above it, or first-floor commercial suites with residences above, and the like;

(c) Walkable commercial opportunities within the district which allow residents to walk to, rather than drive to, those businesses;

(d) Higher density multiple-family residential buffers between Commercial, Industrial, or Manufacturing Zones and lower density residential areas as appropriate;

(e) A mix of different housing types and densities, including single-family homes, townhomes, apartments, and affordable housing units;

(f) The preservation of open space through the use of clustering in residential and non-residential developments;

(g) Neighborhood and regional parks, and other recreational features (trails excluded);

(h) Community cultural facilities, such as community centers and facilities for the arts; and

(i) Institutional uses such as libraries, educational institutions, religious facilities, or public buildings.

- **This list is not a list of requirements, but rather suggestions, so there is no specific requirement to be evaluated.**

(3) Mixed Use developments of less than two acres are required to have only one of the required components. If a mandatory commercial overlay exists in the district in which the development is located, it shall continue to be required.

- **Does not apply due to the size of the project.**

(4) Trails alone may not be used as a required element in the recreational category.

- **Does not apply, as applicant is not proposing to use trails as a recreational element.**

(B) (1) RESIDENTIAL AFFORDABLE HOUSING shall mean housing (either owned or rented), the cost of which is projected in good faith at the time of application to consume no more than 30% of the monthly income of those residents with incomes less than, or equal to, 80% of the annual mean income (AMI) for the city as published by the United States Census Bureau.

- **Affordable housing is considered anything which requires less than 30% of the monthly gross income of those making less than 80% of an area median income (AMI)- AMI is determined on a county-wide basis**
- **According to 2021 HUD data given to the Governor's Office of Planning & Budget[2], Weber County's AMI is $90,900- 80% of that is $72,700- 30% of that $72,700 is $21,810, or $1,817.5 per month.**
- **For the purposes of housing development, anything which rents for at or below $1,817.50/mo is considered affordable. I would make an educated guess that the average cost of housing (owned or otherwise) in West Haven City is less than that, not including utilities.**
- **While this project is not being proposed specifically as an affordable housing project, based on the County's AMI and on current market rental rates, the project certainly meets the State threshold of being affordable.**

(2) For the purposes of density calculations in the Mixed Use Zone, an acre is defined as 43,560 square feet of raw ground.

- **The City has previously taken steps to standardize the definition of an acre, so there is nothing to be considered with this subsection.**

(3) (a) A Mixed Use District is a contiguous area of land which is designated to be zoned as Mixed Use on the general plan map.

(b) Districts may include property under the ownership of multiple entities.

(c) District boundaries shall be shown on the general plan map.

- **As can be seen on the City's zoning maps, this property was clearly designated and zoned for mixed-use projects, so the project falls within the anticipated land use.**

§ 157.311 DENSITY; DISTRICTS.

(A) Residential Density Zones shall be defined as follows:

(1) Low Density is zero to 4.9 dwelling units per project acre;

(2) Medium-Low Density is five to 8.9 dwelling units per project acre;

(3) Medium-High Density is nine to 14.9 dwelling units per project acre; and

(4) High Density is 15 to 30 dwelling units per project acre.

- **The General Plan and zoning maps designate this mixed-use district for high density, which would be 15-30 units per acre. The proposed 285 units on 9.5 acres falls within this range, satisfying the density cap for the property.**

(B) The Planning Commission shall designate the boundaries of each Mixed Use District and shall delineate said boundaries on the general plan map.

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[2] https://budget.utah.gov/homelessness-and-housing-affordability-2022-general-session/

(C) The density of each Mixed Use District shall be determined by the Planning Commission, and delineated on the general plan map.

(D) Mandatory Commercial overlays will be identified on the General Plan Map.

(E) The Planning Commission may take into account the overall density of the surrounding area as well as that of the encompassing Mixed Use District as a whole when considering a development project density, but shall not be required to grant a similar density to the development under consideration.

- **B-D have been previously done. Comments on the mandatory commercial overlay are below.**
- **As to E, staff has reviewed this with the City attorney, as well as spent time reviewing relevant statutes and relevant land use cases. Because this property is already zoned mixed use and because the designation of high density has already been made, they have a vested right to a project that falls within the density range, provided that other regulations of the mixed-use zone are satisfied.**

§ 157.312 ADDITIONAL REQUIREMENTS.

(A) A concept plan shall be attached to any application for Mixed Use Zoning in accordance with this chapter and the requirements of §§ 157.705 through 157.715 and 157.730 through 157.737.

(B) Uses permitted in a Mixed Use Zone development shall reflect the character, scale, and needs of the particular area as determined by the Planning Commission, in consultation with area residents via one or more public hearings.

(C) Once the Planning Commission has held the required public hearing and recommended to City Council a residential density for a proposed Mixed Use Zone development, the project may not be approved with a density exceeding 110% of the recommended density unless an additional public hearing is held by the Planning Commission to receive input on the proposed increase. After the Planning Commission has held the additional public hearing on the increased density and voted on a recommendation, the City Council shall review the public input and make a final determination. Density for a proposed Mixed Use Zone development may be decreased from the Planning Commission recommendation without holding an additional public hearing.

- **The property has already been zoned Mixed-Use, so sections A-C do not apply to this project. The developer is not requesting the density increase that B outlines, so that is not an issue.**

(D) Specific setbacks and other zoning or design criteria, landscaping, vehicular and pedestrian circulation patterns, building aesthetics and payback agreements (as applicable) for each development shall be established in a development agreement, the approval of which shall be determined by the City Council upon recommendation of the Planning Commission.

- **Setbacks and maximum building height language is included in the MDA.**
- **The other items mentioned above are governed by WHZC 157.730, which outlines the site plan and design review requirements. Language has been included in the MDA that obligates the developer to that process.**

(E) Residential single-family homes and townhomes within 300 feet of Commercial, Manufacturing, or Industrial Zones shall be required to have a sound engineer determine the

method and materials of construction to protect future homeowners from noise. The developer shall ensure that buyers of lots and contractors are made aware of, and agree to abide by, this requirement.

- **N/A- no single family homes or townhomes are being proposed.**

(F) (1) Lot size buffering

- **I removed the language of this section from the staff report, as none of the regulations of subsection F apply since this project is not adjacent to any of the zones which would require buffering.**

(G) Once a rezoning application to the Mixed Use Zone development has been granted, improvements to the real property must begin within 365 days or the property may revert to its original zoning at the option of the city with 60 days' notice.

(1) Two 90-day extensions may be granted by the Planning Commission at the request of the developer.

(2) If at any time the development remains stagnant in construction or improvements for a period of 365 days, the city may, at its option, notify the developer of the intent for the city to revoke the Mixed Use Zone designation with 60 days' notice.

- **This section does not apply, as the property is already zoned for mixed-use.**

§ 157.313 COMMERCIAL OVERLAY AND COMMERCIAL USES IN MIXED USE.

(A) Mixed Use Commercial Overlay areas are designed to encourage the establishment and retention of a variety of retail, entertainment, and personal service establishments to meet the needs of the community's residents, workers, and visitors.

(B) All businesses allowed or conditionally allowed in Zones C-1 and C-2 may be included in Mixed Use Zones where commercial areas have been approved, designated, required or established. A conditional use permit must be obtained for any business that would be required to do so in either a C-1 or C-2 Zone.

(C) Businesses that are permitted or conditional only in a C-3 Zone are specifically excluded from the Mixed Use Zone, with the exception of large retail stores, also known as big box stores, which are allowed in a Mixed Use Zone.

(D) With the exception of Mandatory Commercial Overlay designations, not all Mixed Use Zone developments require a commercial component.

- **This is the area that seems to be of the greatest concern. Overlay districts/areas are a zone within a zone. In order to enforce them, overlay district and areas require an ordinance that defines the boundaries, sets a purpose and outlines the specific rules and regulations for that particular area.**
- **It is not enough for a City to simply designate an area on a map. Absent an ordinance for the overlay, the City has no mechanism with which to enforce that designation.**
- **Although it appears that this area is slated for commercial overlay, the City does not at this time have the mechanism by which it can require this project to contain a commercial element.**
- **Going forward, we will have that ordinance in place which will obligate future projects, which is why the Commission discussed this in work session.**

§ 157.314 REGULATIONS FOR TEMPORARY STORAGE UNITS, CONTAINERS, AND STRUCTURES.

- **There is nothing in this subsection which applies to the project, so the verbiage is not included in this staff report.**

Staff Findings of Fact & Conclusions of Law

Based on staff review of the project and of West Haven Zoning Code, and as outlined in this staff report, staff finds and concludes as follows.

Findings of Fact:

- On January 11, 2023, the developer, Ponderosa Capital, LLC submitted a complete application for a mixed-use project
- The proposed density, as outlined in the MDA and on the attached concept, falls within the high density range outlined in code and on the official maps of the City
- The proposed project, as outlined in the MDA and on the attached concept, meets the statutory requirement to contain two elements outlined in City code
- Approval of the MDA does not constitute approval of the entire project, but only approval of the project terms, conditions and of a conceptual layout.
- The MDA states that the developer will be required to submit the necessary site plans to receive approval of the specific design for the buildings, as well as the site circulation, landscaping and traffic impacts.
- Absent an ordinance defining the boundaries and regulations for a commercial overlay, the City cannot require a commercial element of this project.
- The Commission may recommend changes to the MDA, so long as those changes do not affect the density of the project or otherwise impact the applicant's rights under the mixed-use ordinance.

Conclusions of Law:

- Developer has presented a plan which is compliant with all standards necessary to receive approval and proceed to preparation of an engineered site plan and civil design documents.
- The Commission should make a favorable recommendation to the City Council for approval of the MDA and concept plan.

Should the Commission agree with the above, then staff recommends the following verbiage for a motion: "I motion that we forward this MDA and concept plan to the City Council for their approval, based on the findings and conclusions outlined in the staff report dated January 19, 2023"

MDA/Concept Review

CITY OF WEST HAVEN
801-731-4519

Date 1-11-23

Address of Site: 1890 S. 1350 W
1920 S. 1350 W.

Property Parcel # 1506600096
1506600004

Applicant's Name: PONDEROSA CAPITAL PARTNERS LLC.

Application is hereby made to West Haven City requesting the following permitted use(s), MIXED USE MULTI FAMILY HOUSING and Master Development Agreement, be approved on 9.47 ACRES (Acreage) with 8 (Amount) of buildings of

Property in the MIXED USE zone in accordance with the Master Development Agreement and Concept Plan. (

Signed: JordanWatson (Owner/Petitioner) Date: 1-11-23

I authorize DANIEL STEPHENS & JAKE EARL to act as my representative in all matters relating to this application.

JordanWatson (Owner)

_____ (Agent as Authorized by Owner)

Percentages of Landscaping 5-10%	**Number of Parking Spaces** 500

Planning Commission preliminary action ☐ Approved ☐ Denied Date_____	**Scheduled for Planning Commission Agenda** January 25, 2023
Planning Commission final action ☐ Approved ☐ Denied Date_____	**Conditions:**
Needs City Council Approval ☐ Yes _____ ☐ No	
City Council action ☐ Approved ☐ Denied Date_____	

ALL APPLICABLE ITEMS MUST BE RECEIVED BEFORE BEING ADDED TO THE AGENDA.

WHEN RECORDED, RETURN TO:
Matthew D. Jensen, City Manager
West Haven City
4150 S 3900 W
West Haven, UT 84401

MASTER DEVELOPMENT AGREEMENT FOR _____

THIS MASTER DEVELOPMENT AGREEMENT is made and entered as of the_____ day of _____,_____ by and among the West Haven City, a political subdivision of the State of Utah ("City"), and Ponderosa Capital Partners, LLC, a Utah limited liability company ("Developer").

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1.2, below.

B. Developer owns and is developing the Property.

C. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the Concept Plan and this MDA.

D. Development of the Property pursuant to this MDA is acknowledged by the parties to be consistent with LUDMA and the Zoning Ordinance and to operate to the benefit of the City, Developer, and the general public.

E. The Planning Commission has reviewed this MDA, including the Concept Plan, and determined that they are consistent with the Act, the Zoning Ordinance and development of the Property.

F. The parties acknowledge that development of the Property pursuant to this MDA will result in planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property, and increasing revenues to the City based on improvements to be constructed on the Property. Development of the Property pursuant to this MDA will also result in additional benefits to the City in that Developer has agreed to tear down an existing, blighted building located on the Property.

G. Development of the Property pursuant to this MDA will also result in benefits to Developer by providing assurances to Developer that it will have the ability to develop the Property in accordance with this MDA.

H. Developer and the City have cooperated in the preparation of this MDA.

I. The parties desire to enter into this MDA to specify the rights and responsibilities of the Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.

J. The parties understand and intend that this MDA is a "development agreement" within the meaning of, and entered into pursuant to the terms of, the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101 et seq.

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 City and Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation**. The foregoing Recitals and Exhibit A are hereby incorporated into this MDA.

1.2. **Definitions**. As used in this MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Act** means the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, et seq.

1.2.2. **Administrator** means the person designated by the City as the Administrator of this MDA.

1.2.3. **Applicant** means a person or entity submitting a Development Application.

1.2.4. **Buildout** means the completion of the Project on the Property in accordance with the approved plans.

1.2.5. **City** means the West Haven City, a political subdivision of the State of Utah.

1.2.6. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology or drainage for reviewing certain aspects of the development of the Project.

1.2.7. **City's Future Laws** means the ordinances, policies, standards, procedures and processing fee schedules of the City which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.

1.2.8. **City's Vested Laws** means the ordinances, policies, standards and procedures of the City in effect as of the date of this MDA, and which may govern this MDA.

1.2.9. **Commission** means the duly appointed Planning Commission of West Haven City, Utah.

1.2.10. **Concept Plan** means that plan for the development of the Project attached as Exhibit A.

1.2.11. **Council** means the elected City Council of the City.

1.2.12. **Default** means a material breach of this MDA as specified herein.

1.2.13. **Denial** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application, but does not include review comments or "redlines" by City staff.

1.2.14. **Developer** means Ponderosa Capital Partners, LLC, a Utah limited liability company, and its assignees or transferees as permitted by this MDA.

1.2.15. **Development** means the development of all or a portion of the Property pursuant to the Concept Plan and an approved Development Application.

1.2.16. **Development Application** means an application to the City for development of all or a portion of the Project or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.17. **MDA** means this Master Development Agreement including all of its Exhibits.

1.2.18. **Notice** means any notice to or from any party to this MDA that is either required or permitted to be given to another party.

1.2.19. **Project** means the total development to be constructed on the Property pursuant to this MDA, including the Concept Plan, with the associated public and private facilities, and all of the other aspects approved as part of this MDA.

1.2.20. **Property** means that real property owned and to be developed by Developer more fully described in Section 4.1 of this MDA.

1.2.21. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City, if any, as a condition of the approval of a Development Application.

1.2.22. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City's Vested Laws.

2. **Effect of MDA**. This MDA shall be the sole agreement between the parties related to the Project.

3. **Development of the Project.** Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Concept Plan and this MDA.

4. Zoning, Obligations and Vested Rights.

4.1. **Property Description**. The Properties which shall be the subject of this MDA are identified as: **Parcel 15-066-0096** and **Parcel 15-066-0071**, as described in the office of the Weber County Recorder.

4.2. **Zoning.** The City has zoned the Property as Mixed Use.

4.3. **Mixed Use Zone Compliance**. West Haven Zoning Code ("WHZC") 157.310(A)(1) requires all projects in the Mixed-Use Zone to contain two or more of the following elements: commercial, residential, open space, recreational, and/or institutional. The Project is in compliance with the Mixed-Use Zone because it includes high-density residential, recreational and open space elements and uses in accordance with WHZC 157.310(A)(1). The Project is also in compliance with a stated purpose of the zone in WHZC 157.310(A)(2)(d) because the Project is a high-density multi-family residential project which provides a buffer between nearby commercial, industrial and other uses.

4.4. **Density.** The property may be developed at 30 units per acre, for a total of 285 units on the Property, as provided on the Concept Plan.

4.5. **Land Uses.**

4.5.1. **Residential Land Uses**. The Property shall be developed as a residential, high-density multi-family project, with a combination of 1, 2, and 3-bedroom apartments, as well as the recreational and open space elements provided below.

4.5.2. **Recreational Elements**. The Property shall be developed with the following recreational elements as shown on the Concept Plan or as otherwise approved by the City:

4.5.2.1. Pickleball Court(s)
4.5.2.2. Clubhouse
4.5.2.3. Swimming Pool
4.5.2.4. Fitness Facility

4.5.3. **Open Space Elements**. The Property shall also be developed with the following open space elements as shown on the Concept Plan or as otherwise approved by the City:

4.5.3.1. Dog parks
4.5.3.2. Other open space as shown on the Concept Plan

4.6. **Landscaping.** As part of the site plan and design review, Developer shall be required to submit a site plan which complies with the landscaping requirements outlined in WHZC 157.733(D)

4.7. **Site Plan and Design Review**. Upon approval of the MDA, Developer shall be required to comply with the terms, conditions and process of the WHZC 157.730, including building design, landscaping and site circulation.

4.8. **Setbacks and Building Heights**.

4.8.1. **Setbacks**. All residential buildings shall be set back a minimum of 10' from any property line, a minimum of 10' from any other building, and a minimum of 15' from any public or private right of way.

4.8.2. **Building Height**. Regardless of the use of the building, no building may exceed 45' height.

4.9. **Pedestrian and Vehicular Circulation; Parking**. All pedestrian and vehicular circulation within the Project shall comply with the West Haven Engineering Design Standards and Specifications, as well as the International Fire Code. Approval of civil design documents shall constitute approval of said circulation. City and Developer acknowledge and agree that the Project, as depicted on the Concept Plan, complies with the City's parking requirements.

4.10. **Civil Drawings.** Once approved by the City Engineer, a copy of the stamped, approved civil engineering drawings for the Project shall be kept with this MDA. Once construction has commenced, a copy of the stamped drawings is required to be kept on-site at all times during construction of the Project.

4.11. **Developer Obligations.** In exchange for the City approving the above zoning, density, and land uses, Developer shall:

4.11.1. Develop the property in accordance with this MDA, all applicable federal, state, and local ordinances, as well as all relevant building codes.

4.11.2. Follow the Site Plan/Design Review process outlined in WHZC 157.731, relative to the landscaping, building design and engineering requirements.

4.12. **City Obligations.** In addition to the above zoning, density and land uses, the City does hereby agree to issue all permits and approvals within a timely manner, as prescribed by any relevant federal, state and local law.

4.13. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the City and Developer intend that this MDA grants Developer all rights to develop the Project in fulfillment of this MDA, the City's Vested Laws and the Concept Plan except as specifically provided herein. The Parties intend that the rights granted to Developer under this MDA are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that this MDA grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann.§10-9a-509.

4.14. **Exceptions.** The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 3 are subject only to the following exceptions:

4.14.1. **Developer Agreement.** City's Future Laws that Developer agrees in writing to the application thereof to the Project;

4.14.2. **State and Federal Compliance.** City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

4.14.3. **Codes.** City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APW A Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

4.14.4. **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; or,

4.14.5. **Fees.** Changes to the amounts of fees (but not changes to the times provided in the City's Vested Laws for the imposition or collection of such fees) for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

4.14.6. **Planning and Zoning Modification.** Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not materially or adversely amend or reduce the Maximum Residential Units, Public Infrastructure or amenities required for the Project, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

4.14.7. **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 Ann. §10-9a-509(1)(a)(ii)(A).

5. **Term of Agreement.** The term of this MDA shall be until June 30, 2028 unless otherwise amended in writing and signed by the parties hereto. This MDA shall also terminate automatically at Buildout.

6. **Processing of Development Applications.**

6.1. **City Denial of a Development Application.** If the City denies a Development Application, the City shall provide a written determination advising the Applicant of the reasons for denial,

including specifying the reasons the City believes that the Development Application is not consistent with this MDA, and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

6.2. **Meet and Confer regarding Development Application Denials.** The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

6.3. **Mediation of Development Application Denials.**

6.3.1. **Issues Subject to Mediation.** Issues resulting from the City's Denial of a Development Application that are not subject to arbitration provided in Section 6.4 shall be mediated.

6.3.2. **Mediation Process.** If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the parties are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. Applicant and City shall each pay one-half (1/2) of the fees of the chosen mediator. The chosen mediator shall within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

6.4. **Arbitration of Development Application Objections.**

6.4.1. **Issues Subject to Arbitration.** Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

6.4.2. **Mediation Required Before Arbitration.** Prior to any arbitration the parties shall first attempt mediation as specified in Section 6.3.

6.4.3. **Arbitration Process.** If the City and Applicant are unable to resolve an issue through mediation, 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 are unable to agree on a single acceptable arbitrator they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Applicant and City shall each pay one-half (1/2) of the fees of the chosen 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 ask the prevailing party to draft a proposed order for consideration and 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. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not

only incorrect but was also maintained unreasonably and not in good faith, then the arbitrator may order the City or Applicant, as applicable, to pay the arbitrator's fees and the other party's reasonable attorneys' fees and costs.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application so long as Developer is not in current breach of this Agreement. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent Developer from relying for other Development Applications on the City's Vested Laws and the terms and conditions of this MDA.

8. **Tax Benefits.** The City acknowledges that Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for Open Space or other public use. Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Developer by reason of the foregoing. The City shall reasonably cooperate with Developer to the maximum extent allowable under law to allow Developer to take advantage of any such tax benefits.

9. **Public Infrastructure.**

9.1. **Construction by Developer.** Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

9.2. **Bonding.** If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public or private Infrastructure is required by the City it shall provide in a form acceptable to the City as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

9.3. **Utilities**. The City acknowledges that the utility drawings submitted along with the Plat for the Project are, or will be when finally approved by the City's Engineer, acceptable to the City and that the City will allow such connections and service.

10. **Default.**

10.1. **Notice.** If Developer or the City fails 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 of such default as provided herein.

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

10.2.1. **Specific Claim.** Specify the claimed event of Default;

10.2.2. **Applicable Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

10.2.3. **Materiality.** Identify why the Default is claimed to be material; and

10.2.4. **Optional Cure.** If the City chooses, in its discretion, it may propose a method and time for curing the Default which shall be not less than thirty (30) days in duration.

10.3. **Meet and Confer, Mediation, Arbitration.** Upon the issuance of a Notice of Default the parties shall engage in the "Meet and Confer" and "Mediation" processes specified in Sections 6.2 and 6.3. If the claimed Default is subject to Arbitration as provided in Section 6.4, then the parties shall follow such processes.

10.4. **Remedies.** If the parties are not able to resolve the Default by "Meet and Confer" or by Mediation, and if the Default is not subject to Arbitration then the parties may have the following remedies, except as specifically limited in Section 10.8

10.4.1. **Law and Equity.** All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

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

10.4.3. **Future Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project.

10.5. **Public Meeting.** Before any remedy in Section 10.4 may be imposed by the City, the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

10.6. **Emergency Defaults.** If the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 10.4 without the requirements of Sections 10.5. The City shall give Notice to Developer of any public meeting at which an emergency default is to be considered and the Developer shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

10.7. **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days, then such cure period shall be extended so long as the defaulting party is pursuing a cure with reasonable diligence. A written agreement extending the cure period shall be evidence of such extension and shall set a new expiration of the cure period.

10.8. **Limitation on Recovery for Default- No Damages.** No party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto. The sole remedy available to Developer or any party shall be that of specific performance.

11. **Notices.** All notices required or permitted under this Development Agreement shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Developer:	Ponderosa Capital Partners, LLC 1141 E. 2800 N. Ogden, UT 84414 Attn: Daniel Stephens E-mail: daniel@theblackpinegroup.com
With a Copy for Developer to:	Cheney Law Group 10808 S. River Front Pkwy, Ste 365 South Jordan, UT 84095 Attn: Brian Cheney E-mail: bcheney@cheneylawgroup.com
To the City:	Matthew Jensen, City Manager Shari Phippen, Community Development Director 4150 S. 3900 W. West Haven City, UT 84401 Email: matthewj@westhavencity.com sharip@westhavencity.com
With a Copy for City to:	Amy F. Hugie, JD 9 West Forest St. #208 Brigham City, UT 84302 Email: amyhugie@xmission.com

11.1. **Effectiveness of Notice.** Except as otherwise provided in this MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

11.1.1. **Hand Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice). If the copy is not mailed on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.1.2. **Electronic Delivery.** Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.1.3. **Mailing.** On the third day after the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this MDA by giving written Notice to the other party in accordance with the provisions of Section 11.

12. **Estoppel Certificate.** Upon twenty (20) days prior written request by Developer, the City will execute an estoppel certificate to any third party certifying that Developer is, at that time, not in default of the terms of this Agreement.

13. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

14. **No Third-Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership or agency relationship between the City, or Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The parties acknowledge that this MDA refers to a private development. Further, the parties agree that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements, at which time all rights and responsibilities (except for warranty bond requirements under City's Vested Laws and as allowed by state law) for the dedicated public improvement shall be the City's.

15. **Assignability.** The rights and responsibilities of Developer under this MDA may be assigned in whole or in part by Developer with the written consent of the City as provided herein.

15.1. **Sale of Lots.** Developer's selling or conveying lots in any approved Subdivision to builders or end users shall not be deemed to be an "assignment" subject to the above-referenced approval by the City.

15.2. **Related Entity.** Developer's transfer of all or any part of the Property to any entity "related" to Developer (as defined by regulations of the Internal Revenue Service in 26 U.S. Code §267(B)), Developer's entry into a joint venture for the development of the Project or Developer's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Developer. Developer shall give the City Notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

15.3. **Notice.** Subject to Sections 15.1 and 15.2, Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

15.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of notice, the City shall be deemed to have approved of and consented to the assignment.

15.5. **Partial Assignment.** If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.

15.6. **Denial.** The City may only withhold its consent to a proposed assignment if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of or Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 6.2 and 6.3. If the refusal is subject to Arbitration as provided in Section 6.4 then the parties shall follow such processes.

15.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.

16. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

17. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.

18. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, health pandemics, acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

19. **Time is of the Essence.** Subject to Section 18, time is of the essence to this MDA and every right or responsibility shall be performed within the times specified.

20. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this MDA, the City, Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City shall be the City Manager and the initial representatives for Developer shall be Daniel Stephens and Nate Messerly. The parties may change their designated representatives

by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this MDA and the development of the Project.

21. **Mutual Drafting.** Each party has participated in negotiating and drafting this MDA and therefore no provision of this MDA shall be construed for or against either party based on which party drafted any particular portion of this MDA.

22. **Applicable Law.** This MDA is entered into in Weber County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

23. **Venue.** Any action to enforce this MDA shall be brought only in the Second District Court, Weber County Division or the Utah District of the Federal Court.

24. **Entire Agreement.** This MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

25. **Recordation and Running with the Land.** This MDA shall be recorded against the Property in the Official Records of the Weber County Recorder. This MDA shall be deemed to run with the land.

26. **Authority.** The parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this MDA lawfully binding the City pursuant to Resolution No. _____ adopted by the City on _____, _____.

[Signatures on Following Page]

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 herein above written.

DEVELOPER:

PONDEROSA CAPITAL PARTNERS, LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

State of Utah)
ss:
County of _____)

On the _____ day of _____ 2023, personally appeared before me _____, the [Manager/Authorized Agent] of Ponderosa Capital Partners, LLC, duly sworn, and the signer of the within instrument, who duly acknowledged to me that he executed the same in his authorized capacity.

_____
Notary Public

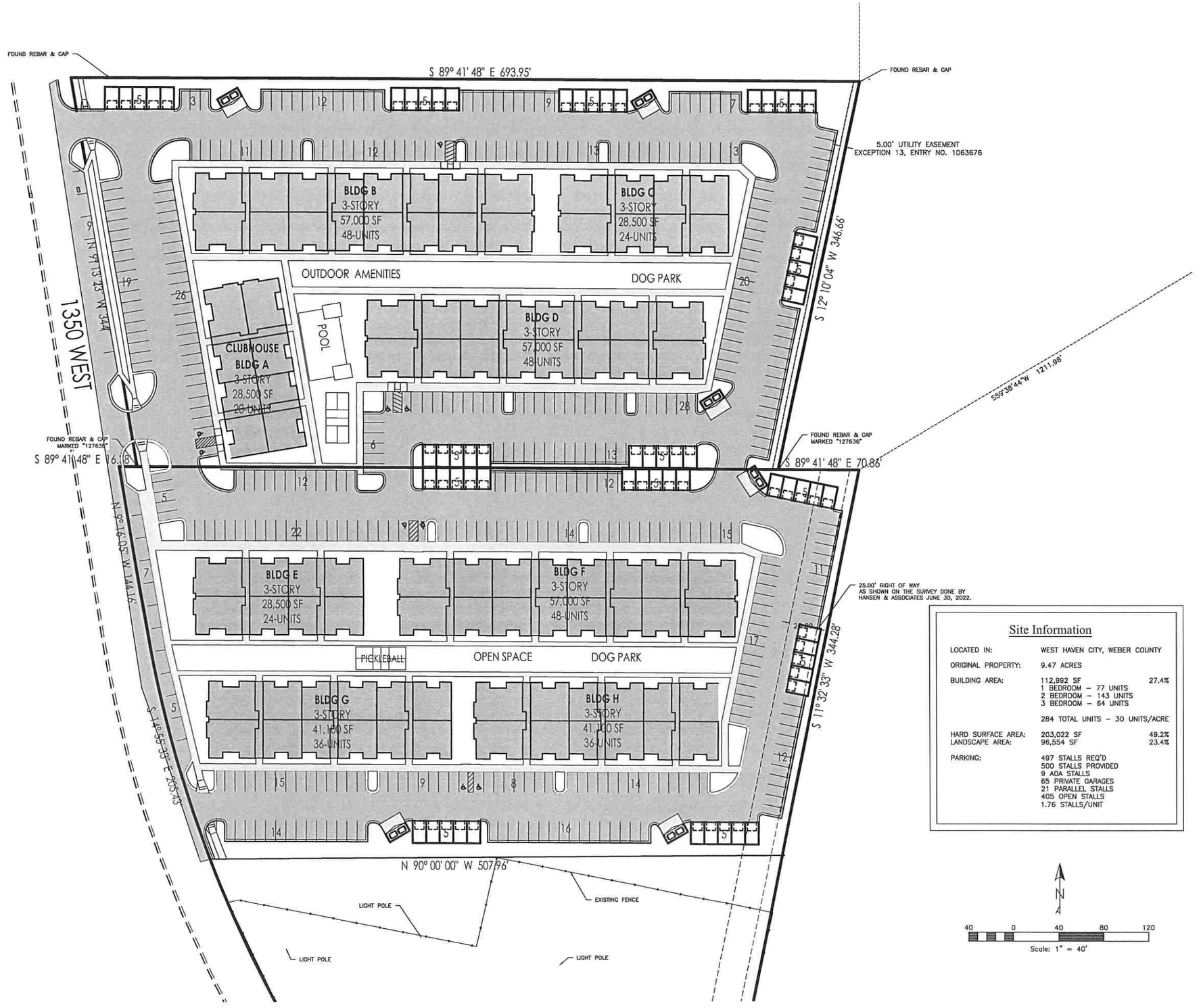
CITY:

By: _____
Name: _____
Title: _____

State of Utah)
ss:
County of _____)

On the _____ day of _____ 2023, personally appeared before me _____, the Mayor of West Haven City, duly sworn, and the signer of the within instrument, who duly acknowledged to me that he executed the same in his authorized capacity.

_____
Notary Public



Site Information

LOCATED IN:	WEST HAVEN CITY, WEBER COUNTY	
ORIGINAL PROPERTY:	9.47 ACRES	
BUILDING AREA:	112,992 SF 1 BEDROOM – 77 UNITS 2 BEDROOM – 143 UNITS 3 BEDROOM – 64 UNITS	27.4%
	284 TOTAL UNITS – 30 UNITS/ACRE	
HARD SURFACE AREA:	203,022 SF	49.2%
LANDSCAPE AREA:	96,554 SF	23.4%
PARKING:	497 STALLS REQ'D 500 STALLS PROVIDED 9 ADA STALLS 65 PRIVATE GARAGES 21 PARALLEL STALLS 405 OPEN STALLS 1.76 STALLS/UNIT	

HUNT ENGINEERING, LLC
HUNT ENGINEERING, LLC
6619 Willow Creek Rd.
Mountain Green, UT 84050
C. 801.664.4724
thomas.hunt@hunt-engineering.com

West Haven Apartments
1890 South 1350 West,
West Haven, Weber County, Utah

Overall Site Plan

Revisions	Date

ENGINEERS STAMP
PROFESSIONAL ENGINEER
10564088
THOMAS J. HUNT
STATE OF UTAH

PROJECT INFO.
Engineer: T. HUNT
Drafter: T. HUNT
Start Date: 1/5/2023
Name: West Haven Apartments

SHEET 3 of 13 SHEETS

PARKING AND LOADING SPACE, VEHICLE TRAFFIC, ~~AND ACCESS~~ AND DRIVE-THROUGH REGULATIONS

§ 157.630 PURPOSE AND APPLICABILITY~~INTENT~~.

(A) This subchapter regulates parking and loading spaces, vehicle traffic, and access to provide orderly and adequate development of these needed amenities, and in so doing, promote the safety and well-being of the citizens of the city.

(B) Subsequently, there shall be provided at the time of the erection of any main building, or at the time any main building is enlarged or increased, minimum off-street parking spaces with adequate provisions for ingress and egress by standard-sized automobiles.

(C) Additionally, it is the purpose of subsection 157.632 to regulate for drive-through facilities by setting development standards to ensure that design and operations mitigate possible negative impacts. Of special concern are noise from idling cars and voice amplification equipment, lighting, and queued traffic interfering with on- and off-site traffic and pedestrian flow.

(1) The regulations of 157.632 apply to any drive-through facilities, regardless of whether the drive through is accessory to a primary use, any rebuild or replacement of an existing structure containing a drive-through facility or modification to an existing building that includes altering the location of an existing drive-through window.

(D) Conformance with the requirements of this section does not alleviate an applicant of the duty to comply with any non-conflicting requirements of this Chapter.

(Prior Code, § 44.02) (Ord. 2-92, passed - -1992)

§ 157.631 PARKING SPACE FOR RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, RECREATIONAL AND OTHER LAND USES ~~DWELLING~~.

~~In all zones there shall be provided in a private garage, or in an area properly located for a future garage:~~

~~Dwelling~~	~~Parking Layout~~
~~Four-family dwelling~~	~~7 parking spaces~~
~~Housing exclusively for elderly~~	~~1 sparking space per unit for the first 30 units, 1/4 space per unit for the next 20 units and 1/2 space per unit for each unit in excess of 50 in the development~~
~~Other multiple-family dwellings~~	~~1 3/4 parking spaces per unit; building permit will stipulate maximum number of persons per unit and number and type of unit~~
~~Single-family dwelling~~	~~2 side-by-side parking spaces~~
~~Three-family dwelling~~	~~6 parking spaces~~
~~Two-family dwelling~~	~~4 side-by-side parking spaces~~

~~Notes to Table:~~

~~If any dwelling unit is increased by occupant use after the original building permit is issued, the parking requirements shall reflect that increase.~~

~~In addition to the above parking space requirements, 3/4 parking space shall be provided for each rental sleeping room in a dwelling unit.~~

~~(Prior Code, § 44.04) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)~~

~~§ 157.632 PARKING SPACE FOR NON-DWELLING BUILDINGS AND USES.~~

~~For new buildings and uses, or for any enlargement or increase in seating capacity, floor area, or guest rooms of any existing building, there shall be provided:~~

~~**Structure or Business**~~	~~**Parking Layout**~~
~~Apartment hotel~~	~~1 space per 2 sleeping units~~
~~Assisted living center~~	~~1 space per 3 units~~
~~Auditorium~~	~~1 space per 5 fixed seats~~
~~Auto repair shop~~	~~1 space per employee plus 5 spaces for client use~~
~~Bank~~	~~Not less than 30 spaces~~
~~Beautician shop~~	~~3 spaces per staff member~~
~~Beauty shop~~	~~2 spaces per staff member~~
~~Bed and breakfast inn~~	~~1 space per each rental sleeping room and bed and breakfast hotel in addition to the owner/host required 2 spaces~~
~~Boarding house~~	~~3 spaces per 4 person to whom rooms will rented~~
~~Business office~~	~~1 space per employee on highest shift~~
~~Cafe~~	~~1 space per eating booth and table, plus 1 space per 3 stools~~
~~Cafeteria~~	~~1 space per eating booth and table, plus 1 space per 3 stools~~
~~Car wash~~	~~4 spaces in approach land to each wash bay~~
~~Chiropractor office~~	~~4 spaces per professional staff~~
~~Church~~	~~1 space per 5 fixed seats~~
~~Clinic~~	~~4 spaces per professional staff, plus one space per subordinate staff~~
~~Club, private~~	~~At least 20 client spaces~~
~~Dance hall~~	~~1 space per 200 square feet of floor space~~
~~Day care center~~	~~1 space per employee, plus one space per 10 children~~
~~Dental office~~	~~4 spaces per professional staff, plus 1 space per subordinate staff~~
~~Drive-in food~~	~~1 space per 100 square feet of floor establishment space, but not less than 10 spaces~~
~~Dry cleaner~~	~~1 space per employee, plus 5 spaces for client use~~
~~Educational institution, private~~	~~1 spaces per 3 student capacity, plus 1 space per staff member~~
~~Employment~~	~~1 space per employee, plus 6 spaces for client use~~
~~Finance office~~	~~1 space per staff member, plus 3 spaces for~~

	~~client use~~
~~Fraternity~~	~~2 spaces per 4 persons whom the building is designated to accommodate~~
~~Hospital~~	~~1 space per 2-bed capacity~~
~~Hotel~~	~~1 space per 2 sleeping units~~
~~Insurance office~~	~~1 space per 2 staff members, plus 4 spaces for client use~~
~~Laboratory~~	~~1 space per employee on highest shift~~
~~Laundromat~~	~~1 space per 3 coin-operated machines~~
~~Legal office~~	~~1 space per professional staff, plus 4 spaces for client use~~
~~Library~~	~~At least 30 spaces~~
~~Lodging house~~	~~3 spaces per four persons to whom rooms will be rented~~
~~Lounge~~	~~At least 20 client spaces~~
~~Liquor store~~	~~At least 20 spaces~~
~~Medical office~~	~~4 spaces per professional staff, plus 1 space per subordinate staff~~
~~Mortuary~~	~~At least 30 spaces~~
~~Motel~~	~~1 space per sleeping or living unit~~
~~Museum~~	~~At least 30 spaces~~
~~Nightclub~~	~~At least 20 client spaces~~
~~Nursery for children~~	~~1 space per employee, plus 4 spaces for client use~~
~~Nursing home~~	~~1 space per 2 1/2 bed capacity~~
~~Optometrist office~~	~~4 spaces per professional staff, plus 1 space per subordinate staff~~
~~Photo studio~~	~~At least 6 spaces~~
~~Post office~~	~~At least 20 client spaces~~
~~Psychiatric office~~	~~4 spaces per professional staff, plus 1 space per subordinate staff~~
~~Real estate office~~	~~1 space per 2 employees, plus 4 spaces for client use~~
~~Reception center~~	~~At least 30 spaces~~
~~Recreation center~~	~~1 space per 200 square feet of recreation area~~
~~Rental establishment~~	~~At least 4 client spaces~~
~~Restaurant~~	~~1 space per eating booth or table~~
~~Retail store~~	~~1 space per 200 sq. ft. of floor space in building~~
~~Retail store with drive-in window~~	~~1 space per 200 sq. ft. of floor space in building, plus storage capacity of 4 cars per window on the property~~
~~Sanitarium~~	~~1 space per 2-bed capacity~~
~~Service repair shop, general~~	~~At least 4 client spaces~~
~~Sorority~~	~~2 spaces per 4 persons whom the building is~~

	designed to accommodate
Stadium	1 space per 5 fixed seats
Tavern	At least 15 spaces
Terminal, transportation	At least 30 spaces
Theater	1 space per 5 fixed seats
Travel agency	1 space per employee, plus 4 spaces for client use
Upholstery shop	1 space per employee, plus 3 spaces for client use
Used car lot	1 space per employee, plus 4 spaces for client use
Warehouse	2 spaces per 3 employees
Wedding chapel	At least 30 spaces
Wholesale business	2 spaces per three employees, plus 3 spaces for client use
Notes to Table: -For other uses not listed above, the parking requirements shall be established by the Planning Commission based upon a reasonable number of spaces for staff and customers, and similar requirements of like business.	

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(Prior Code, § 44.06) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

Land Use	**Required Parking**
Residential: (see notes to table)	All residential off-street parking requirements are exclusive of any garage parking which may be provided
Dwelling, Single Family Detached	Two spaces
Dwelling, Two to Four Family	Two spaces per dwelling unit
Dwelling, Single Family Attached	One space per dwelling unit, plus 1 guest parking space per 4 dwelling units
Dwelling, Multi-Family Apartment	1 space per studio/1br apartment 2 spaces per 2br+ apartment
Commercial:	
Auto Repair Shop	1 space per service bay, plus 3 spaces per 1,000 sq ft of total building.
Automobile Sales, New/Used	5 spaces, plus 1 space per 2,000 sq ft floor area.
Bus Facility, Intermodal Transit Hub	1 space per 2 employees, plus 1 space per bus
Car Wash	5 stacking spaces per bay or lane, plus 1 space per service stall.
Drive-Thru Facility	5 stacking spaces per lane per casher, teller or other similar employee. This shall be in addition to the parking required for the specific land use
Dry Cleaner, Laundry Facility	1 space per employee, plus 5 spaces for client use

Financial Services	2 spaces per 1,000 sq ft of floor area
Food Production	2 space per 1,000 sq ft of floor area
Flex Space	20 spaces, plus 2 spaces per 1,000 sq ft of floor area
Hotel/Motel/B&B	5 spaces, plus 1 space per 2 sleeping units
Laboratory	2 spaces per 2,500 sq ft of floor area. Parking for offices shall be calculated based on General Office standards.
Manufacturing, Durable Goods	2 spaces per 1,000 sq ft of floor area
Manufacturing, General	1 space per 2 employees, plus 1 space per company vehicle
Medical/Dental office or Clinic	5 spaces per 1,000 sq ft of floor area
Office, General	5 spaces, plus 2 spaces per 1,000 sq ft.
Personal Services	3 spaces per staff member
Repair Shop, General	3 spaces per 1,000 sq ft of floor area
Restaurant, Tavern, Bar, Lounge, Café	2 spaces per 1,000 sq ft of floor area.
Retail Goods and/or Services	5 spaces, plus 2 spaces per 1,000 sq ft of floor space
Warehouse	20 spaces, plus 1 space per 2,000 sq ft of floor area. Office space parking shall be calculated separately based on Office, General standards.
Wholesale Distribution	20 spaces, plus 1 space per 2,000 sq ft of floor area. Office space parking shall be calculated separately based on Office, General standards.
Institutional:	
Assisted Living Center/Nursing Home	1 space per 4 employees, plus 1 space per 4 beds
Auditorium/Church/Assembly Hall	1 space per 5 fixed seats in the main auditorium or hall/chapel, plus 1 space per 2,000 sq ft floor area
Day Care/ Preschool (see below)	1 space per employee, plus one space per 5 children.
Education, 9-12	1 space per 3 faculty members, plus 1 space per 3 full-time employees, plus 1 space per 5 students.
Education, College, University, Vocational	1 space per 3 faculty members, plus 1 space per 3 full-time employees, plus 1 space per 5 students.
Education, K-8 (see below)	1 space per 3 faculty/full-time employee
Funeral/Mortuary/Crematorium	10 spaces plus 1 space per 4 fixed seats in the parlor(s).
Government Services	5 spaces, plus 2 spaces per 1,000 sq ft of floor area.
Hospital	1.5 space per hospital bed
Recreation/Culture/Entertainment:	
Art Gallery, Museum	1 space per 1,000 sq ft of floor area

Club, Private	1 space per 100 sq ft of floor space
Event Venue, Private	10 spaces, plus 1 space per 1,000 sq ft
Gym/Fitness/Recreation Center, Indoor	3 spaces per 1,000 sq ft of floor area
Gym/Fitness/Recreation Center, Outdoor	8 spaces per field, seat, lane, etc., plus 3 spaces per 1,000 sq ft of floor area
Theater, Movie or Live	1 space per 4 fixed seats

Notes to Table:

- Day cares, preschools and K-8 schools are also subject to design requirements for how the pickup/drop off is handled. See subsection 157.633 for such requirements

-For other uses not listed above, the parking requirements shall be established by the Planning Commission based upon a reasonable number of spaces for staff and customers, and similar requirements of like business.

-The City reserves the right to increase the required amount of off-street parking for residential uses if, in the opinion of Engineering and Community Development staff, the ownership and design of the right-of-way serving the development is insufficient to support on-street parking.

-Where computation of parking requirements results in a fraction, the required parking spaces shall be rounded to the next highest number.

§157.632 DRIVE-THROUGH DESIGN STANDARDS

1. Development Standards
   - A. The development standards in this section are intended to supplement the standards in the underlying zoning district for drive-in and drive-through uses. In the event of conflict between these standards and the underlying zoning district standards, the provisions of this section shall apply or based on the discretion of the approving authority.

   - B. Traffic Circulation Standards:
     - i. Only one driveway providing vehicular access to and from the drive-through window or service area shall be provided from any street;
     - ii. The driveway providing access to the service windows shall be at least fifty feet (50') from the back of the curb of an intersecting street measured to the centerline of the proposed driveway;
     - iii. The driveway providing access to the service windows shall be at least twenty-five feet (25') from any driveway providing access to the site from a public street or from a driveway on an adjacent property;
     - iv. The driveway providing access and service windows shall be located away from adjacent residential uses.
     - v. Internal traffic circulation patterns on the lot shall be adequate to keep traffic from backing into a street or blocking access to any required parking spaces located on the lot; and
     - vi. A traffic study addressing both on-site and off-site traffic and circulation impacts may be required as part of a permit application for a drive-through facility.

C. Drive-through Lane/Aisle and Stacking/Queuing Standards:

i. Drive through lanes shall not be located adjacent to the primary pedestrian entrance nor block required back out areas for adjacent spaces ;

ii. Each entrance to an aisle and the direction of traffic flow shall be clearly designated by signs and pavement markings;

iii. Each drive-through aisle shall be separated from the circulation routes necessary for ingress or egress to/from the property or access to a parking space. Separation should consist of concrete curbing or landscaping on at least one side of the lane;

iv. Drive-through aisles cannot serve as sole access to any parking space;

v. Drive-through aisles shall have a minimum ten (10' 0") foot interior radius at curves and a minimum twelve (12' 0") foot width;

vi. Double stacked drive aisles to a single business are permitted, but discouraged;

vii. A vehicle path analysis shall be performed using software approved by the City Engineer to show how vehicles of various types will maneuver the drive-through lane;

viii. A drive-through aisle that provides access to a service window shall be designed to provide the following length of stacking capacity measured from the point of service to the entry point into the drive-through lane.

a. Restaurants. An aisle accessing a food service window (ordering or pickup, whichever occurs first in a drive through aisle) shall be designed to provide at least forty feet (40') between the food service window and the menu board and eighty fee (80') between the menu board and the entry point to the drive-through lane;

b. Other retail and service businesses. An aisle accessing a retail pick-up or service window for a business other than a restaurant shall be designed to provide at least eighty (80') feet of stacking space;

c. Stacking capacity cannot be included to satisfy the required number of off-street parking spaces required for the use; and

d. The approving authority may require stacking in addition to the above if it finds that the minimum stacking area is insufficient to ensure safe and effective traffic and pedestrian circulation.

ix. Exceptions:

a. The approving authority may approve alternatives to the requirements of Section X where it finds that the alternate design will, given the characteristics of the site, be equally effective in ensuring on- and off-site pedestrian and vehicular traffic safety and minimizing traffic impacts.

D. Pedestrian Access

i. Direct pedestrian entry through the front of the building shall be provide from public streets and sidewalks to the building entrance; and

ii. Pedestrian walkways should not intersect drive-through aisles, stacking lanes or parking areas, but if required, walkways shall have clear visibility and shall be delineated from the pavement.

E. Solid Waste Management/Stormwater

i. Dumpsters, recycling receptacles and/or similar shall not be located where access is required via a drive through lane or servicing those facilities would interfere with stacking or building traffic circulation during permitted operating hours;

ii. Dumpsters shall have covers and suitably enclosed to contain any spillover; and

iii. A litter clean up plan/schedule is required to be provided to the City as part of the site's overall stormwater management program;
iv. Compliance with Section X, as applicable.

F. Noise
i. Noise emitted from drive-through service windows and related features shall not create a nuisance or disturbance for abutting properties.
ii. Speaker designed to communicate between service windows and menu boards shall comply with applicable noise regulations.;
iii. Compliance with Section X, as applicable.

G. Buffer
i. The approving authority may require a minimum six-foot high masonry wall or solid fence be erected and maintained along a property line where a drive-through use adjoins any residential use or residential zone;
ii. Compliance with Section X, as applicable.

§ 157.633 DROP OFF/PICK-UP LANES

A. Certain commercial, retail and institutional uses include a drop-off/pick-up lane/aisle as part of overall site development which may include, but not necessarily limited to, public and private schools; educational facilities; day care; recreational or lessons/class/timed- based businesses or similar. The Community Development Director has to discretion to require compliance with this section during concept review.

B. Drop-off / Pick-up lanes designed parallel to public roads shall require additional right of way dedication. These lanes shall not interfere with free flow of traffic on public road.
i. Minimum length of stacking for drop-off / pick-up lanes shall be determined at the discretion of the approving authority based on proposed use of the site.

C. Drop off/pick up management plan is required for any drop-off/pick-up lanes within the public right of way.

D. Drop-off / Pick-up lanes not designed parallel to the public road shall meet the same design standards as those for general drive-through lanes.

§ 157.634~~3~~ ADJUSTMENTS FOR UNUSUAL AND UNIQUE CONDITIONS.

The Planning Commission may adjust the required number of spaces listed in this subchapter if, in its determination, unusual or unique circumstances or conditions relating to the operational characteristics of the use exist in a manner, or to such a degree, that such adjustment is equitable and warranted.

(Prior Code, § 44.08) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

~~§ 157.634 COMPUTATION OF PARKING REQUIREMENTS.~~

~~When measurements determining the number of required parking spaces result in a fractional space, any fraction up to one-half shall be disregarded, and fractions including one-half and over shall require one parking space.~~

~~(Prior Code, § 44.10) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)~~

§ 157.635 PARKING LOT DESIGN AND MAINTENANCE.

(A) Parking space location. Parking space, as required in §§ 157.631 and 157.632, shall be on the same lot with the main building or, in the case of buildings other than dwellings, may be located no farther than 500 feet therefrom.

(B) Public parking lot standards. Every parcel of land hereafter used as a public parking area shall be paved with an asphalt or concrete surface, and shall have appropriate bumper guards or curbs where needed, as determined by the Building Official, to protect adjacent property owners or persons using a sidewalk. Catch basins and drains shall be provided to collect surface drainage of all paved areas at a minimum rate of one inch an hour of rainfall. Surface drainage is not allowable across pedestrian walkways.

(C) Maximum yard area to be used for parking and this subchapter's parking/access regulations vehicle access lanes.

(1) For all uses permitted in a Residential Zone, none of the front yard area required by the respective zones shall be used for parking but shall be left in open green space, except that access across and over the required front yard is allowed to the side or rear yards.

(2) In the case of multiple-family dwellings and non-residential uses in a Residential Zone, not more than 50% of the required side and rear yards shall be used for parking.

(3) Any yard area used over these limits shall be provided in an equivalent amount of land elsewhere on the same lot as the building as open green space, patios, play area, or courts.

(D) Additional provisions. The design and maintenance of off-street parking facilities shall be subject to the following provisions.

(1) Each parking space shall encompass not less than 180 square feet of net area. Each parking space shall be not less than nine feet wide, the width being measured at a right angle for the side lines of the parking space.

(2) Adequate automobile access to, and from, the parking area for interior block developments shall be provided. Minimum size of the access right-of-way shall be as follows based on the number of units to be served:

(a) Up to and including four dwelling units, 16 feet;

(b) Five or more dwelling units, one 24-foot, two-way access right-of-way or two 16-foot, one-way access rights-of-way; and

(c) A greater size of access right-of-way be required as deemed necessary by the Planning Commission, especially in cases where an access right-of-way will create corner lots from otherwise interior lots.

(3) All off-street parking spaces and associated access lanes shall be effectively screened on any side adjoining on any property in a Residential Zone by a masonry wall or fence not less than four feet, nor more than seven feet high, except that some type of hedgerow shrubs may be used in place of a wall or fence; provided the hedge is continuous along adjoining property and at maturity is not less than five feet, nor more than seven feet, high.

(4) Hedgerow shrubs shall be maintained and replaced where necessary in order that the hedge may become an effective screen from bordering property within a maximum five-year period. Front yard and corner lot fences or plantings shall maintain height requirements of their respective zones.

(5) Lighting and signs shall conform to the requirements set forth in this chapter.

(6) Parking requirements for dwellings will be located on the same lot with the dwelling.

(7) All private parking facilities must be improved with a hard surface, such as concrete or asphalt, and must be sloped and graded to prevent drainage of stormwater onto adjacent properties.
(Prior Code, § 44.12) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

§ 157.636 OFF-STREET TRUCK LOADING SPACE.

(A) On the same premises with every building or use involved in the receipt or distribution by vehicles of materials or merchandise, there shall be provided, and maintained, on the lot adequate space for standing, loading, and unloading services in order to avoid undue interference with public use of streets or alleys.

(B) Such space, unless otherwise adequately provided, shall include a ten-foot by 25-foot loading space, with a 14-foot height clearance for every 20,000 square feet, or fraction thereof, in excess of 3,000 square feet of building floor area used for above-mentioned purposes, or for every 20,000 square feet, or fraction thereof, in excess of 3,000 square feet of land used for the above-mentioned purposes.
(Prior Code, § 44.14) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

§ 157.637 BUSINESS REQUIRING AUTOMOBILE ACCESS.

Service stations, roadside stands, public parking lots, and all other businesses requiring motor vehicle access shall meet the following requirements.

(A) Access to the station, or other structure or parking lot, shall be by not more than two roadways for each 100 feet, or fraction thereof, of frontage on any street, no two of said roadways shall be not more than 34 feet in width and shall not be closer than a curb, hedge, or fence of not more than two feet in height, shall be provided by the owner to limit access to the permitted roadway.

(B) Gasoline pumps shall be set back at least 20 feet from any property line bordering a street; provided that a pump island parallel to an adjoining street may be located not less than 15 feet from the property line bordering said street.
(Prior Code, § 44.16) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

§ 157.638 VEHICULAR TRAFFIC TO COMMERCIAL OR MANUFACTURING ZONES.

Privately-owned land within an area zoned for residential purposes shall not be used as a regular means of vehicular passage to, and from, property in Commercial or Manufacturing Zones.
(Prior Code, § 44.18) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

§ 157.639 REGULATIONS GOVERNING ACCESSORY VEHICLE OFF-STREET PARKING WITHIN REQUIRED SIDE YARD AREAS.

(A) The dwelling unit has the minimum number of required off-street parking spaces as stipulated by § 157.631.

(B) The slab is at least eight feet wide and is of sufficient length to accommodate the vehicle with no portion of the vehicle extending forward of the front face of the dwelling.

(C) The appurtenant driveway to the slab must be tapered to use the existing driveway approach or a new approach must be installed for the new driveway.

(D) Any slab constructed must remain open and unobstructed to the sky.

(E) No vehicle shall be parked in the required side yard unless the parking area is improved with hard surface material such as concrete or asphalt.

(F) Any slab constructed for vehicle parking must be screened by a non-see through fence of not less than six feet in height along the length of the slab behind the front yard setback.

(G) All stormwater runoff from the hard surface of the slab must be directed so as to prevent drainage onto adjacent properties

(Prior Code, § 44.20) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)

§ 157.640 OFF-SITE IMPROVEMENTS REQUIRED.

(A) (1) The applicant for a use permit for all residential, commercial, or industrial structures, all other business and uses, and public and semi-public buildings shall install high back curb, gutter, and sidewalk, and entrance ways to city public works standards and locations within public or private streets along the entire property line which abuts the street

(2) The exception of division (A)(1) above shall be in Agricultural Zones, and where city regulations exempt such curb, gutter, or sidewalk installation.

(B) The Planning Commission may defer or exempt the installation of high back curb and gutter, and/or sidewalk, where topographic, timing, or other unusual or special conditions exist.

(C) The public health, safety, and welfare must be preserved.

(Prior Code, § 44.22) (Ord. 2-92, passed - -1992; Ord. 13-2020, passed 5-6-2020)