

ORDINANCE NO. 10-2023

AN ORDINANCE OF WEST HAVEN CITY AMENDING THE MASTER DEVELOPMENT FOR THE 21 SOUTH MIXED-USE PROJECT; AND PROVIDING AN EFFECTIVE DATE FOR THESE CHANGES.

Section 1 – Recitals

WHEREAS, the City of West Haven (“City”) is a municipal corporation duly organized and existing under the laws of Utah; and

WHEREAS, the City Council finds that in conformance with UC §10-3-702, the governing body of the City may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by the laws of the State of Utah or any other provision of law; and,

WHEREAS, the City and Ponderosa Capital, LLC, entered into a Master Development Agreement relating to the 21 South Mixed-Use Project (hereinafter the “MDA”) on February 1, 2023, and which was recorded in the Weber County Recorder’s offices on February 14, 2023; and

WHEREAS, it has become necessary to make minor modifications to the MDA in order to reflect changes to the City Obligations and the allocation of total units between each of the phases; and

WHEREAS, the parties discussed the need to amend the MDA to reflect those changes; and

WHEREAS, the City Council finds that the planning commission discussed this amendment to the MDA for the Wilson Cove Project (“Amendment”) in a public meeting and has recommended adoption of the Amendment to the City Council; and,

WHEREAS, the City Council finds that under Utah Code §10-9a-305(8)(a) and §10-9a-509, the City Council may lawfully adopt development plans and schedules by ordinance as recommended by the Planning Commission; and,

WHEREAS, upon petition to and based on the recommendation of the West Haven City Planning Commission, the City Council determines it to be in the best interest of the City to adopt the proposed Amendment; and,

WHEREAS, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED by the City Council of West Haven City, Utah:

The **Amended Master Development Agreement, 21 South**, by and between West Haven City and Ponderosa Capital Partners, LLC, attached hereto as Exhibit A, and fully incorporated by this reference, is approved and adopted.

The forgoing Recitals are fully incorporated herein.

Section 2 – Prior Ordinances and Resolutions

That the above changes, where they may have been taken from prior City Ordinances and Resolutions, are listed here for centralization and convenience; and that the body and substance of those prior Ordinances and Resolutions, with their specific provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

Section 3 – Repealer of Conflicting Enactments

All orders, ordinances and resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts thereof, which conflict with this Ordinance are, for such conflict, repealed, except that this repeal will not be construed to revive any act, order or resolution, or part.

Section 4 – Savings Clause

If any provision of this Ordinance be held or deemed invalid, inoperative or unenforceable, such will render no other provision or provisions invalid, inoperative or unenforceable to any extent whatsoever, this Ordinance being deemed the separate independent and severable act of the City Council of West Haven City.

Section 5 – Date of Effect

This Ordinance shall be effective as of the date of signing and after being published or posted as required by law.

DATED the ____ day of May, 2023

WEST HAVEN CITY

Rob Vanderwood
Mayor

ATTEST:

Emily Green, City Recorder

EXHIBIT A



WV3273202

ORDINANCE NO. 05-2023

E# 3273202 PG 1 OF 16

LEANN H KILTS, WEBER CTY. RECORDER
14-FEB-23 10:44 AM FEE \$0.00 SW
REC FOR: WEST HAVEN CITY

AN ORDINANCE OF THE CITY OF WEST HAVEN, UTAH APPROVING AND ADOPTING A MASTER DEVELOPMENT AGREEMENT FOR 21 SOUTH; AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1 - Recitals:

WHEREAS, the City Council finds that the planning commission has caused to be prepared and has recommended to the City Council a proposed zoning ordinance and general plan; and,

WHEREAS, the City Council finds that the Planning Commission has caused to be prepared and has recommended to the City Council a Master Development Agreement ("Agreement") for the 21 South development, with said Agreement representing the Commission's recommendations for development of the proposed project within the municipality; and

WHEREAS, the City Council finds that under Utah Code 109-9a-305(8)(a) and 10-9a-509, the City Council may lawfully adopt development plans and schedules by ordinance, as recommended by the Planning Commission; and

WHEREAS, upon petition to and based on the recommendation of the West Haven City Planning Commission, the City Council determines it to be in the best interest of the City to adopt the proposed Agreement; and,

WHEREAS, the City Council finds that such a change follows the City's General Plan; and,

WHEREAS, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WEST HAVEN, UTAH:

The **Master Development Agreement, 21 South**, by and between West Haven City and Ponderosa Capital Partners, LLC, attached hereto as Exhibit A, and fully incorporated by this reference, is approved and adopted.

The foregoing recitals are fully incorporated herein.

Enactments:

All orders, ordinances and resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Ordinance, are, for such

conflict, repealed, except this repeal will not be construed to revive any act, order or resolution, or part, repealed.

Section 3 - Prior Ordinances and Resolutions:

The body and substance of all prior Ordinances and Resolutions, with their specific provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

Section 4 - Savings Clause:

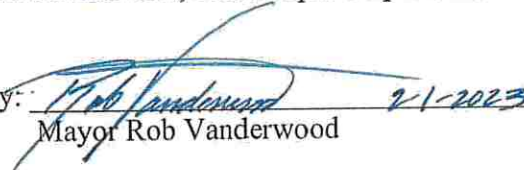
If any provision of this Ordinance be held or deemed or be invalid, inoperative, or unenforceable, such reason will render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed the separate independent and severable act of the City Council of West Haven City.

Section 5 - Date of Effect

BE IT FURTHER ORDAINED this Ordinance will become effective on the 1st day of February, 2023

DATED this 1st day of February, 2023.

WEST HAVEN, a municipal corporation

by:  2-1-2023
Mayor Rob Vanderwood

Attested and recorded


Emily Green
City Recorder



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

MASTER DEVELOPMENT AGREEMENT FOR 21 SOUTH

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 284 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: [Signature]
Name: Daniel Stephens
Title: MANAGER

State of Utah)

SS:

County of Weber)



On the 7th day of February 2023, personally appeared before me Daniel Stephens, 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.

[Signature]
Notary Public

CITY:

By: [Signature]
Name: Rob Vanderwood
Title: Mayor West Haven City

State of Utah)

SS:

County of Weber)



On the 13th day of February 2023, personally appeared before me Rob Vanderwood, 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.

[Signature]
Notary Public

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

MASTER DEVELOPMENT AGREEMENT FOR 21 SOUTH – 1st AMENDMENT

THIS MASTER DEVELOPMENT AGREEMENT – 1st AMENDMENT (“Amendment”) 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. Developer and the City previously entered into a development agreement for the 21 South Apartment Project (“Project”) on February 1, 2023, a copy of which is attached hereto as Exhibit A, and which was recorded in the offices of the Weber County Recorder on February 14, 2023 as Entry No. 3273202 (“MDA”)
- B. Since the time the City and Developer entered into the MDA, circumstances have arisen which necessitate this Amendment, specifically development of a portion of the original property is no longer feasible and Developer wishes to remove that property from the MDA.
- C. Additionally, with the reduction in the project size, it is necessary to reduce the number of allowed units and to remove a portion of the agreed-upon amenities.
- D. Beyond the specific changes listed in this Amendment, all other provisions of the MDA remain in full force and effect.

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:

- A. Section 4.1 “Property Description” shall be amended to read as follows:
 - a. The Property which shall be subject to this MDA is identified as Parcel 15-805-0001, as may be described in the office of the Weber County Recorder.
- B. Section 4.4 “Density” shall be amended to read as follows:
 - a. The property may be developed at 30 units per acre, for a total of 137 units on the property, as provided on the Concept Plan.
- C. Section 4.5.2.1 “Pickleball Court(s)” is stricken

D. Section 4.5.2.3 "Swimming Pool" is stricken

E. The Concept attached in the MDA shall be removed and replaced by the Concept attached to this Amendment as Exhibit B.

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

UNIT COUNTS	
44	3-BED UNITS
92	2-BED UNITS
136	TOTAL UNITS

PARKING SCHEDULE	
Type	QTY
9' x 18'	230
ADA	7
ADA (VAN)	1
	238

EXHIBIT B



1 SITE PLAN CONCEPT
A300 1" = 50'-0"

A0

PROJECT ADDRESS: ADDRESS
CITY, ST, ZIP
PROJECT #: 2205.01

WEST HAVEN APARTMENTS | SITE CONCEPT

2701 N. HANSHAW WAY, STE. 100
LEHI, UT 84043
801.501.6506
RILEY@JARRETTARCHITECTURE.COM



