

RESOLUTION NO. 2021-07-01

A RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY LOCATED AT LOT 1 OF THE POINTE VILLAGE COMMERCIAL PARK SUBDIVISION AND APPROVING A DEVELOPMENT AGREEMENT FOR SAID PROPERTY

WHEREAS, the City of Fort Morgan ("City") purchased the CentrePointe property, which was previously used as a farm ground adjacent to the Highway 34 corridor within the City, and is now is being subdivided for residential, retail and mixed use development; and

WHEREAS, the City purchased the CentrePointe property, in part, with the intention of building and developing multi-family residential housing within the City, and now intends to further develop its Pointe Village Commercial Park subdivision for commercial, retail and mixed uses; and

WHEREAS, Harrison Homes, Inc. intend to purchase around one half of an acre, at Lot 1, of the Pointe Village Commercial Park subdivision, (the "Property") to develop, construct and operate a retail coffee shop called "Teddy Bear's Coffee;" and

WHEREAS, the Fort Morgan City Council ("Council") is duly authorized to sell, develop, own or maintain the CentrePointe property and the Pointe Village Commercial Park subdivision, which includes the subject Property designated in the Development Agreement, attached hereto as Exhibit A; and

WHEREAS, the City Council authorizes the sale of a portion of that Pointe Village Commercial Park subdivision, specifically Lot 1, through the execution of a Contract to Buy and Sell Real Estate, and the execution of all necessary documents associated with the sale and closing of the subject Property; and

WHEREAS, the purchaser and the City intend to also be subject to a Development Agreement, which shall be executed along with the applicable Contract to Buy and Sell Real Estate, to incentivize the development of the Property, as well as stimulate local small business and the resulting sales tax revenue to the City; and

WHEREAS, City Staff and the City Attorney have drafted, negotiated and finalized the attached Development Agreement between the City and purchaser, attached hereto as Exhibit A and incorporated herein, and the City Attorney shall finalize a draft of the City's standard form of Contract to Buy and Sell Real Estate, which City Council desires to approve and authorize.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:

SECTION 1. The City hereby authorizes the Mayor to sign the Development Agreement, attached hereto as Exhibit A.

SECTION 2. The City Council authorizes the Mayor to sign the applicable Contract to Buy and Sell Real Estate for this Property, which draft shall be finalized by the City Attorney.

SECTION 3. The City Council additionally authorizes the Mayor to execute all necessary documents associated with the sale and closing of the Property.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 6th day of July, 2021, the vote upon roll call being as follows:

Ayes: Mayor Shaver, Councilmembers Deal, Garcia, Kaper, Lindell, Schossow and Udiales

Nays: None

Absent /Abstain: None



THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: Ronald Shaver
Ronald Shaver, Mayor

ATTEST:
John Brennan
John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fort Morgan this 6th day of July, 2021.

John Brennan
John Brennan, City Clerk

Exhibit A
Development Agreement

**CITY OF FORT MORGAN, COLORADO
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("**Development Agreement**") is made and entered into this 14th day of July, 2021 ("Effective Date"), by and between the **CITY OF FORT MORGAN**, a home rule municipal corporation and political subdivision of the State of Colorado, whose legal address is 110 Main Street, Fort Morgan, Colorado 80701, hereinafter referred to as "**City**," and **HARRISON HOMES, INC.**, a Colorado corporation, whose legal address is 611 West Mineral Avenue, Unit 1115, Littleton, Colorado 80120, hereinafter referred to as "**Owner**"; and

WHEREAS, Owner is the purchaser of .48 acres of that certain real property located within the City and described on **Exhibit A** attached hereto (the "**Property**"), pursuant to that certain Purchase and Sale Agreement dated [____], a copy of which is attached hereto as **Exhibit B** and fully incorporated herein by this reference, between City, as Seller, and Owner, as Purchaser;

WHEREAS, Owner intends to develop the Property to build and operate a retail coffee shop called "Teddy Bear's Coffee" in the Pointe Village Commercial Park Subdivision (the "**Project**");

WHEREAS, "Owner" shall be defined in this Agreement to include Harrison Homes, Inc., as well as its successors and assigns, and any subsequent owners of the Property (as described on **Exhibit A**) who shall be obligated under the covenants of this Agreement;

WHEREAS, in order to finance the development of the Property and facilitate the successful completion of the Project, the Developer has requested public financial support for the Project; and

WHEREAS, the City wishes to provide financial support to the Owner, including conveyance of fee title to the Property for a specified price, and the waiver of many development fees and other incentives, under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein the sufficiency of which is acknowledged and confessed, the Parties agree, promise and covenant as follows:

1. RECITALS. The Recitals above are hereby incorporated as if fully set forth in this paragraph.

2. DEVELOPMENT FEES AND INCENTIVES.

In addition to the conveyance of fee title to the Property for a price of Twenty Eighty Thousand One Hundred Twenty Five Dollars (\$28,125), the City shall waive the following for the Owner as it relates to the Project: electric system connections up to and including the meter; natural gas system connections up to and including the meter;

expansion of City's telecommunications network to allow for a connection with Allo Communications; water connection up to and including the meter; wastewater connection at the property line. Such fee waivers and incentives shall apply, and be available and in effect, for three (3) years from the Effective Date. The City shall also be responsible for the construction and installation of access from Saunders Road to Badger Avenue.

The Owner shall be responsible for acquiring the applicable water right units and for purchasing the applicable water right transfer fees for the Project.

Owner shall also be responsible for any and all applicable building permit fees, plan review Fees, use tax, and water and wastewater plant investment fees. Owner shall be responsible for the installation of all landscaping and irrigation system in the open spaces along Platte Avenue and Saunders Road, which shall be included in the construction of the Project at the Property.

3. DEVELOPMENT AND MAINTENANCE OF THE PROJECT.

- a. Project. The Project will include the development and construction of a retail coffee shop, called "Teddy Bear's Coffee," by the Owner, to be operated by the Owner. The Project also includes installation of all landscaping and irrigation system in the open spaces along Platte Avenue and Saunders Road.
- b. Timeline. The Owner plans to complete the Project within two (2) years.
- c. Operation and Maintenance of the Project. The Owner shall be and remain responsible for all operation and maintenance of the Project, except for those responsibilities expressly assumed by the City as set forth herein. The Owner anticipates operating the retail coffee shop after construction of the Project.

4. PUBLIC IMPROVEMENTS.

- a. Ownership, Maintenance and Repair. The City shall own and be responsible for the maintenance and repair of public infrastructure and public roadway improvements at Saunders Road and Badger Avenue, and the City shall be responsible for construction and installation of access from Saunders Road to Badger Avenue. Owner shall be responsible for the construction, maintenance and repair of parking lots, curbs and gutters within the Project, if applicable. Owner shall be responsible for the construction of all sidewalks within the Project, which shall all be five feet in width. The maintenance and repair of sidewalks shall be the responsibility of the Owner(s) of the Property pursuant to the terms of the Municipal Code of the City of Fort Morgan (the "Code").
- b. Landscaping. Owner shall be responsible for the installation of all landscaping and irrigation system in the open spaces along Platte Avenue and Saunders Road, which shall be included in the construction of the Project at the Property.

5. ZONING AND RELATED APPROVALS.

- a. Project Plan Approval; Zoning; Suitability. The City shall use reasonable efforts consistent with applicable law to support and approve the Project as contemplated by this Agreement and execute and deliver all necessary documents or instruments contemplated by or related to this Agreement. Owner acknowledges that it shall make its own independent investigation as to the suitability of the Property for purposes of developing the Project, and further acknowledges that they have not relied upon any representations or warranties by the City with regard to such suitability except as expressly set forth herein.
- b. Permitted Uses. The land uses for the Property shall be only as permitted under the Code and as specified in the approved Plan. No different or additional uses shall be permitted, unless approved as provided in the Code or through an amendment to the Plan pursuant to the provisions of the Code in effect at the time of such amendment.

6. DEFAULT AND REMEDIES.

- a. Owner Default. If the City alleges that the Owner is in default under this Agreement and the Owner does not cure that default within thirty (30) days following written notice from the City, the City shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific performance; (3) withholding action on any pending applications or approvals of plans, building permits or certificates of occupancy, to the extent such applications and approvals relate to Owner's alleged default; and (4) any other remedies permitted under the Code, or otherwise set forth in this Agreement or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the Owner commences the corrective action within thirty (30) days and diligently pursues such correction thereafter. If the Owner default arises from the failure to grant any right of way, easement, or convey other property as required by this Agreement or any approved Plan, then the Owner agrees that the City may condemn that land pursuant to C.R.S. Section 38-6-102. The Owner agrees that in any such condemnation proceeding, the fair and actual cash market value of all such property is zero since the property is subject to an irrevocable obligation to grant or dedicate it to the City pursuant to this Agreement, and Owner is estopped from asserting otherwise. Owner agrees that it would have granted or dedicated such property upon execution of this Agreement without compensation.
- b. City Default. If the Owner alleges that the City is in default under this Agreement and the City does not cure that default within thirty (30) days following written notice from the Owner, the Owner shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific

performance; and (3) any other remedies permitted under the Code, or otherwise available at law or in equity. The Owner shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

- c. Remedies. In addition to any other remedy allowed by law, in the event of default by the Owner with respect to any provision of this Agreement, including insufficiency of security to complete the Improvements, or failure to construct the residential units by the deadlines set forth in this Agreement, the City may refuse to further process any site development or building permit application for property owned, in whole or in part, by the Owner. Except as otherwise specifically provided herein, neither party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.
- d. Additional Default and Remedy. Notwithstanding the foregoing, in the event that the Owner fails to complete construction of the Project by December 31, 2023, then the Owner shall either, at the Owner's discretion: (1) convey the Property back to the City in an amount equal to ten dollars (\$10.00); or (2) pay the City an additional monetary amount, of Twenty Thousand Dollars (\$20,000), which shall reflect a compensation to the City for the partial reimbursement for all development incentives provided to the Owner by the City.

7. MISCELLANEOUS TERMS.

- a. Vested Rights. The City agrees that the Final Plan submitted for the Project constitutes a "Site specific development plan" pursuant to C.R.S. 24-68-101 et seq. (the "**Vested Rights Act**") for that portion so platted, and in addition, that the rights of the Plat and this Development Agreement which vest pursuant to the Vested Rights Act shall vest for a period of three (3) years. This Development Agreement shall be deemed to be a "development agreement" pursuant to the Vested Rights Act. Approval of the Final Plan and this Development Agreement shall create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended, subject to the terms and limitations as contained in the Code.
- b. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:

City of Fort Morgan

Owner:

Harrison Homes, Inc.

110 Main Street
Fort Morgan, CO 80701

611 West Mineral Avenue
Unit 1115
Littleton, Colorado 80120

With a copy to:

Nina Williams, Esq.
Wilson Williams LLP
15306 W 93rd Avenue
Arvada, CO 80007

With a copy to:

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- c. Applicable Law. Except to the extent specifically set forth herein, this Development Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This Development Agreement shall be construed pursuant to the laws of the State of Colorado. Jurisdiction and venue for any cause of action arising under this Development Agreement shall be proper and exclusive in the Morgan County District Court.
- d. Severability. It is understood and agreed by the parties that if any part, term, or provision of this Development Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Development Agreement did not contain the particular part, term, or provision held to be invalid.
- e. Complete Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and with the exception of the other agreements referenced herein, this Development Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. There shall be no modification of this Development Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Development Agreement may be enforced in any court of competent jurisdiction.
- f. Recording; Benefit. This Development Agreement shall be recorded with the Clerk and Recorder for Morgan County, Colorado; shall run with the land; and shall obligate, be binding upon and shall inure to the benefit of the parties hereto and upon and to their respective successors, grantees and assigns. The Owner shall be released from further obligation hereunder in the event of sale of the

Property or portions thereof with respect to that portion of the Property conveyed; provided however, that any successor, grantee or assignee of the Owner, or any subsequent owner of the Property shall be bound hereby, and this document shall have been recorded and, except as otherwise provided herein, serve as a non-dischargeable covenant running with and burdening the land described in **Exhibit A**, as the burdened property, as an easement in gross for the benefit of the City. Any reference herein to the Owner shall be deemed to include any purchaser, successor-in-interest or assign of the Owner as to all or any part of the Property. The Owner shall notify the City in writing within fifteen (15) days after any sale, transfer, or assignment, giving name and address of transferee, assignee or buyer. Owner agrees not to convey, transfer or sell the Property until the Project is completed. This Agreement does not confer any right or benefit to any third party, except as expressly set forth herein. Upon request of the Owner and after the expiration of the warranty period, the City hereby agrees to cooperate and execute any document in recordable form reasonably necessary to evidence Owner's satisfaction of the obligations contained herein.

- g. Force Majeure. If either party is unreasonably delayed, disrupted or interfered with by the presence of any reasonably perceived hazardous material, labor dispute, fire, adverse weather conditions not reasonably anticipated, any written or oral order, directive, interpretation or determination made by any governmental entity having jurisdiction, unavoidable casualties or any other causes reasonably beyond the delayed party's control (each a "**Force Majeure Event**"), then the delayed party's time shall be extended for such duration as reasonably requested by the delayed party upon the delayed party's submission of its request for an extension of time with an explanation of the Force Majeure Event and upon agreement by the non-delaying party that a Force Majeure Event exists, which agreement shall not be unreasonably withheld. Notwithstanding the foregoing, neither party may rely on the other party's actions as a basis for reasonable delay.
- h. Effective Date. The terms of this Development Agreement shall become binding on all Parties hereto on the date first set forth above.
- i. No Waiver. No waiver of any of the provisions of this Development Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- j. Counterparts. This Development Agreement may be executed in counterparts, each of which shall be deemed an original.
- k. Authority. The undersigned hereby acknowledge and warrant their power and authority to bind the parties to this Development Agreement.


CITY OF FORT MORGAN, a home rule
municipal corporation and political subdivision
of the State of Colorado

By: Ron Shaver
Ron Shaver, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF MORGAN)

WITNESS my hand and official seal.

My commission expires: December 12, 2021



Notary Public

By: _____
Daniel Harrison, Vice President

)

) SS.

)

ACKNOWLEDGED before me this _____ day of _____, 2021, by Daniel

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

[SEAL]

Exhibit A
Description of Property

**LOT 1 OF THE POINTE VILLAGE COMMERCIAL PARK SUBDIVISION, REPLAT
OF LOTS 1 AND 2, BLOCK 2 OF THE CENTREPOINTE PLAZA SUBDIVISION
FILING NO. 1 LOCATED IN THE SOUTH ONE-HALF OF SECTION 5, TOWNSHIP 3
NORTH, RANGE 57 WEST 6TH PRINCIPAL MERIDIAN, CITY OF FORT MORGAN,
COUNTY OF MORGAN, STATE OF COLORADO CONTAINING .48 ACRES MORE
OR LESS, RECORDED WITH THE CLERK AND RECORDER FOR MORGAN
COUNTY, COLORADO, [_____,], ON OR ABOUT [_____, 2021]**

Exhibit B
[Purchase and Sale Agreement]