

SOIL EXCAVATION AND SITE IMPROVEMENT AGREEMENT

DATED: March ____, 2015

BETWEEN: URBAN RENEWAL COMMISSION OF
THE CITY OF OREGON CITY
PO Box 3040
Oregon City, OR 97045-0304 (the "Commission")

AND: GRAND COVE, LLC,
a Delaware limited liability company
4582 S. Ulster Parkway, Ste. 1200
Denver, CO 80237 ("Grand Cove")

Grand Cove is the contract purchaser of the real property described in attached Exhibit A (the "GC Site"). Grand Cove intends to construct a 244-unit garden apartment project, including related infrastructure and amenities (the "GC Project") in the event that Grand Cove closes on the GC Site and purchase fee simple title to the GC Site.

The Commission owns the real property adjacent to the GC Site, which is described on attached Exhibit B (the "Commission Property"). The GC Site and the Commission Property were both previously the site of a mixed-use project to be built by Clackamette Cove, LLC, subject to that Disposition and Development Agreement for the Cove, between the Commission and Clackamette Cove, LLC, dated January 10, 2014, which is now not legally binding and not in effect.

Grand Cove is unrelated to and unaffiliated with Clackamette Cove, LLC. Grand Cove is pursuing the GC Project and the GC Site as a separate, stand-alone garden apartment project. The Commission may

enter into a new agreement with Clackamette Cove, LLC for the purchase and development of substantially all of the Commission Property.

Portions of the GC Site are below the 100-year flood plain and cannot be developed unless the elevation of those portions of the GC Site are filled to an elevation above the elevation of the 100-year flood plain. Following the closing of Grand Cove's purchase of the GC Site, Grand Cove desires to extract soil from that portion of the Commission Property described on attached Exhibit C (the "Excavation Site"). The Commission is willing to allow Grand Cove to excavate up to 87,790 cubic yards of soil from the Excavation Site in return for Grand Cove constructing certain infrastructure improvements on the Commission Property (the "Required Infrastructure Improvements") described in Section 3.1 below. The Required Infrastructure Improvements are in addition to other infrastructure improvements that may be required by the City of Oregon City (the "City") through its land use approval process, which will be on portions of the Commission Property or City right-of-way.

NOW, THEREFORE, in consideration of the mutual promises of Grand Cove and the Commission set forth in this Soil Excavation and Site Improvement Agreement (the "Agreement"), Grand Cove and the Commission agrees as follows:

SECTION 1 EFFECTIVE DATE, TERM

1.1 Effective Date.

The "Effective Date" of this Agreement is the last to occur of:
(i) the execution of this Agreement by Grand Cove; and (ii) the approval of

this Agreement by the Commission's Board and the execution of this Agreement by the Chair of the Board.

1.2 Closing Date.

The "Closing Date" for purposes of this Agreement shall be the date on which Grand Cove acquires title to the GC Site.

1.3 Term

The "Term" of this Agreement commences on the Effective Date and continues thereafter until the date that is twelve (12) months after the Closing Date, except for those provisions of this Agreement which explicitly state that they survive any termination. Notwithstanding the foregoing, the obligations of Grand Cove and the Commission under this Agreement shall only become effective as of the Closing Date, except that Section 2.3 shall become effective as of the Effective Date.

1.4 Early Termination

The Agreement will terminate in its entirety and automatically: (a) upon the termination for any reason of the purchase and sale agreement between Woodley Properties, Inc., as seller and Grand Cove as purchaser relating to the GC Site, or (b) in the event Grand Cove fails to submit preliminary and final Excavation Plans to the Commission and the City Planning Department which are acceptable to the Commission and the City Planning Department when required by Section 2.

SECTION 2 EXCAVATION PLAN

2.1 Excavation Plan

2.1.1 Grand Cove has prepared and has submitted to the Commission, a preliminary excavation plan which is attached as Exhibit D (the "Preliminary Excavation Plan"). The Commission will approve or

approve with conditions or modifications or disapprove, in its reasonable discretion, the Preliminary Excavation Plan within 45 days of the Effective Date. If the Commission timely approves the Preliminary Excavation Plan (with a copy to the Commission), then Grand Cove will prepare and submit to the City Planning Department, within 30 days of the Commission's approval, a final excavation plan (the "Final Excavation Plan"). The Final Excavation Plan must contain the following: (i) a description of that area of the Excavation Site where actual excavation will occur; (ii) a description of the means and methods of the excavation work; (iii) a schedule for implementing the Excavation Plan; (iv) a safety plan that will be in place until the excavation work is complete; (v) a plan showing the elevations and contours of the excavated area after all material to be excavated has been excavated; (vi) a grading plan for the area where the excavation has occurred; (vii) a drainage analysis that shows that the excavated area will not create a pond; (viii) a safety plan (including fencing, if required by the Commission for safety purposes) which demonstrates that the excavated area will not be a potential hazard to the public; and (ix) all other information required by City Code, including but not limited to information necessary to comply with the requirements of the Natural Resources Overlay District.

2.1.2 Grand Cove may not proceed with any excavation unless and until the Commission has approved the Preliminary Excavation Plan, and the City has approved the Final Excavation Plan and no appeal of that final City action has been filed. In the event Grand Cove and the Commission cannot agree on the Preliminary Excavation Plan, or Grand Cove and the City cannot agree on the Final Excavation Plan, this Agreement may be

terminated by either party to this Agreement by written notice to the other party, in which event Grand Cove shall have no obligation to construct the Required Infrastructure Improvements.

2.2 Excavation Easement

2.2.1 Assuming the parties have agreed on the Final Excavation Plan, the Commission hereby grants Grand Cove a temporary access easement allowing Grand Cove to come upon the Commission Property in order to have access to and from the area where the excavation will occur and to transport excavated material from the excavation area to the GC Site, and to transport soil from the "Tri-City" site across the Commission Property to the GC Property. This temporary easement will be subject to the requirements of the Final Excavation Plan. This temporary easement will be in effect from the commencement of Grand Cove's excavation and terminate thirty (30) days after Grand Cove has completed the grading plan and safety plan included in the Final Excavation Plan.

2.2.2 Grand Cove agrees to repair any material damage to the Commission Property, other than the actual area of excavation, created by Grand Cove's exercise of its easement rights under Section 2.2.1 or the implementation of the Final Excavation Plan.

2.2.3 Grand Cove agrees to defend, indemnify and hold the Commission harmless from any third-party claim, loss, damage, injury or liability arising out of or related to Grand Cove's exercise of its easement rights or the implementation of the Final Excavation Plan. Nothing in this Section 2.2 shall be construed to require Grand Cove to indemnify the Commission against any loss or damage arising out of, or resulting from,

any condition existing on or about the Excavation Site prior to the time of Grand Cove's excavations.

2.2.4 Before exercising any of its rights under this Section 2.2, Grand Cove shall provide the Commission with a comprehensive commercial liability insurance policy with coverage in the amount of at least \$2,000,000 and naming the Commission as an additional insured.

2.3 Hazardous Materials

2.3.1 The Commission makes absolutely no representation or warranty regarding whether or not the material Grand Cove desires to excavate contains Hazardous Materials. "Hazardous Materials" are any and all substances identified as hazardous under state law and federal law. The Commission shall have no liability to Grand Cove in the event the material excavated by Grand Cove contains Hazardous Materials.

2.3.2 Grand Cove will have until the Closing Date to investigate the soil on the Excavation Site. Such right of investigation will include, without limitation, the right to have made, at Grand Cove's expense, any studies or inspections of the Excavation Site that Grand Cove may deem necessary or appropriate, including, without limitation, the taking of soil samples and the conduct of environmental assessment of the Excavation Site. The Commission agrees to cooperate reasonably with any such investigations, inspections or studies made by or at Grand Cove's direction so long as such cooperation is at no expense or liability to the Commission. Grand Cove agrees to repair any material damage to the Excavation Site created by Grand Cove's exercise of its investigation rights under this Section, and Grand Cove agrees to indemnify and hold the Commission

harmless from any mechanic's lien asserted against the Commission or the Commission Property arising out of or resulting from Grand Cove's or its employees', agents', representatives' or contractors' investigations of the Excavation Site. Notwithstanding any other terms and provisions of this Agreement to the contrary, this indemnification obligation of Grand Cove will survive any termination of this Agreement. Nothing in this Section 2.3.2 shall be construed to require Grand Cove to indemnify the Commission against any loss or damage arising out of, or resulting from, any condition existing on or about the Excavation Site prior to the time of Grand Cove's investigations.

2.3.3 In the event that, during the inspections described in Section 2.3.2 above or during the excavation and removal of soil from the Excavation Site to the GC Site, either Grand Cove or its contractor has reason to suspect that the soil being extracted or to be extracted may contain Hazardous Materials: (a) Grand Cove shall immediately cease any ongoing excavation and make full disclosure to the Commission; (b) no further excavation may occur unless and until the Commission has investigated and confirmed, to the reasonable satisfaction of both the Commission and Grand Cove, that Hazardous Materials are not present; and (c) if such confirmation does not occur within sixty (60) days after Grand Cove's initial disclosure to the Commission, then either Grand Cove or the Commission may elect to terminate this Agreement by written notice to the other, in which event neither party shall have any further obligations hereunder except for those obligations that expressly survive termination.

2.4 Charge for Excavated Material

There shall be no charge imposed by the Commission for the material excavated by Grand Cove. The consideration is the performance by Grand Cove of its obligations under this Agreement.

2.5 Grading

After Grand Cove has completed its excavation of material, Grand Cove agrees to implement the grading plan and the safety plan set forth in the Final Excavation Plan, all in accordance with the schedule in the Final Excavation Plan. Grand Cove shall execute this work in a good and workmanlike manner, at Grand Cove's sole cost and expense, lien free and free of any material defects.

2.6 Excess Flood Capacity

The parties acknowledge that the removal of soil from the Excavation Site to the GC Site will create an unbalanced importation of dirt in the flood plain. The City has approximately 22,000 cubic yards of excess flood capacity that was generated from the construction of the "Jug Handle" road improvements. On the Closing Date, the City will transfer this excess capacity to the GC Site for consideration of Ten Dollars (\$10.00).

SECTION 3 REQUIRED INFRASTRUCTURE IMPROVEMENTS

3.1 Improvements

The Required infrastructure Improvements consist of: (i) a full street improvement of Main Street and a round-about, all to City standards, as shown on the plan attached as Exhibit E-1; (ii) a stormwater line, to City standards, as shown on the plan attached as Exhibit E-2; (iii) a pedestrian crossing of Main Street, to City of Oregon City standards, as shown on the plan attached as Exhibit E-3; (iv) a temporary trailhead graveled parking

area, as shown on the plan attached as Exhibit E-4; (v) the removal of invasive, non-native plant material and the planting of native riparian vegetation in a portion of the Natural Resource Overlay Zone as shown on the plan attached as Exhibit E-5; (vi) an earthwork and grading plan as shown on the plan attached as Exhibit E-6; and (vii) a temporary access improvement providing access to Old Agnes Street, as shown on the plan attached as Exhibit E-7 (collectively, the "Required Infrastructure Improvements"). The native riparian vegetation to be planted shall be selected from the City's approved native plant list and shall be consistent with the landscape plan for the area. The area in which such planting will be done shall take into account the location of Main Street and the prohibition against the planting of trees in the public utility easement area). Grand Cove agrees to construct the Required Infrastructure Improvements at its own cost and expense, lien free, in a good and workmanlike manner, and in substantial accordance with Exhibit E (subject to any modifications to such exhibits that are approved by both the Commission and Grand Cove after the date of this Agreement). Grand Cove is required to construct and complete the Required Infrastructure Improvements even if Grand Cove does not excavate and use any or all of the soil which Grand Cove has the right to excavate under the terms of this Agreement. The Commission has the right to require that Grand Cove post a completion bond with the Commission covering the Required Infrastructure Improvements, in a form and from a bonding company reasonably acceptable to the Commission.

3.2 Time of Construction

Grand Cove agrees to construct the Required Infrastructure Improvements during the construction of the GC Project. The construction

of the Required Infrastructure Improvements shall commence within thirty (30) days after notice from Grand Cove to the Commission regarding the commencement of construction. The completion of the construction of the Required Infrastructure Improvements shall occur promptly but no later than nine (9) months after the commencement of construction.

3.3 Temporary Construction Easement

The Commission hereby grants Grand Cove a temporary access and construction easement to come upon the Commission Property as may be reasonably necessary for Grand Cove and its contractors, subcontractors, employees and employers to construct the Required Infrastructure Improvements. This temporary construction easement is on the same terms and conditions as the easement referred to in Section 2.2 above, except that it shall not terminate until thirty (30) days after completion of the Required Infrastructure Improvements.

3.4 Inspection

During the construction of the Required Infrastructure Improvements, the Commission's employees shall be entitled to inspect the work at any reasonable time.

3.5 Warranty

Grand Cove warrants that the completed Required Infrastructure Improvements will be in substantial conformance with Exhibits D and E (subject to modifications as described above) and will be free of any material defects or inferior workmanship. This warranty shall have a term of one (1) year after final completion of the Required Infrastructure Improvements.

SECTION 4 GENERAL PROVISIONS

[To be added, subject to approval by all parties.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

COMMISSION: URBAN RENEWAL COMMISSION OF THE CITY OF OREGON CITY

By: _____
Its: _____

GRAND COVE: GRAND COVE, LLC, a Delaware limited liability company

By: _____
Its: _____

THE CITY (solely for purposes of acknowledging and agreeing to Section 2.6, Excess Flood Capacity):

THE CITY OF OREGON CITY

By: _____
Its: _____