

HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032
Heber City Council Meeting

January 2, 2024

4:00 p.m. Council Member Oath of Office
4:30 p.m. Work Meeting
6:00 p.m. Regular Meeting

TIME AND ORDER OF ITEMS ARE APPROXIMATE AND MAY BE CHANGED AS TIME PERMITS

I. OATH of OFFICE for THREE CITY COUNCIL SEATS - 4:00 P.M.

1. Swearing in of Three Newly-Elected City Council Members: Mike Johnston, Aaron Cheatwood, and Sid Ostergaard for Four-Year Term 2024-2028 (Trina Cooke, City Recorder)
2. Reception ()

II. WORK MEETING - 4:30 P.M.

1. Ordinance 2024-01 Highlands MDA Amendment (Denna Woodbury, Planning Consultant) - *50 min*
2. POSTT (Parks, Open Space, Trails, and Trees) Presentation (Scott House, POSTT Co-Chair, Ashley Farrell, POSTT Co-Chair) - *30 min*

III. BREAK - 10 MIN

IV. REGULAR MEETING - 6:00 P.M.

1. Call to Order
2. Pledge of Allegiance (Scott Phillips, Council Member)
3. Prayer/Thought by Invitation (Heidi Franco, Mayor)

V. CONFLICT OF INTEREST DISCLOSURE:

VI. CONSENT AGENDA:

1. Approval of December 19, 2023, City Council Meeting Minutes (Trina Cooke, City Recorder)
2. City Council Board Appointments (Heidi Franco, Mayor)

VII. PUBLIC COMMENTS: (3 min per person/20 min max)

VIII. GENERAL BUSINESS ITEMS:

1. Planning Commission Presentation (Tony Kohler, Community Development Director) - *20 min*
2. Airport Advisory Board Presentation (Jason Talley) - *20 min*
3. Public Works SWOT Analysis (Matt Kennard, Public Works Director) - *5 min*
4. Police Department SWOT Analysis (Parker Sever, Chief of Police) - *5 min*
5. Parks and Cemetery SWOT Analysis (Mark Rounds, Parks and Cemetery Director) - *5 min*
6. Human Resources SWOT Analysis (Cherie Ashe, Human Resources Director) - *5 min*
7. Finance Department SWOT Analysis (Sara Nagel, Finance Manager) - *5 min*

IX. ACTION ITEMS: (Council can discuss; table; continue; or approve items)

1. Legislative Report from Mountainlands Association of Governments (MAG) Contracted Lobbyist (Dave Stewart) - *15 min*
2. Ordinance 2024-01 Highlands MDA Amendment (Denna Woodbury, Planning Consultant) - *10 min*
3. Agreements for T-hangar Development at the Heber Valley Airport (Steve Osit) - *40 min*
4. ITN for Sale of Parcel in the Commerce Park (Industrial Lot) (J. Mark Smedley, Asst. City Manager) - *20 min*
5. Jordanelle Ridge Bond Agreement (Jeremy Cook, City Attorney) - *15 min*

X. COMMUNICATION:

XI. ADJOURNMENT:

Ordinance 2006-05 allows Heber City Council Members to participate in meetings via telecommunications media.

In accordance with the Americans with Disabilities Act, those needing special accommodations during this meeting or who are non-English speaking should contact Trina Cooke at the Heber City Offices 435.657.7886 at least eight hours prior to the meeting.

Posted on December 28, 2023, in the Heber City Municipal Building located at 75 North Main, the Heber City Website at www.heberut.gov, and on the Utah Public Notice Website at <http://pmn.utah.gov>. Notice provided to the Wasatch Wave.

YOU ARE
INVITED TO
JOIN US FOR
AN OATH OF
OFFICE
CEREMONY

CITY COUNCIL
CHAMBERS
AT 4:00 PM
TUESDAY,
JANUARY 2,
2024



WELCOME 2024 CITY COUNCIL MEMBERS

AARON CHEATWOOD, MIKE JOHNSTON, SID OSTERGAARD





Heber City Council Staff Report

MEETING DATE: 1/2/2024
SUBJECT: Ordinance 2024-01 Highlands MDA Amendment
RESPONSIBLE: Denna Woodbury
DEPARTMENT: Planning
STRATEGIC RELEVANCE: Community Development

SUMMARY

Highlands and their potential home builder, DR Horton, have analyzed their home models in relation to the Highlands Master Plan and is asking for modification to the Highlands Master Development Agreement (MDA) to address some of the required zoning design elements (including those contained in the North Village Overlay Zone) for the proposed homes. The state code requires that the City go through the rezoning process when considering development agreements that permit deviations from the requirements of the zoning ordinance and overlay zones. Highlands is requesting the City consider permitting 10 changes to their Master Development Agreement that relate to Design, Street Facade and Topography.

RECOMMENDATION

Staff recommends Council adopt Ordinance 2024-01, approving the amendments to the Highlands MDA.

BACKGROUND

Earlier this year, Highlands submitted a request to amend its MDA, particularly addressing the City's Transportation Master Plan.

The Highlands Development Group and DR Horton continued to work with the staff on their amendment requests and home designs. However, the topography has created some challenges in implementing the NVOZ code provisions. That's why the amendment to the MDA is being sought. The number of amendment requests has been reduced from thirteen to ten. They are providing three different housing types; single-family detached, townhomes, and stacked flats. The applicant has also reduced the number of overall units approved in this portion of the Master Plan than what was originally approved with the concept plan. The original concept for this portion of the Master Plan showed 851 units, while this proposal has 806 units.

On July 18, 2023, the City Council accepted these amendments to be processed as Administrative Amendments to be approved by the Administrator, the City Manager. The application is still pending and has not yet been finalized due to the recent issues identified by the developer. A Public Hearing was held at the October 24, 2023, Planning Commission meeting. The City Council held a work session on this item on November 7, 2023. The Planning Commission again discussed this item on November 14, 2023, and recommended approval for the proposed amendment to the MDA.

DISCUSSION

The NVOZ has some challenges with hillside development. The NVOZ concept creates short streets and blocks, which increases connectivity and walkability. NVOZ also encourages pushing buildings towards the streets. However, when topography is added in, it can be difficult to meet the standards without carving up the hillsides to make the grades meet for streets and buildings. DR Horton's amendment requests are to meet the intent of the NVOZ standards while trying to minimize hillside disturbance in cut and fill.

Requested Amendments to the MDA

The changes requested to the Design Guidelines relate to the design of the residential units and the physical location that is impacted by the topography. The requests are listed by section, with the developer's proposal and an explanation by staff is found below:

Design

1. Section 3.6. 2. Footnote 2. Townhome Green Courtyards. Page 19. Requirement for up to 3 of each 5 buildings to front upon a courtyard with a minimum width of 50 feet. Proposal: The developer is requesting to permit more than 3 out of 5 buildings to front on a courtyard and is asking for the 50-foot width minimum to be reduced.

The staff reviewed and found that the locations where this request would apply meet either a one to one ratio of height to distance separation, creating a room effect that the Design Guidelines are trying to achieve, or the average courtyard width exceeds the 50-foot minimum requirement. The locations where this request would apply also provide 20-foot driveways for each of the townhomes, in addition to the garages provided.

2. Section 3.7. 2. Line i and Foot Note 5. Garage Façade Setback Page 21. Requirement for garages to be setback 5 feet further than living space. Proposal: The developer is asking for that living space to be reduced to 2 feet and be measured from the second story and include other design elements to reduce the visual impact of the garage.

This request provides housing products and variations that minimize the garage and provide a better street frontage than if the front porch and entryway are located in front of the garage.

3. Section 3.0 Buildings Page 25 – Craftsman, Farmhouse, Mountain Modern, North

Village Natural/MDA Defined- Minimum Required Elements Front porch that addresses the street, either full or partial-width (60 square feet minimum). Proposal: The developer is requesting some of the porches be permitted to be less than 60 square feet.

In order to provide variation to the facade, the size of the porches needs to vary. Each unit has at least 200 square feet of private open space.

4. Section 3.1. 5. Unique Architecture. Page 12 Requirement of no single-family buildings on the same block face may have the same street facing façade within a 400-foot distance. Proposal: The developer is seeking that it be based on the frontage distance of the lot adjacent and across the street within a 120-foot distance.

The proposed single-family lot sizes are smaller than a typical quarter-acre lot, so the 400-foot distance would require 20 different facades. The 120-foot distance proposed would provide 6 different facades that would ensure that the homes next to you and across the street directly and to the corner, would not look the same.

5. Section 3.6 Figure 3.6 (5) Townhouse Building. Page 25 - Townhouses facing common greens, must also have three-sided architecture with wrapping porches and windows. Proposal: The developer is requesting that Townhouses facing common greens, must also have three-sided architecture with windows, and should not include wrapping porches. Additional architectural elements are cohesive with the architectural style.

In certain locations, the townhomes face each other and not the street. Staff will work with the applicant to include porch-like elements so the street facade from the private streets is pleasing.

Street Façade Requirements

6. Section 3.2.4, page 12: 360-degree architecture, public right-of-way, parking lot, rear or interior side yards. Proposal: To be discussed with planning staff. 360-degree architecture conflicts with other sections of the NVOZ and within the same paragraph.

The purpose of the 360-degree architecture is to ensure that there are no blank walls along the street frontages. The proposed products do not have blank walls. Staff will work with the applicant to ensure that the intent of the code is met.

Topography

7. Section 3.2.2(d), page 11 Building Height. Proposal: The requirement only applies to adjacent buildings along the front property line which are facing a public street and on the same side of the street. The height variation requirement does not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.

The topography on the site creates a height variation and makes it challenging to meet the ADA requirements for stacked flats.

8. Table 3.4(1), item B, page 15 Front Build to Zone. Proposal: The front build-to-zone may be

increased to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

The buildings will be located as close to the street and as practically as possible, without having to create giant retaining walls.

9. Table 3.4(1) item A, page 15 Front Property Line Coverage (80%) Proposal: The front property line coverage may be reduced when site topography has unbuildable areas. Access drives from public streets shall be excluded from the front property line coverage calculation.

Due to the topography, to meet this standard, large retaining walls would need to be built to accommodate the stacked flats. In one case the building would have to be built into the wall because of the grade difference. By allowing less than 80% it provides a more open feel in between buildings and allows for reduced retaining wall heights.

10. Section 4.2.3.5 and Table 4.2(1) footnote 1, page 39 Maximum Block Perimeter: 2000 ft. Proposal: The block perimeter may be increased to accommodate topography, which makes street connectivity requirements unachievable and unreasonable. Single parcel communities consisting of multiple buildings may substitute internal parking lots, pathways, and private access drives to achieve connectivity.

Due to the topography and the collector road, the 2000 block perimeter cannot be achieved. The Applicant is providing pedestrian street connectivity so that residents have access to parks and trails and nearby amenities.

FISCAL IMPACT

None.

CONCLUSION

The Highlands Master Plan has challenging topography and makes it difficult to meet some of the required zoning design elements (including those contained in the North Village Overlay Zone) for the proposed homes. The changes that are being proposed to the MDA address the unique topography challenges and provide design elements to meet the intent of the required zoning design elements.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** Ordinance 2024-01 as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** Ordinance 2024-01 as amended, as follows.

Alternative 3 - Continue

I move to **continue** the Ordinance 2024-01 to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** Ordinance 2024-01 with the following findings.

ACCOUNTABILITY

Department: Planning

Staff member: Denna Woodbury, Planning Consultant

EXHIBITS

1. Ord 2024-01
2. First Amendment to Master Development Agreement - Clean for Packet - 4893-4844-0473 - 1
3. Regional Map (1)
4. 2023-10-19 Highlands Proposed Base V11 B-EX-01
5. NVOZ 11.13.23B
6. 201010_Creekside at Highlands MP Amendment Powerpoint (1)

ORDINANCE NO. 2024-01

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE HIGHLANEDS MASTER PLANNED COMMUNITY.

BE IT ORDAINED by the City Council of Heber City, Utah, the First Amendment to Development Agreement for the Highlands Master Planned Community is hereby approved as shown in Exhibit 1.

This Ordinance shall take effect immediately upon approval.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this _____ day of _____ 2024.

	AYE	NAY	ABSENT	ABSTAIN
Yvonne Barney	_____	_____	_____	_____
Aaron Cheatwood	_____	_____	_____	_____
Michael Johnston	_____	_____	_____	_____
Sid Ostergaard	_____	_____	_____	_____
D. Scott Phillips	_____	_____	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

RECORDER

Date: _____

EXHIBIT 1

WHEN RECORDED, RETURN TO:

**Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032
Tax Parcel Nos.:**

(Space above for Recorder's use only.)

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
FOR THE
HIGHLANDS MASTER PLANNED COMMUNITY**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE HIGHLANDS MASTER PLANNED COMMUNITY (this “**Amendment**”) is entered into this ____ day of November, 2023, by and between HEBER CITY, a political subdivision of the State of Utah (the “**City**”), and CARDINAL FUNDING, LLC, a Utah limited liability company (“**Cardinal Funding**”). Each of Cardinal Funding and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”

RECITALS:

A. This Amendment amends that certain Development Agreement for the Highlands Master Planned Community (the “**Original Agreement**”), which Original Agreement is dated December 7, 2021 and was recorded in the official records of the Wasatch County Recorder on December ___, 2021 as Entry No. _____ in Book _____ at Page _____ (as such Original Agreement has been modified or amended prior to the date hereof and by this Amendment, the “**Agreement**”). Capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to them in the Original Agreement.

B. The Original Agreement was entered into by and among the City and Cardinal Funding with respect to that certain real property (the “**Property**”) described therein and described on Exhibit A attached hereto, which Property is presently owned by Thackeray Family Holdings II, LLC, a Utah limited liability company (“**TFHII**”) and Johansen Family Holdings II, LLC, a Utah limited liability company (“**JFHII**” and together with TFHII, the “**Landowners**”), which are executing this Amendment as owners of the Property.

C. The Original Agreement incorporated certain Design Guidelines, which Design Guidelines “are the approved guidelines for certain aspects of the design and construction of the development of the Property, including setbacks, building sizes, open space, height limitations, parking and signage, and, the design and construction standards for buildings, roadways and infrastructure, as set forth in and adopted as part of [the Original Agreement.]”

D. The Design Guidelines are applied in the context of the Zone, as the Zone is interpreted, clarified and/or modified by the City pursuant to this Agreement, and Cardinal Funding has sought certain interpretive guidance and clarification and certain amendments or other modifications from the City with respect to the Zone.

E. The City’s planning staff and Planning Commission have reviewed the proposed clarifications, modifications and amendments in one or more public hearings and provided a recommendation to the City Council based upon the unique and challenging topography of the Property but also seeking to maintain the overall intent of the required zoning design elements.

F. At the request of the City, Cardinal Funding or its affiliates have exchanged real property (the “**Property Exchange**”) along the eastern boundary of the Property with RE Investment Holdings, L.L.C. (“**REIH**”).

G. The property owned by REIH prior to the Property Exchange was subject to that certain Development Agreement for the Upper Jordanelle Master Planned Community, recorded in the office of the Wasatch County Recorder on November 2, 2020 as Entry No. 487731 in Book 1321 at Page 1398 (as amended, supplemented or otherwise modified, the “**Upper Jordanelle Development Agreement**”).

H. Cardinal Funding and the City desire to amend the Original Agreement so as to recognize the effect of the Property Exchange and to provide for the application of this Agreement to the property received by Cardinal Funding or its affiliates in the Property Exchange.

I. Pursuant to the requirements of Sections 17 and 18 of the Original Agreement, Cardinal Funding and the City are authorized and have the right to amend the Original Agreement and now desire to amend the Original Agreement as more fully set forth below.

AGREEMENT:

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NOW, THEREFORE, in consideration of the foregoing and the mutual covenants made herein and in the Original Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Amendment agree as follows:

1. **Amendment of Section 1.2.69.** Section 1.2.69 of the Agreement is hereby amended and restated in its entirety as follows:

1.2.69 **Zone** means the City’s North Village Overlay District Zone, as interpreted, clarified, amended or modified by the “NVOZ Specific Application Standards—Highlands Master Planned Community” attached to this Agreement as **Exhibit L**.

2. **Amendment of Section 3.1.** Section 3.1 of the Agreement is hereby amended such that the Base Density Entitlements are increased to 691 ERUs by reason of the property exchange described in Section 5 of this Amendment; provided, however, the twenty-one (21) additional ERUs shall not be used in the calculation of Bonus Density Entitlements under the Agreement.

3. **References to “NVOZ” or “NVOZ Zone and Ordinance”.** All references to the terms “NVOZ” and “NVOZ Zone and Ordinance” included in the Original Agreement are hereby changed to “Zone.”

4. **Exhibits.** Exhibit D to the Original Agreement (i.e. the Master Plan) is hereby replaced with Exhibit D attached to this Amendment (i.e. the A&R Master Plan, dated October 19, 2023).

5. **Addition/Removal of Property.** In recognition of the Property Exchange and from and after the date of this Amendment, the Parties agree that: (a) the real property described on Exhibit M attached hereto shall no longer be subject to the Upper Jordanelle Development Agreement and shall be subject to and governed by the Agreement; and (b) the real property described on Exhibit N attached hereto shall no longer be subject to the Agreement and shall be subject to and governed by the Upper Jordanelle Development Agreement.

6. **Conflicts.** In the event of any conflict between the terms and conditions set forth in this Amendment and those set forth in the Original Agreement, the terms and conditions of this Amendment shall control.

7. **Ratification.** Except as expressly set forth in this Amendment, the Agreement is ratified and confirmed as written.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, this Amendment has been entered into by and among the City and Cardinal Funding with the consent and agreement of the Landowners as of the date and year first above written.

CARDINAL FUNDING:

CARDINAL FUNDING, LLC, a
Utah limited liability company

By: _____
Name: _____
Title: _____

CARDINAL FUNDING ACKNOWLEDGMENT

STATE OF UTAH)
CITY OF _____) :§.

On the _____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Cardinal Funding, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

CITY:

Heber City, a political subdivision of the State of Utah

Heidi Franco, Mayor

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By:_____

By:_____

CITY ACKNOWLEDGMENT

STATE OF UTAH

)

:\$.

CITY OF HEBER

)

On the ____ day of _____, 2023, personally appeared before me Heidi Franco, who being by me duly sworn, did say that she is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

NOTARY PUBLIC

CONSENT AND ACKNOWLEDGMENT OF LANDOWNERS

Each of the undersigned Landowners hereby: (a) confirms and acknowledges such Landowner's receipt of this Amendment and confirms that the Agreement, as amended by this Amendment, is in full force and effect with respect to the to the properties owned by such Landowner and located within the Property; and (b) consents and agrees to abide by the terms and conditions of the Agreement, as amended pursuant to this Amendment, each to the extent applicable to the properties owned by such Landowner.

LANDOWNERS:

Thackeray Family Holdings II, LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

Date of Execution: _____, 2023

STATE OF UTAH)
CITY OF _____) :§.

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Thackeray Family Holdings II, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

**Exhibit A
to
First Amendment
to
Development Agreement for Highlands Master Planned Community**

(Description of Property)

[See attached.]

NORTH PARCEL:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19 AND THE WEST HALF OF SECTION 20 ALL IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF COMMONS BOULEVARD AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 40 PROJECT NO. F-019-1(1), SAID INTERSECTION BEING EAST 214.59 FEET AND SOUTH 1260.57 FEET FROM THE 2005 WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE NORTH 32°00'02" WEST 1,057.48 FEET TO THE SOUTHEASTERLY LINE OF PARCEL 2 AS DESCRIBED IN THAT WARRANTY DEED TO UTAH VALLEY STATE COLLEGE RECORDED AS ENTRY NO. 333087 OF SAID RECORDS AND ALSO DESCRIBED ON RECORD OF SURVEY NO. OWC-035-019-0-1157 AS FILED IN THE WASATCH COUNTY SURVEYORS OFFICE; THENCE ALONG SAID SOUTHEASTERLY LINE THE FOLLOWING TWO COURSES (1) NORTH 58°00'22" EAST 1,112.69 FEET (NORTH 57°59'34" EAST 1,111.85 FEET BY RECORD); AND (2) NORTH 48°11'59" EAST 1,098.03 FEET (NORTH 48°11'11" EAST 1,097.66 FEET BY RECORD) TO THE CENTERLINE OF THE TIMPANOGOS CANAL AS DESCRIBED IN THAT CONTRACT AND GRANT OF EASEMENT RECORDED AS ENTRY NO. 212641 OF SAID RECORDS; THENCE ALONG SAID CENTERLINE THE FOLLOWING NINE COURSES: (1) NORTH 17°22'52" WEST 54.83 FEET (NORTH 17°22'52" WEST 54.71 FEET PER SAID PARCEL 2); (2) NORTHWESTERLY 62.66 FEET ALONG A 57.21 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 62°45'14" AND A LONG CHORD OF NORTH 48°45'29" WEST 59.57 FEET; (3) NORTH 80°08'06" WEST 50.43 FEET; (4) NORTHWESTERLY 80.09 FEET ALONG A 77.16 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 59°28'06" AND A LONG CHORD OF NORTH 50°24'03" WEST 76.54 FEET; (5) NORTH 20°40'00" WEST 67.54 FEET TO STA 212+38 OF SAID TIMPANOGOS CANAL WHICH STA 212+38 IS SOUTH 1318.48 FEET AND EAST 1244.36 FEET FROM THE 1976 WASATCH COUNTY BRASS CAP MONUMENT FOR THE NORTHWEST CORNER OF SECTION 20 PER PARCEL NO. WCWEP-T-0584(P) OF SAID ENTRY NO. 212641; (6) CONTINUING NORTH 20°40'00" WEST 39.32 FEET; (7) NORTHWESTERLY 26.35 FEET ALONG A 73.32 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 20°35'35" AND A LONG CHORD OF NORTH 30°57'47" WEST 26.21 FEET; (8) NORTH 41°15'35" WEST 114.29 FEET; AND (9) NORTHWESTERLY 11.22 FEET ALONG A 3,029.45 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 00°12'44" AND A LONG CHORD OF NORTH 41°09'13" WEST 11.22 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE SOUTH 89°54'54" EAST 1,524.20 FEET TO THE NORTH-SOUTH CENTER SECTION LINE OF SAID SECTION 20; THENCE ALONG SAID NORTH-SOUTH CENTER SECTION LINE SOUTH 00°00'09" WEST 1,774.05 FEET TO THE

CENTERLINE OF THE SAID TIMPANOGOS CANAL; THENCE ALONG SAID CENTERLINE THE FOLLOWING EIGHT COURSES: (1) NORTH 10°34'34" WEST 26.14 FEET; (2) NORTHERLY 18.66 FEET ALONG A 63.10 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°56'26" AND A LONG CHORD OF NORTH 19°02'47" WEST 18.59 FEET TO STA 236+55 OF SAID TIMPANOGOS CANAL WHICH STA 236+55 IS NORTH 2238.88 FEET AND WEST 10.76 FEET FROM THE 2005 WASATCH COUNTY ALUMINUM PIPE CAP MONUMENT FOR THE SOUTH QUARTER CORNER OF SECTION 20 PER SAID PARCEL NO. WCWEP-T-0584(P) OF SAID ENTRY NO. 212641; (3) CONTINUING NORTHWESTERLY 31.79 FEET ALONG SAID 63.10 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28°51'57" AND A LONG CHORD OF NORTH 41°56'59" WEST 31.45 FEET; (4) NORTH 56°22'57" WEST 51.03 FEET; (5) NORTHWESTERLY 56.42 FEET ALONG A 130.89 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 24°41'49" AND A LONG CHORD OF NORTH 44°02'03" WEST 55.98 FEET; (6) NORTH 31°41'08" WEST 60.09 FEET; (7) NORTHWESTERLY 126.00 FEET ALONG A 664.07 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°52'18" AND A LONG CHORD OF NORTH 37°07'17" WEST 125.82 FEET; AND (8) NORTH 42°33'26" WEST 8.76 FEET TO THE NORTH LINE OF PARCEL 1 DESCRIBED IN A WARRANTY DEED RECORDED AS ENTRY NO. 462588 OF SAID RECORDS (WHICH SAID PARCEL 1 IS THE SAME AS PARCEL 4 AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY EVERGREEN ENGINEERING FILED AS NO. OWC-035-020-0-881 IN THE WASATCH COUNTY SURVEYORS OFFICE, WHICH BEARINGS ARE ROTATED 0°00'48" CLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS); THENCE ALONG SAID NORTH LINE NORTH 89°59'12" WEST 303.12 FEET (WEST BY DEED) TO THE NORTHWEST CORNER OF SAID PARCEL 1; THENCE ALONG THE WEST LINE OF SAID PARCEL 1 SOUTH 00°00'48" WEST 425.00 FEET (SOUTH BY DEED) TO AN EXISTING EVERGREEN ENGINEERING REBAR & CAP AND THE NORTHWEST CORNER OF PARCEL 2 OF SAID WARRANTY DEED (WHICH SAID PARCEL 2 IS THE SAME AS QUIT CLAIM #2 AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY BUHLER ASSOCIATES FILED AS NO. 0001830 IN THE WASATCH COUNTY SURVEYORS OFFICE); THENCE ALONG THE WEST LINE OF SAID QUIT CLAIM #2 SOUTH 00°32'12" EAST 134.12 FEET (SOUTH BY DEED) TO AN EXISTING BUHLER ASSOCIATES REBAR & CAP; THENCE ALONG THE SOUTH LINE OF SAID QUIT CLAIM #2 NORTH 89°49'38" EAST 528.67 FEET (EAST BY DEED) EXTENDING THROUGH AN EXISTING BUHLER ASSOCIATES REBAR & CAP TO SAID NORTH-SOUTH CENTER SECTION LINE; THENCE ALONG SAID NORTH-SOUTH CENTER SECTION LINE SOUTH 00°00'09" WEST 1,263.25 FEET TO A BING CHRISTENSEN REBAR & CAP AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY MCM ENGINEERING AND FILED AS NO. 1033 IN SAID WASATCH COUNTY SURVEYOR'S OFFICE; THENCE ALONG AN EXISTING FENCE NORTH 89°59'12" WEST 676.35 FEET TO STATION 154+09 ON THE CENTERLINE OF THE WASATCH CANAL AS DESCRIBED IN SAID CONTRACT AND GRANT OF EASEMENT RECORDED AS ENTRY NO. 212641 OF SAID RECORDS, SAID POINT BEING 676.32 FEET WEST AND 668.13 FEET NORTH OF THE SOUTH QUARTER CORNER OF SAID SECTION 20; THENCE CONTINUING NORTH 89°59'12" WEST 52.77 FEET TO THE WESTERLY LINE OF SAID WASATCH CANAL; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FOURTEEN COURSES: (1) NORTHWESTERLY 36.10 FEET ALONG A 180.84 FEET RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11°26'10" AND A LONG CHORD OF NORTH 48°19'44" WEST 36.04 FEET; (2) NORTH 42°36'39" WEST 243.31 FEET; (3) NORTHWESTERLY 59.37 FEET ALONG A 244.36 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 13°55'16"

AND A LONG CHORD OF NORTH 49°34'17" WEST 59.23 FEET; (4) NORTH 56°31'55" WEST 141.96 FEET; (5) NORTHWESTERLY 52.18 FEET ALONG A 139.48 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 21°26'10" AND A LONG CHORD OF NORTH 45°48'50" WEST 51.88 FEET; (6) NORTH 35°05'45" WEST 32.66 FEET; (7) NORTHWESTERLY 24.90 FEET ALONG A 52.16 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27°21'17" AND A LONG CHORD OF NORTH 48°46'23" WEST 24.67 FEET; (8) NORTH 62°27'02" WEST 31.01 FEET; (9) NORTHWESTERLY 59.68 FEET ALONG A 100.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 34°11'34" AND A LONG CHORD OF NORTH 45°21'15" WEST 58.80 FEET; (10) NORTH 28°15'28" WEST 46.48 FEET; (11) NORTHWESTERLY 27.92 FEET ALONG A 75.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 21°19'55" AND A LONG CHORD OF NORTH 38°55'26" WEST 27.76 FEET; (12) NORTH 49°35'23" WEST 30.70 FEET; (13) NORTHWESTERLY 89.92 FEET ALONG A 200.95 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 25°38'22" AND A LONG CHORD OF NORTH 36°46'12" WEST 89.18 FEET; AND (14) NORTH 23°57'01" WEST 0.10 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF COMMONS BOULEVARD PER WASATCH COMMONS SUBDIVISION PHASE 1 RECORDED AS ENTRY NO. 362478 OF SAID RECORDS, WHICH SAID PHASE 1 BEARINGS ARE ROTATED 0°01'39" COUNTERCLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) WESTERLY 252.73 FEET ALONG A 483.50 FEET RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 29°56'58" AND A LONG CHORD OF NORTH 75°05'36" WEST 249.86 FEET; AND (2) NORTH 60°07'07" WEST 29.46 FEET; THENCE NORTH 29°52'53" EAST 67.00 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID COMMONS BOULEVARD; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING EIGHTEEN COURSES (1) NORTH 60°07'07" WEST 50.00 FEET; (2) NORTHWESTERLY 13.57 FEET ALONG A 17.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 44°24'55" AND A LONG CHORD OF NORTH 37°54'40" WEST 13.23 FEET; (3) NORTH 60°07'07" WEST 103.22 FEET; (4) WESTERLY 391.17 FEET ALONG A 488.50 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 45°52'49" AND A LONG CHORD OF NORTH 83°03'31" WEST 380.80 FEET; (5) WESTERLY 30.50 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 49°13'32" AND A LONG CHORD OF NORTH 81°23'10" WEST 29.57 FEET; (6) WESTERLY 50.41 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 30°33'53" AND A LONG CHORD OF NORTH 72°03'20" WEST 49.82 FEET; (7) NORTHWESTERLY 34.27 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF NORTH 59°41'11" WEST 32.95 FEET; (8) NORTH 32°02'05" WEST 11.88 FEET; (9) SOUTH 50°08'15" WEST 77.72 FEET; (10) SOUTH 32°02'05" EAST 1.29 FEET; (11) SOUTHERLY 34.27 FEET ALONG A 35.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF SOUTH 04°22'59" EAST 32.95 FEET; (12) SOUTHERLY 26.91 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°18'53" AND A LONG CHORD OF SOUTH 15°06'41" WEST 26.82 FEET; (13) SOUTHWESTERLY 31.61 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 51°00'41" AND A LONG CHORD OF SOUTH 32°27'35" WEST 30.57 FEET; (14) SOUTH 57°57'55" WEST 24.11 FEET; (15) SOUTHWESTERLY 21.44 FEET ALONG A 135.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°05'55" AND A LONG CHORD OF SOUTH 62°30'53" WEST 21.42 FEET; (16) SOUTH 67°03'50" WEST

52.01 FEET; (17) SOUTHWESTERLY 26.20 FEET ALONG A 165.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 09°05'55" AND A LONG CHORD OF SOUTH 62°30'53" WEST 26.17 FEET; AND (18) SOUTH 57°57'55" WEST 27.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,038,681 SQUARE FEET OR 138.629 ACRES.

SOUTH PARCEL:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20 ALL IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 40 PROJECT NO. F-019-1(1), SAID POINT BEING NORTH 0°08'37" WEST 687.06 FEET ALONG THE SECTION LINE AND EAST 659.19 FEET FROM THE 1999 WASATCH COUNTY SURVEY ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); THE PARCEL 2 DESCRIPTION AS RECORDED AS ENTRY NO. 396936 OF SAID RECORDS, WHICH SAID PARCEL 2 BEARINGS ARE ROTATED 0°01'39" COUNTERCLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE NORTH 32°00'02" WEST 748.34 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID STATE HIGHWAY 40 TO THE BOUNDARY LINE OF WASATCH COMMONS SUBDIVISION, SAID BOUNDARY ALSO BEING THE SOUTH RIGHT OF WAY LINE FOR COMMONS BOULEVARD; THENCE ALONG THE SAID SOUTH RIGHT OF WAY LINE AND BOUNDARY LINE NORTH 57°57'55" EAST 146.97 FEET; THENCE NORTHEASTERLY 33.19 FEET ALONG A 35.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 53°33'54" AND A LONG CHORD OF NORTH 84°44'52" EAST 31.99 FEET; THENCE SOUTHEASTERLY 31.12 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 18°52'06" AND A LONG CHORD OF SOUTH 77°54'14" EAST 30.98 FEET; THENCE SOUTHEASTERLY 34.27 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF SOUTH 59°41'11" EAST 32.95 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE FOR GREEN VALLEY ROAD; THENCE ALONG SAID RIGHT OF WAY LINE AND SAID BOUNDARY LINE SOUTH 32°02'05" EAST 10.00 FEET; THENCE NORTH 57°57'55" EAST 12.00 FEET; THENCE SOUTH 32°02'05" EAST 44.05 FEET; THENCE SOUTHEASTERLY 14.86 FEET ALONG A 153.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 5°33'55" AND A LONG CHORD OF SOUTH 34°49'02" EAST 14.86 FEET; THENCE SOUTH 37°36'00" EAST 36.75 FEET; THENCE SOUTHEASTERLY 59.80 FEET ALONG A 447.00 FEET RADIUS CURVE TO THE

RIGHT THROUGH A CENTRAL ANGLE OF 7°39'55" AND A LONG CHORD OF SOUTH 33°46'03" EAST 59.76 FEET; THENCE SOUTH 29°56'05" EAST 24.60 FEET; THENCE SOUTHEASTERLY 92.27 FEET ALONG A 2517.50 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 2°06'00" AND A LONG CHORD OF SOUTH 30°59'05" EAST 92.26 FEET; THENCE SOUTH 32°02'05" EAST 544.50 FEET; THENCE NORTH 89°59'12" WEST 270.18 FEET TO THE POINT OF BEGINNING.

CONTAINS 185,067 SQUARE FEET OR 4.249 ACRES

**Exhibit D
to
First Amendment
to
Development Agreement for Highlands Master Planned Community**

(Master Plan)

[See attached.]

Exhibit L
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

(NVOZ Specific Application Standards—Highlands Master Planned Community)

Article and Section references are to the General Provisions of the North Village Overlay District Code referenced in the 18.21.010 of the Zone:

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 4 Street Façade Requirements, is hereby amended to eliminate the last phrase of the first sentence (i.e., “including a parking lot”) and the second sentence in the introductory paragraph (i.e. 360-degree architecture is not required), provided, however, all facades facing a public or private right-of-way shall satisfy the “Blank Wall Limitations” set forth in sub-party (2) of sub-paragraph 4.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 5 Unique Architecture, is hereby amended to reduce the 400-foot distance to 120 feet for lots that are less than a quarter acre in size so long as there are at least 6 different building facades within such 120-foot distance on both sides of the street.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 2 Building Height, Sub-paragraph 2(d), is hereby amended to provide that the stated requirements only apply to adjacent buildings on the same side of the street and facing a public street and to indicate that the height variation requirements do not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.

Article 3.0 Buildings, Section 3.6 Townhouse Building, Sub-paragraph 2, Footnote 2, is hereby amended to eliminate the 3-building requirement and to impose a 50-foot average courtyard width requirement where the courtyard is non-linear; provided, in no event shall a non-linear courtyard be less than 30 feet in width at any location.

Article 3.0 Buildings, Section 3.9 Craftsman, Sub-paragraph 9, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.10 Farmhouse, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.11 Mountain Modern, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.6 Townhouse Building, Figure 3.6 (5), is hereby amended to require Townhouses facing common greens to have three-sided architecture with windows (but not a wrap-around porch), provided, where a townhouse faces another row of townhouses, the façade shall include architectural elements approved by the City planning staff that present a pleasing facade to the facing properties.

Table 3.4(1), Line a, is hereby amended to allow the City planning staff to reduce the “Front Property Line Coverage” percentage to accommodate site topography and to provide that access drives shall be excluded from the “Front Property Line Coverage” calculation.

Table 3.4(1), Line b, is hereby amended to allow the City planning staff to increase the “Front Build-to-Zone” requirements to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

Table 3.7(1), Line I, together with footnote 5, are hereby amended to allow the garage to be set back from the building Façade not less than 2 feet, measured from any floor of the building where one or more of the following design elements are incorporated into the design of the building or street face to reduce visual impact of the garage[s], as approved by the City’s planning department:

1. Utilize private streets to minimize City burden of plowing and parking enforcement.
2. Require multiple wall planes along the front face of each building Façade.
3. Require a window in each projecting wall plane of the building Façade.
4. Require a 2-foot projection beyond the garage face on the second story of the building.
5. Require alternating (a.k.a. flipped) floor plans from lot to lot to maximize on-street parking.

6. Require differing lot sizes to maximize on-street parking and enhance the feel or architectural mix.
7. Require front door to face the street.
8. Require a covered porch.
9. Require supportive pillars in front of the garage face.

Table 4.2(1), Line I, Maximum Block Perimeter, together with footnote 1, are hereby amended to indicate that block perimeters may be increased by the City's planning department by more than 20% to accommodate the topography of the site, and to allow for increased maximum block perimeters where internal parking lots, pathways, and private access drives are proposed to achieve pedestrian connectivity.

Exhibit M
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

Parcel 1:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 1307.75 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 1717.20 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); AND RUNNING THENCE NORTH 21°24'08" EAST 258.16 FEET; THENCE SOUTH 70°03'55" EAST 252.30 FEET; THENCE SOUTH 26°05'49" EAST 172.53 FEET TO A POINT ON THE NORTH LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; THENCE NORTH 89°54'54" WEST 407.29 FEET ALONG THE NORTH LINE OF SAID PROPOSED HIGHLANDS DEVELOPMENT TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 64,087 SQUARE FEET, OR 1.471 ACRES

Parcel 3:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 512.50 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 2641.36 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); AND RUNNING THENCE SOUTH 50°47'07" EAST 630.14 FEET; THENCE SOUTH 39°12'53" WEST 160.00 FEET; THENCE SOUTH 48°47'41" WEST 209.84 FEET;

THENCE SOUTH 47°21'15" WEST 58.64 FEET; THENCE SOUTH 11°49'56" EAST 40.21 FEET; THENCE SOUTH 49°46'59" WEST 126.86 FEET; THENCE SOUTH 59°43'42" WEST 112.86 FEET TO A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; THENCE NORTH 0°0'09" EAST 878.48 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 224,569 SQUARE FEET, OR 5.155 ACRE

Note: The above-referenced Parcels 1 and 3 are depicted on Highlands Residential Land Swap Exhibit, a copy of which is attached to Exhibit N.

Exhibit N
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

PARCEL 2:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 512.50 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 2641.36 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); SAID POINT OF BEGINNING ALSO BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF A PROPOSED COLLECTOR ROAD; AND RUNNING THENCE NORTHERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING FIVE (5) COURSES & DISTANCES; (1) NORTH 50°47'07" WEST 49.30 FEET TO A POINT OF CURVATURE; (2) NORTHWESTERLY 96.86 FEET ALONG THE ARC OF A 384.00 FOOT RADIUS CURVE TO THE RIGHT; CHORD BEARS NORTH 43°33'32" WEST 96.60 FEET; (3) NORTH 36°19'58" WEST 219.31 FEET TO A POINT OF CURVATURE; (4) NORTHWESTERLY 109.47 FEET ALONG THE ARC OF A 384.00 FOOT RADIUS CURVE TO THE RIGHT; CHORD BEARS NORTH 28°09'56" WEST 109.10 FEET; (5) NORTH 19°59'55" WEST 438.90 FEET; THENCE SOUTH 89°54'54" EAST 436.34 FEET; THENCE SOUTH 00°00'09" WEST 785.83 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 209,989 SQUARE FEET, OR 4.820 ACRES

Note: The above-referenced Parcels 2 is depicted on Highlands Residential Land Swap Exhibit, a copy of which is attached to this Exhibit N.

SINGLE FAMILY LOTS	39	16	-23	198	213	15
TOWNHOUSE UNITS	178	98	-80	491	353	-138
STACKED FLAT UNITS	0	224	224	120	235	115
TOTAL UNITS	217	338	121	809	801	-8
TOTAL ERUs	230	212	-18	558	579	21



JORDANELLE RIDGE

PREPARED FOR: **RAINTREE**

DATE SUBMITTED: 7/11/2023

unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.



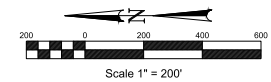
HIGHLANDS-CONCEPTUAL MASTER PLAN-V11B

DEVELOPMENT SUMMARY

TOTAL SITE ACREAGE = 114.458 AC.

DR HORTON	UNITS	ERUs/UNIT	ERUs
SINGLE FAMILY RESIDENTIAL ALTA LOTS (40.5x93)	111	0.75	83.25
SINGLE FAMILY RESIDENTIAL COTTAGE LOTS (46.5x93)	96	1.0	96.0
STACKED FLATS	235	N/A	104.6
TOWNHOMES - OLIVER	89	1.0	89.0
TOWNHOMES - MILLBROOK	119	0.75	89.25
TOWNHOMES - DALTON	156	0.75	117.0
TOTAL UNITS = 806		TOTAL ERUs = 579	

EDITED 10/19/2023



HIGHLANDS
HEBER CITY, UT
PROPOSED BASE V11B

231 West 800 South Salt Lake City Utah 84101
Ward Engineering Group
Planning • Engineering • Surveying
PH: 801.487.8040

CLIENT: DR. HORTON
DWG: 2023-10-19 HIGHLANDS PROPOSED
JOB NO: 3591-DRH01-22
DATE: 10/19/2023

DRAWN BY: WARD
DESIGNED BY: WARD
CHECKED BY: AJS
DATE: 10/19/2023

REVISIONS

SHEET
EX-01

North Village Overlay Zone



NVOZ CHAPTER 18.21

PURPOSE:

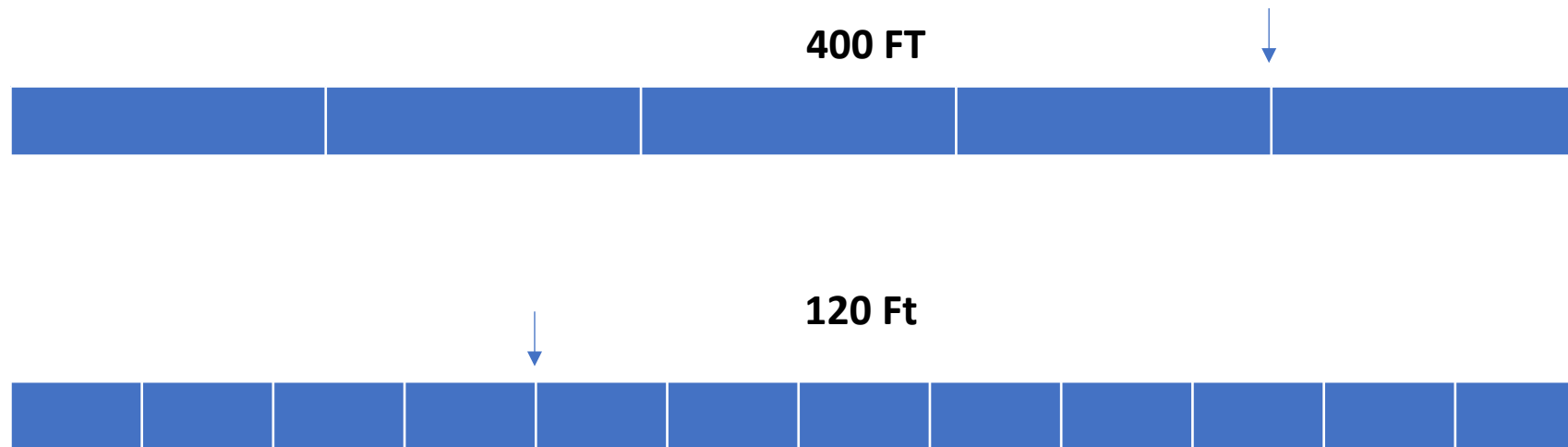
- DR Horton is requesting changes to the Development Agreement due to topographic conditions and proposed site grading that preclude our ability to comply with some of the NVOZ design standards.
- DR Horton is also seeking clarification regarding urban design principles contained in the current code and how to correctly apply them within the master plan in the following amendment principles.

NVOZ CHAPTER 18.21

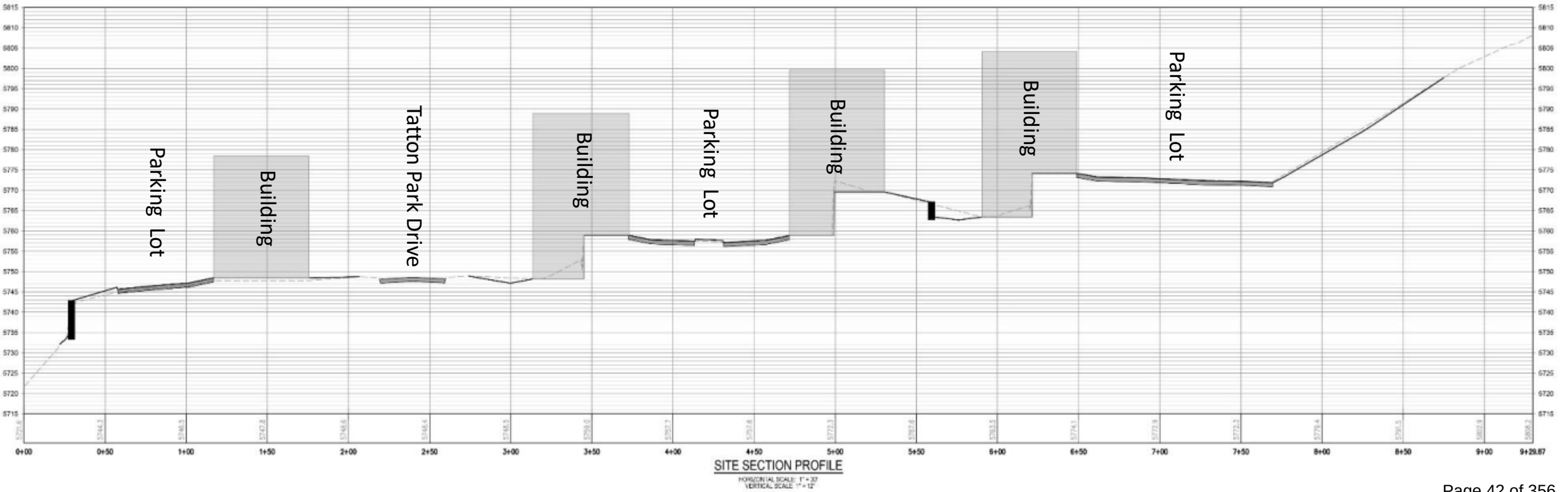
Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 4 Street Façade Requirements, is hereby amended to eliminate the last phrase of the first sentence (i.e., “including a parking lot”) and the second sentence in the introductory paragraph (i.e. 360-degree architecture is not required), provided, however, all facades facing a public or private right-of-way shall satisfy the “Blank Wall Limitations” set forth in sub-party (2) of sub-paragraph 4.

Staff commentary - 360-degree architecture conflicts with other sections of the NVOZ and within the same paragraph. The purpose of the 360-degree architecture is to ensure that there are not blank walls along the street frontages. The proposed products do not have blank walls. Staff will work with the applicant to ensure that the intent of the code is met.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 5 Unique Architecture, is hereby amended to reduce the 400-foot distance to 120 feet for lots that are less than a quarter acre in size so long as there are at least 6 different building facades within such 120-foot distance on both sides of the street.



Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 2 Building Height, Sub-paragraph 2(d), is hereby amended to provide that the stated requirements only apply to adjacent buildings on the same side of the street and facing a public street and to indicate that the height variation requirements do not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.



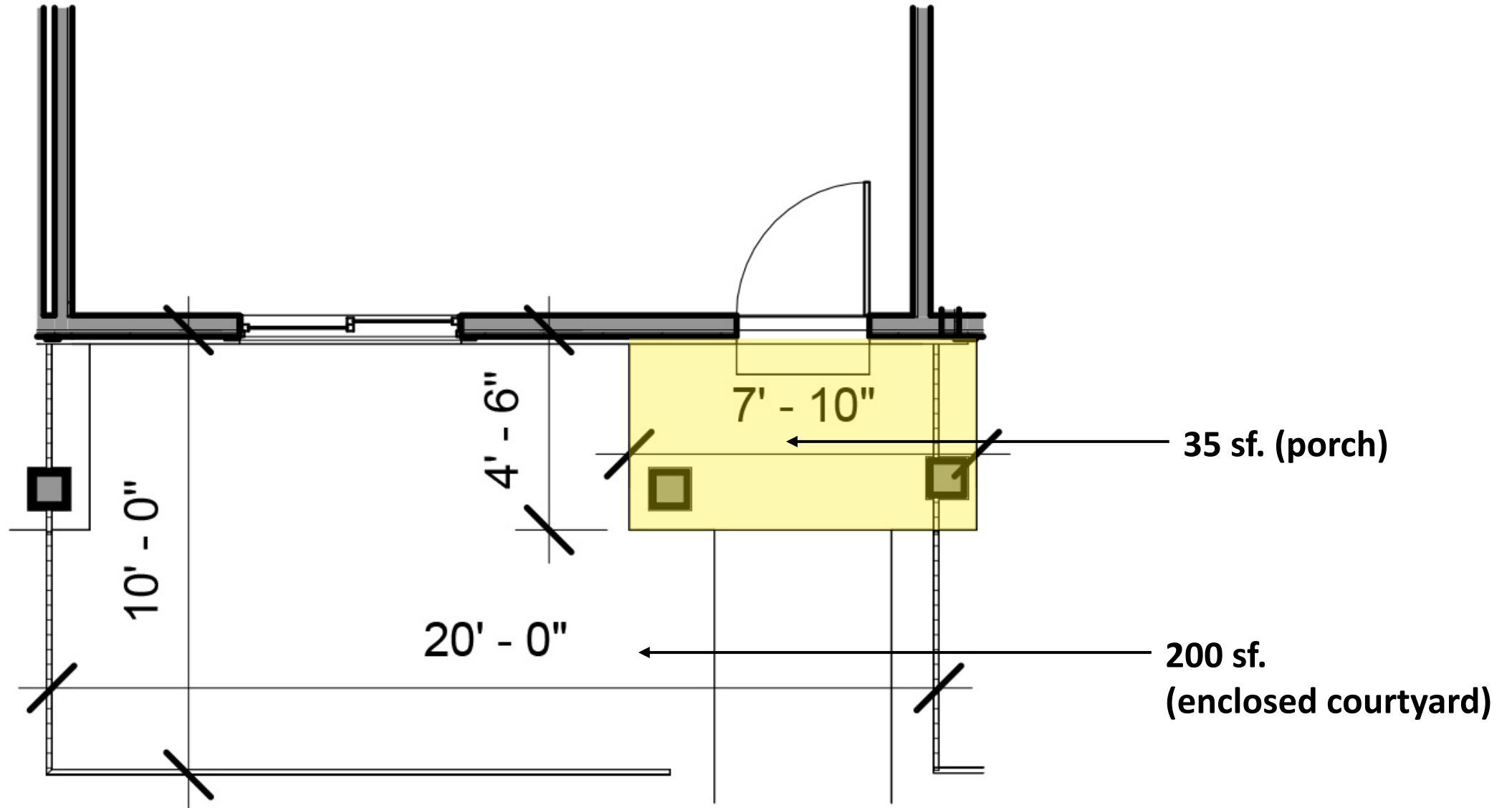
Article 3.0 Buildings, Section 3.6 Townhouse Building, Sub-paragraph 2, Footnote 2, is hereby amended to eliminate the 3-building requirement and to impose a 50-foot average courtyard width requirement where the courtyard is non-linear; provided, in no event shall a non-linear courtyard be less than 30 feet in width at any location.



Article 3.0 Buildings, Section 3.9 Craftsman, Sub-paragraph 9, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.10 Farmhouse, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.11 Mountain Modern, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.



Article 3.0 Buildings, Section 3.6 Townhouse Building, Figure 3.6 (5), is hereby amended to require Townhouses facing common greens to have three-sided architecture with windows (but not a wrap-around porch), provided, where a townhouse faces another row of townhouses, the façade shall include architectural elements approved by the City planning staff that present a pleasing facade to the facing properties.

Avoid “orphaned porches” on the end units by requiring them to be oriented to the street

The courtyard becomes the primary pedestrian space (not the street)

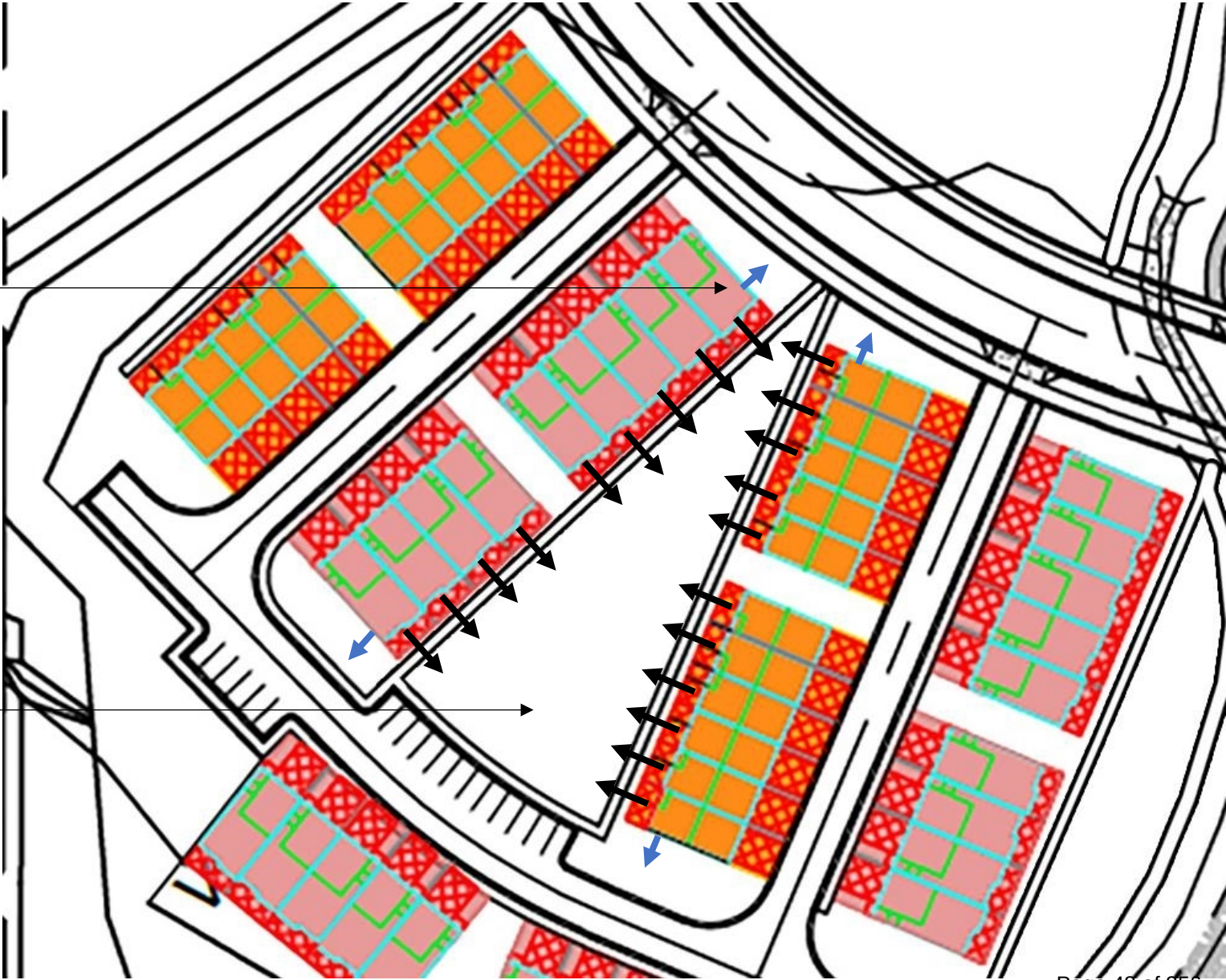


Table 3.4(1), Line a, is hereby amended to allow the City planning staff to reduce the “Front Property Line Coverage” percentage to accommodate site topography and to provide that access drives shall be excluded from the “Front Property Line Coverage” calculation.

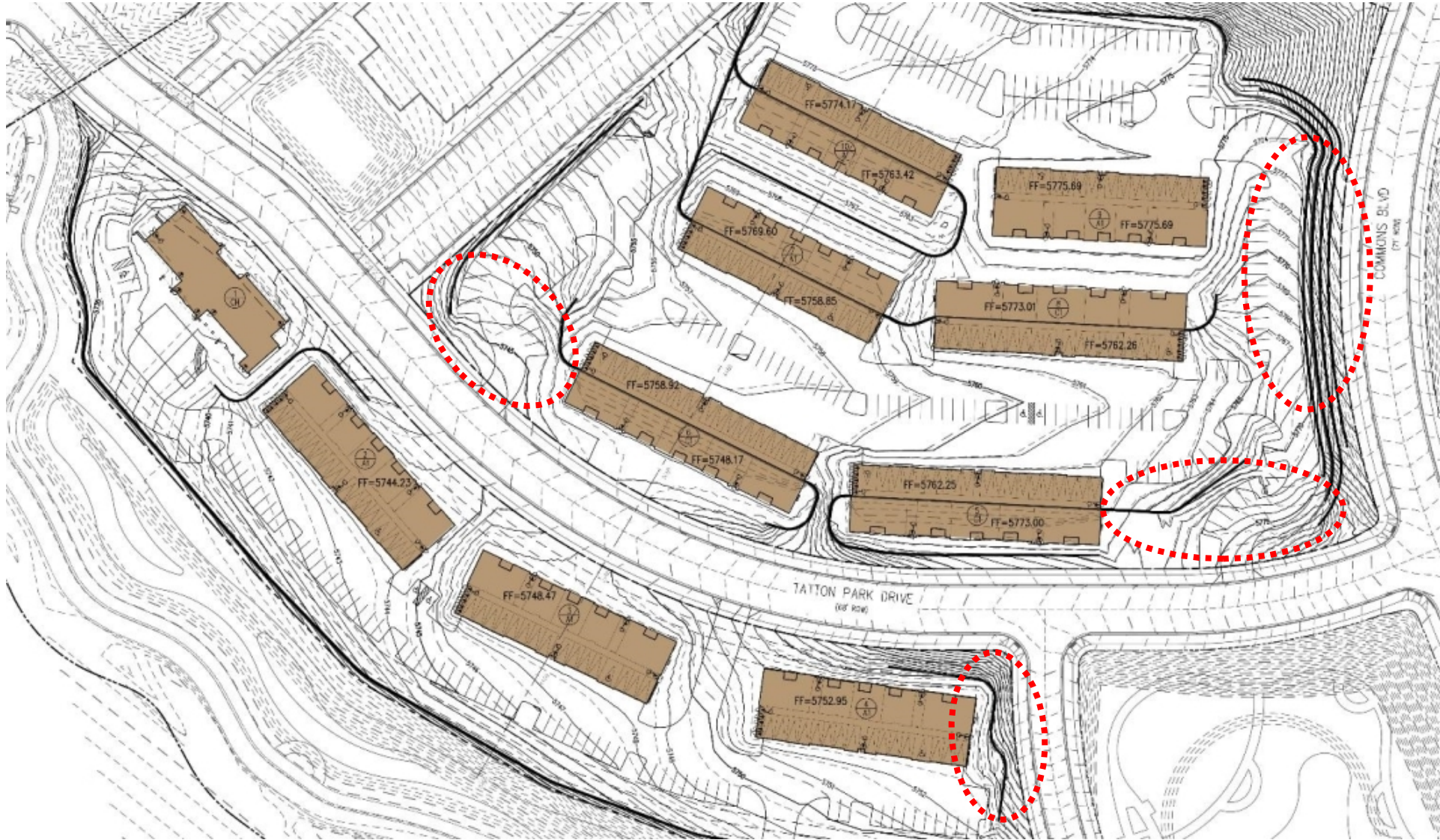


Table 3.4(1), Line b, is hereby amended to allow the City planning staff to increase the “Front Build-to-Zone” requirements to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

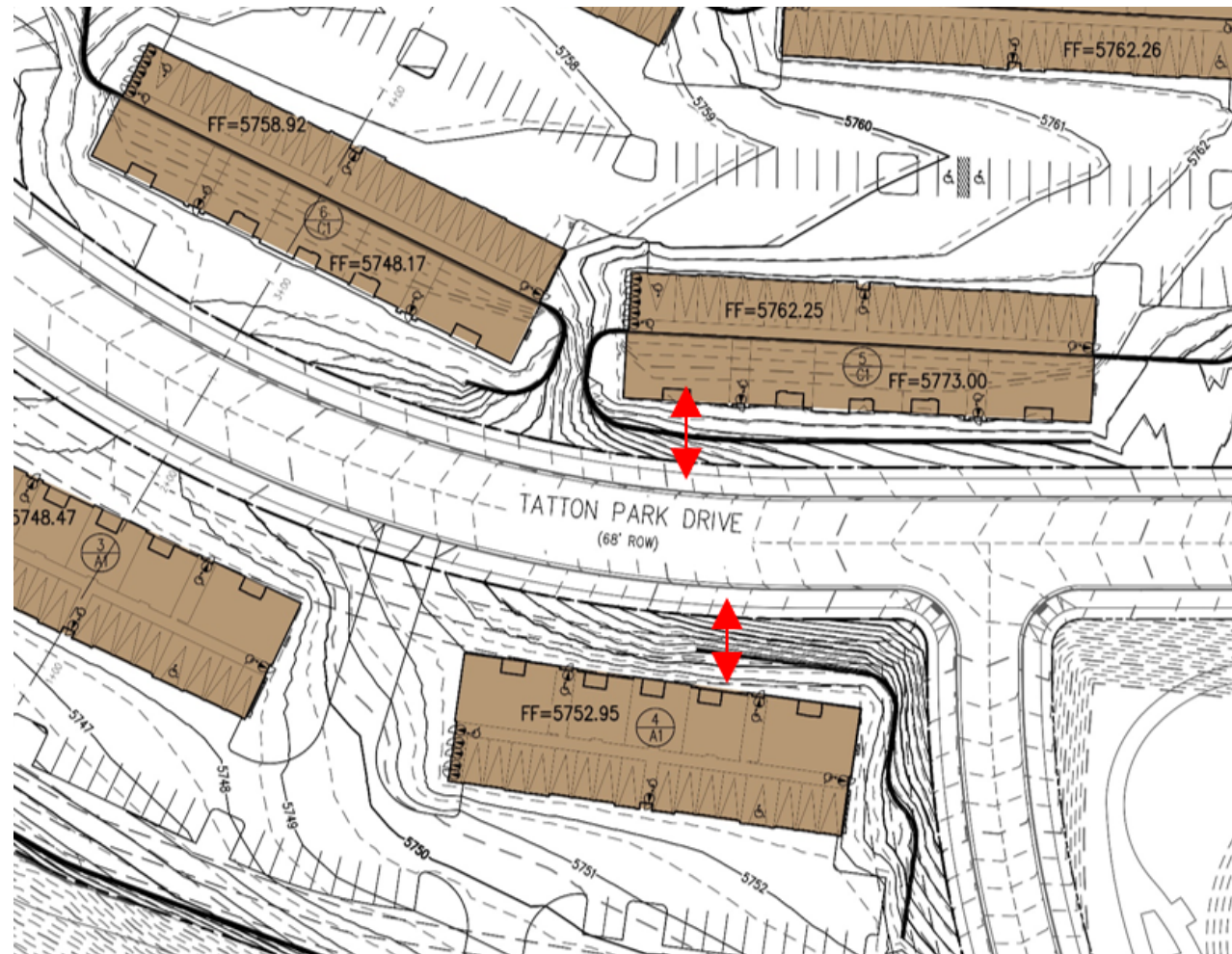


Table 3.7(1), Line I, together with footnote 5, are hereby amended to allow the garage to be set back from the building Façade not less than 2 feet, measured from any floor of the building where other design elements are incorporated into the design of the building to reduce visual impact of the garage and such additional design elements are approved by the City's planning department.

Snout Garages on Narrow Frontage

1. Aesthetics
 - a. Garages aren't attractive building faces
 - b. Interesting wall features of home can't be seen
2. Functionality
 - a. Snow Plowing: Driveways take up most of street frontage
 - b. Parking: Driveways take up most of street frontage
3. Safety:
 - a. Eyes on the Street: Can't see the street from living space

Solutions to Snout Garages

1. Rear yard garages
 - a. Topography limitations
 - b. Desire to differentiate between townhomes and single family
2. Wider lots
 - a. Balance with affordability
3. Home design: de-emphasize garage
 - a. Living space in front of garage
 - b. Windows facing the street
 - c. Doors facing the street
 - d. Differing architecture from home to home
4. Maintenance of streets for narrow lots
 - a. Use private streets to ease public burden of plowing and parking

Recommendations

1. Utilize private streets to minimize burden of plowing and parking enforcement
2. Require multiple wall planes along the front face
3. Require a window in each projecting wall plane
4. Require a 2-foot projection beyond garage face on second story
5. Require alternating (aka flipped) floor plans from lot to lot to maximize on-street parking
6. Require differing lot sizes to maximize on-street parking and mix the architecture
7. Require front door to face the street
8. Require a covered porch
9. Require supportive pillars in front of the garage face

CODE INTENT: WHAT TO AVOID



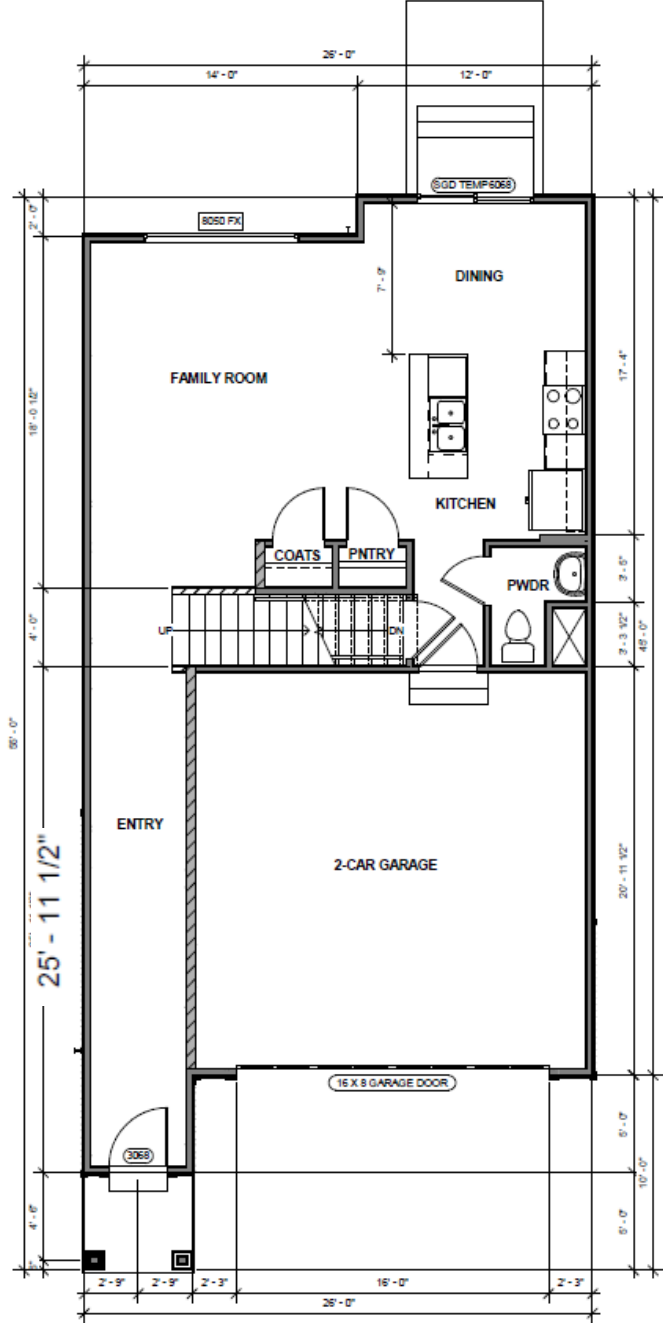
CODE INTENT: WHAT TO AVOID



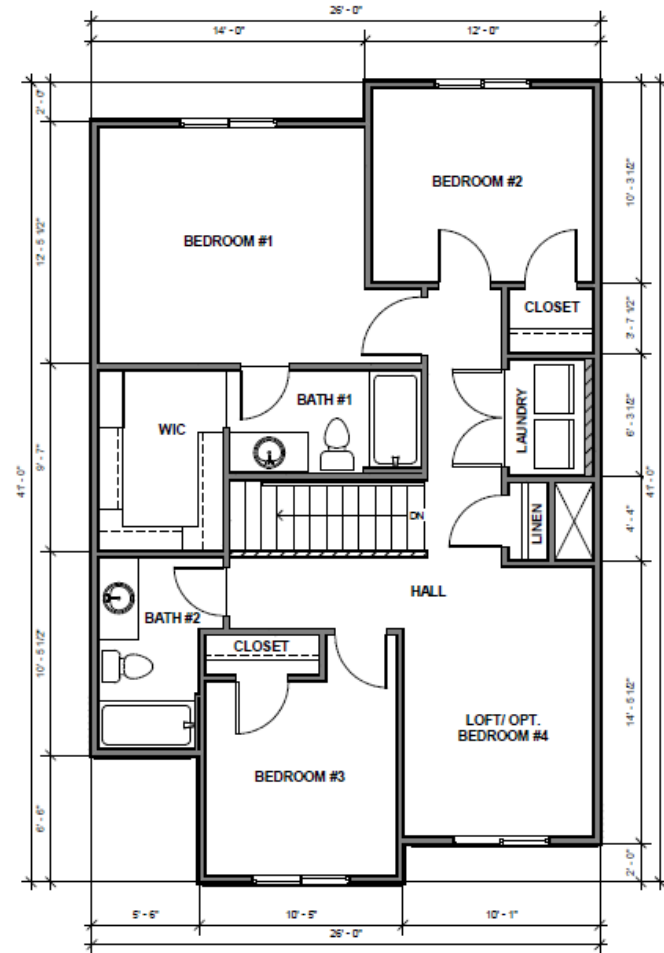
CODE INTENT: WHAT TO AVOID



CURRENT CODE REQUIREMENT

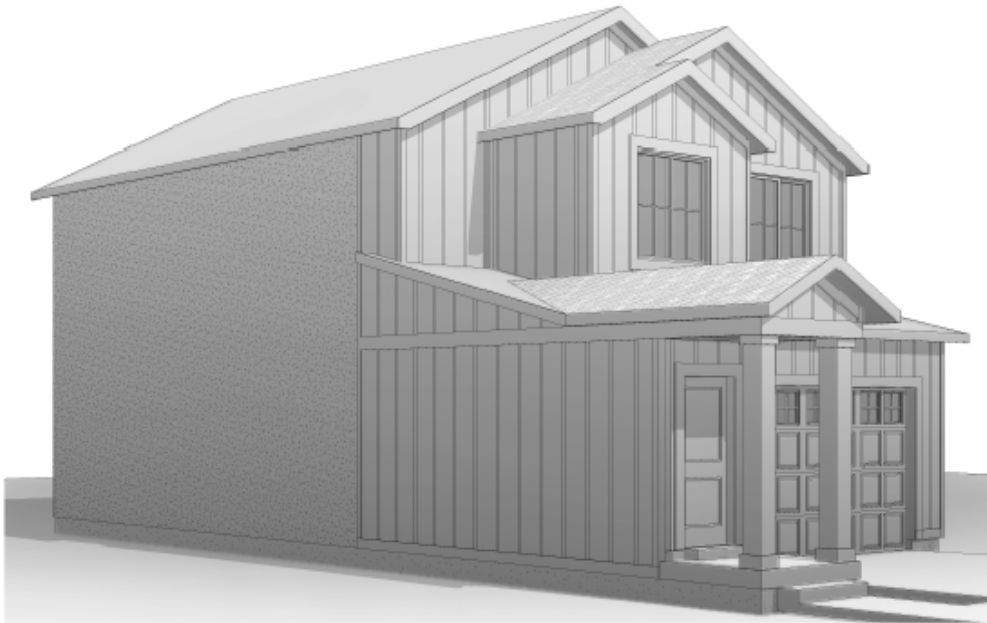


② DD FIRST FLOOR PLAN
1/4" = 1'-0"

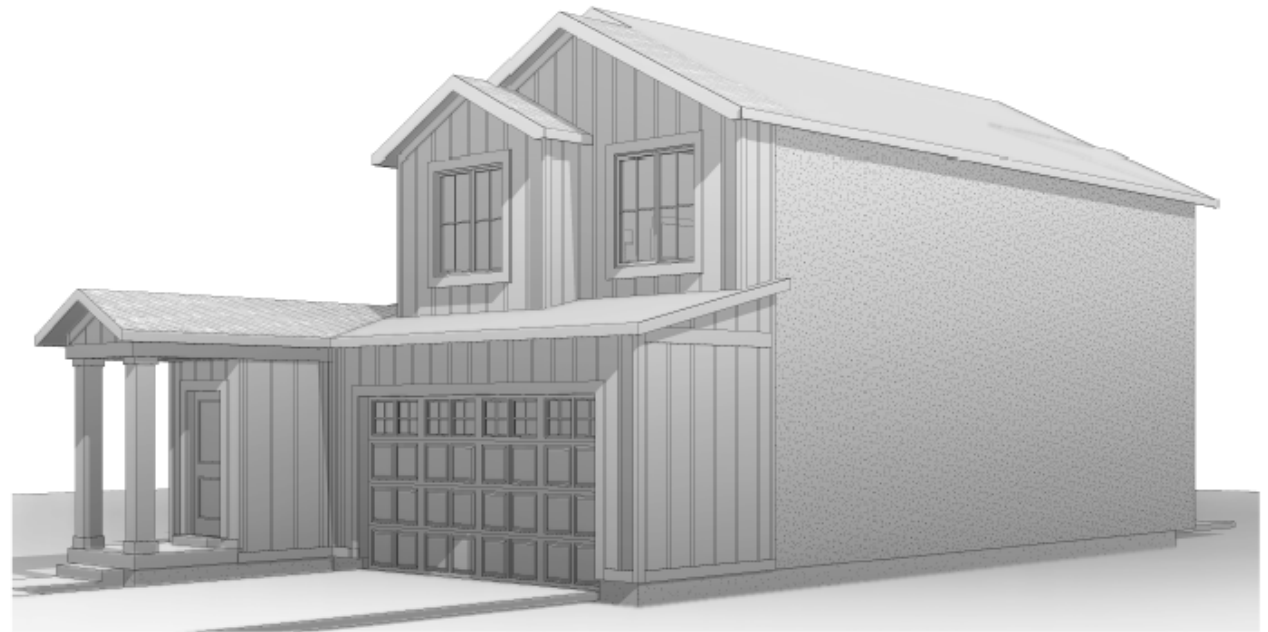


③ DD SECOND FLOOR PLAN
1/4" = 1'-0"

CURRENT CODE REQUIREMENT



① FA - FRONT LEFT 3D VIEW



② FA - FRONT RIGHT 3D VIEW

CURRENT

Garage door remains most dominant visual plane

Awkward 5' architectural appendage for front door



Porch feels exposed

Increased square footage is contained in a corridor

PROPOSED

Garage door becomes a subservient visual plane

Second story 2' cantilever massing with columns becomes focal point



Porch feels enclosed

Increased square footage is contained in a bedroom

PROPOSED SOLUTION



PROPOSED SOLUTION



PROPOSED SOLUTION



PROPOSED SOLUTION



Table 4.2(1), Line I, Maximum Block Perimeter, together with footnote 1, are hereby amended to indicate that block perimeters may be increased by the City's planning department by more than 20% to accommodate the topography of the site, and to allow for increased maximum block perimeters where internal parking lots, pathways, and private access drives are proposed to achieve pedestrian connectivity.



HIGHLANDS

CREEKSIDE AT HIGHLANDS

Master Plan Amendment

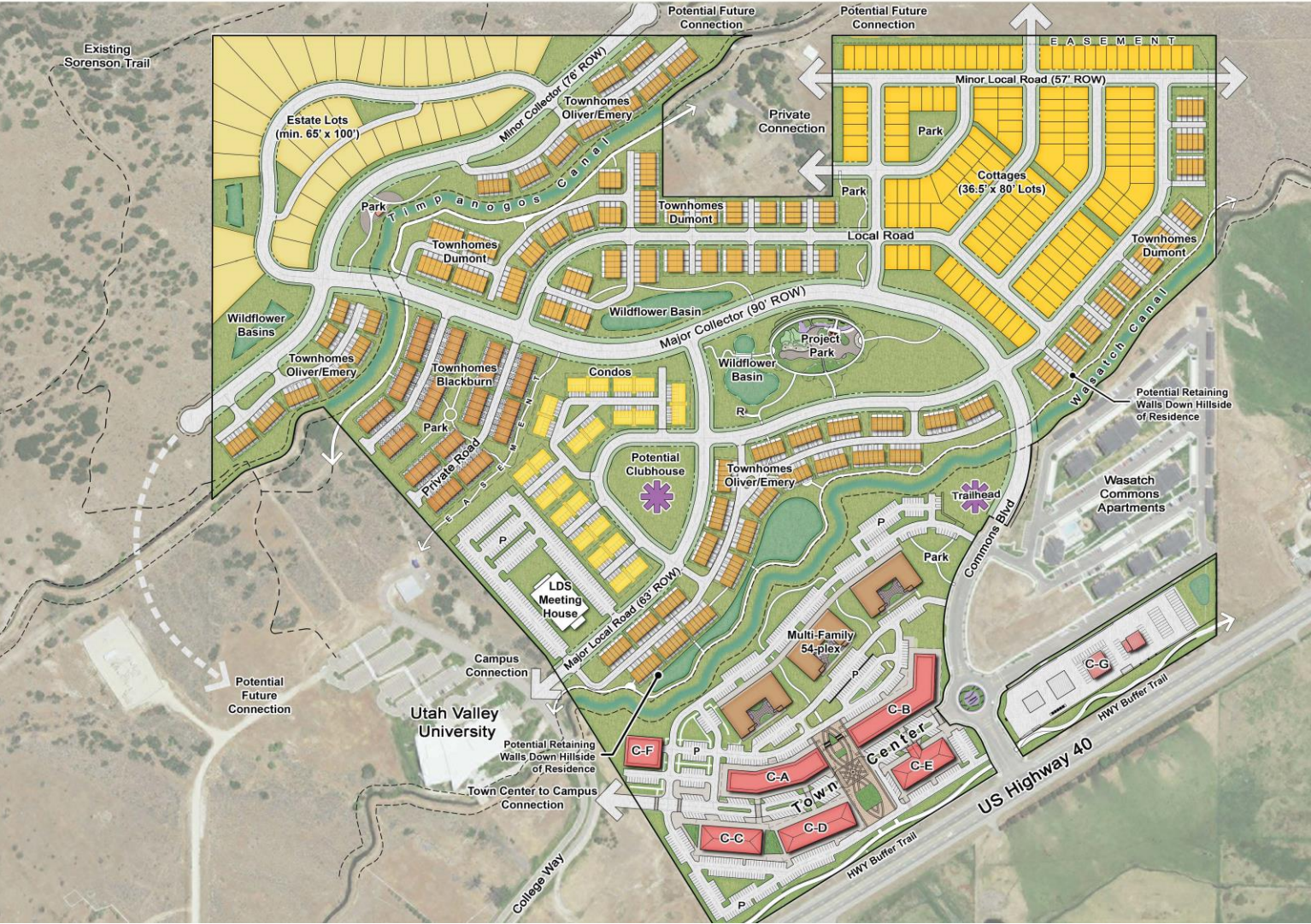
DATE: Tuesday September 20, 2022



HIGHLANDS
ORIGINAL MASTER PLAN

Open Space Required = 43.47 ac
(For Illustrative Purposes Only. Acreages are approximate and subject to change. Master Development Agreement (MDA), Final Plat and NVOZ shall prevail)

737 TOTAL ERU ALLOWED
670 + 67 (10% Affordable Housing Credit)



DEVELOPMENT SUMMARY

Total Site Acreage = 142.88 ac.

Total ERU's = 736.15 Total ERU Allowed = 737

DR Horton Product - 809 Units (557.75 ERU's)

- Estate Lots (>1600 sf) = 35 Units
- Cottages (<1,600 sf) = 163 Units
- Condos (<1200 sf) = 10 Plex x 12 Bldg = 120 Units
- Townhome - Dumont (1174 sf) = 189 Units
- Townhome - Blackburn (1485 sf) = 75 Units
- Townhome - Oliver / Emery = 227 Total Units
 - Oliver (1899 sf) = 78 Units
 - Emery (1406 sf) = 149 Units

Town Center Product - 310 Units (178.4 ERU's)

- Multi-Family - 54 Plex; 3 Stories
3 Buildings = 162 Units
- Commercial / Mixed-Use (A): 4 Stories
 - Retail (1st Floor): 23,500 sf
 - Residential (2 Floors): 51 Units
 - Total: 94,000 sf
- Commercial / Mixed-Use (B): 4 Stories
 - Retail (1st Floor): 28,500 sf
 - Residential (2 Floors): 57 Units
 - Total: 114,000 sf
- Commercial / Mixed-Use (C): 1 Story
 - Retail (Grocery): 16,000 sf
 - Total: 16,000 sf
- Commercial / Mixed-Use (D): 3 Stories
 - Retail (1st Floor): 20,000 sf
 - Residential (2 Floors): 40 Units
 - Total: 60,000 sf
- Commercial / Mixed-Use (E): 4 Stories
 - Hotel (4 Floors): 80 Keys
 - Total: 64,000 sf *
- Commercial (F): 3 Stories + Basement
 - Storage Unit (4 Floors): 12,000 sf EA
 - Total: 48,000 sf*
- Commercial (G)
 - Retail: 8,000 sf

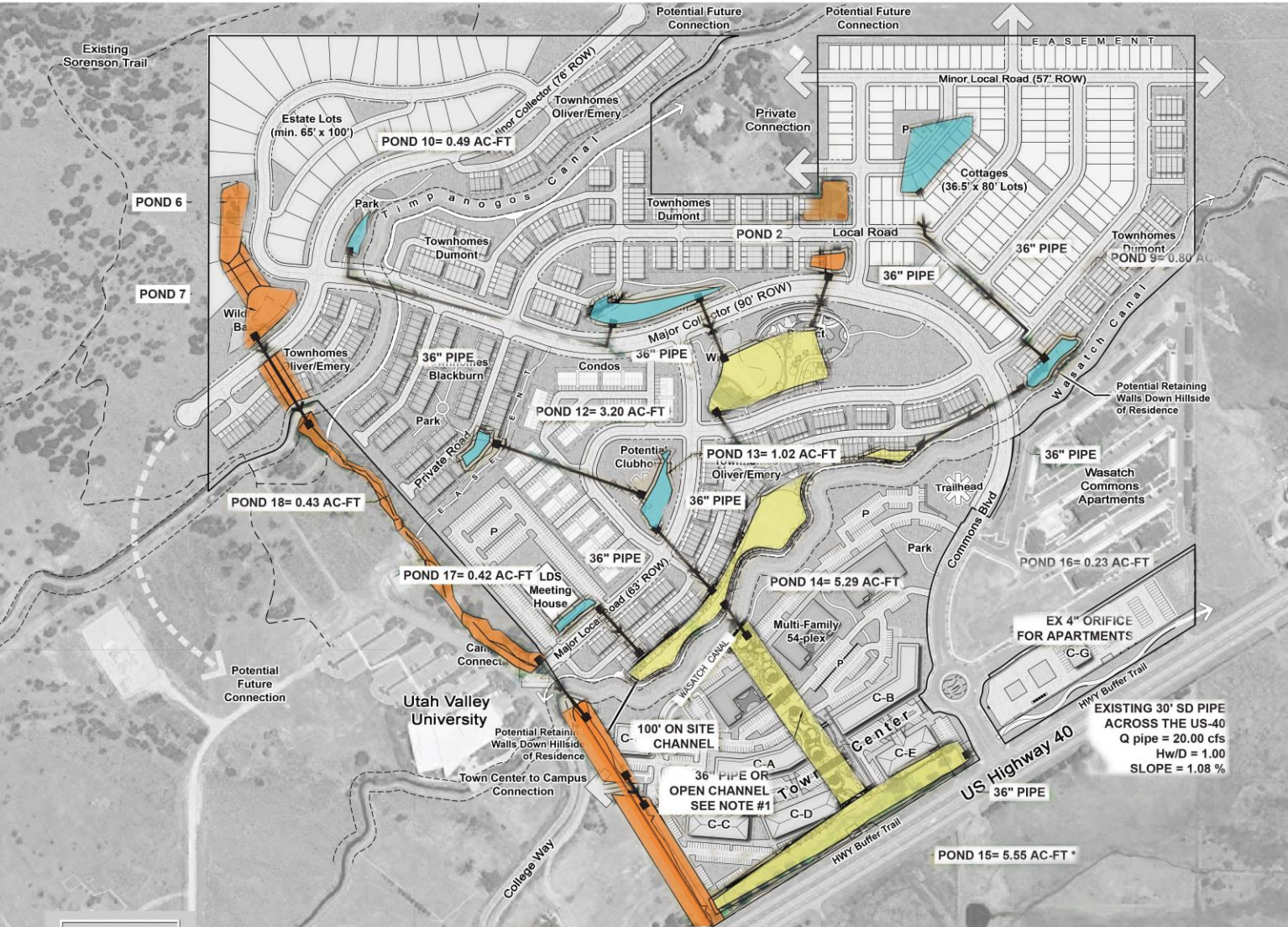
Required Open Space = 43.47 ac

TOTAL COMM / MIXED-USE = 96,000 SF
(*Hotel not included in total)

TOTAL UNITS = 1,119
Market Rate = 1,007
Affordable (10%) = 112
(Student Housing Applies)

NOTE: P=PARKING R=RESTROOM

HIGHLANDS
ORIGINAL MASTER PLAN
ONSITE DRAINAGE OVERLAY



DEVELOPMENT SUMMARY

Total Site Acreage = 142.88 ac.

Total ERU's = 736.15 Total ERU Allowed = 737

DR Horton Product - 809 Units (557.75 ERU's)

- Estate Lots (>1600 sf) = 35 Units
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 - Hotel (4 Floors): 80 Keys
 - Total: 64,000 sf *
- Commercial (F): 3 Stories + Basement
 - Storage Unit (4 Floors): 12,000 sf EA
 - Total: 48,000 sf *
- Commercial (G)
 - Retail: 8,000 sf

Required Open Space = 43.47 ac

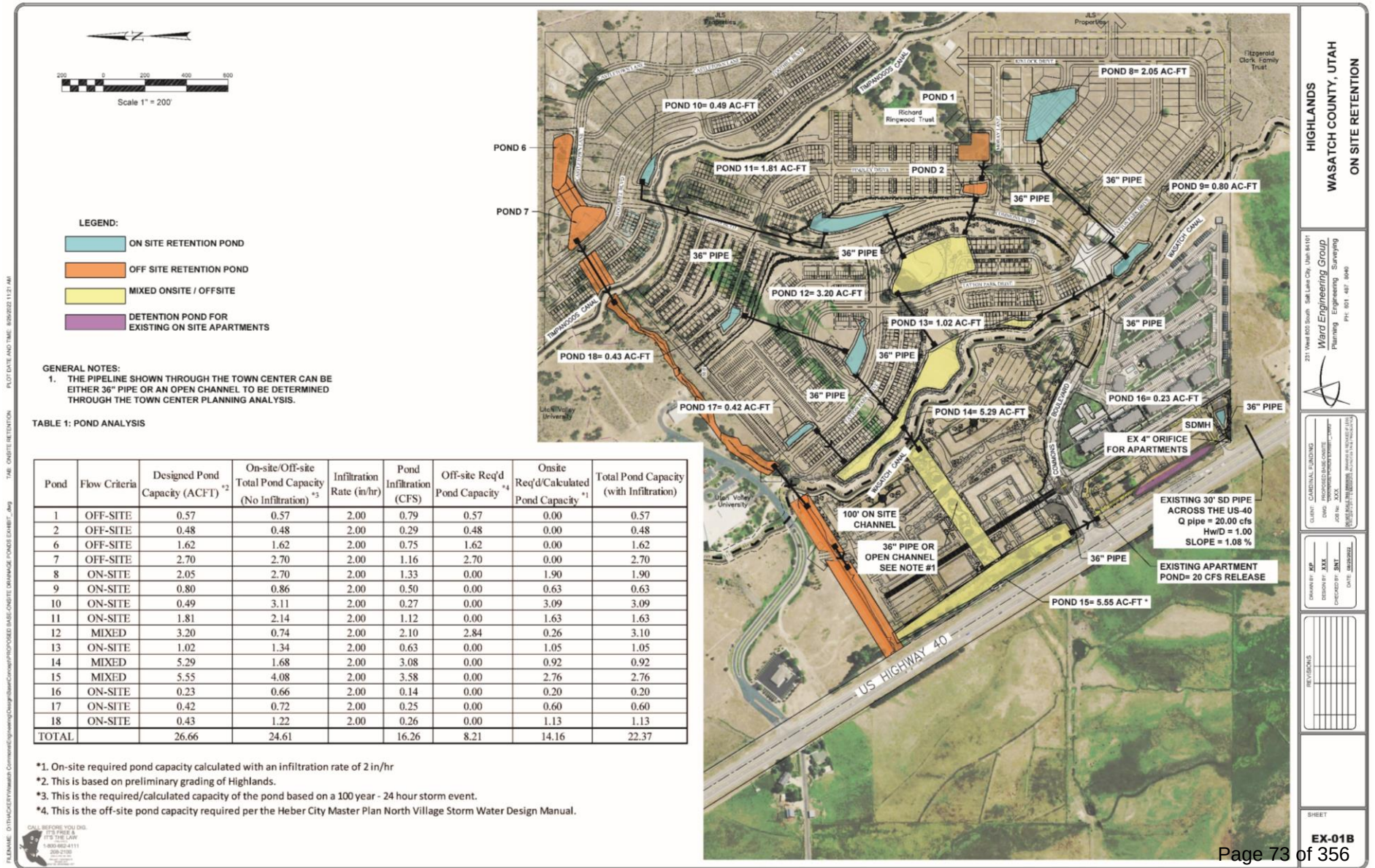
TOTAL COMM / MIXED-USE = 96,000 SF
(*Hotel not included in total)

TOTAL UNITS = 1,119
Market Rate = 1,007
Affordable (10%) = 112
(Student Housing Applies)

NOTE: P=PARKING R=RESTROOM

* For Illustrative Purposes Only

HIGHLANDS
ONSITE DRAINAGE PLAN



HIGHLANDS
WASATCH COUNTY, UTAH
ON SITE RETENTION

231 West 200 South, Salt Lake City, Utah 84101
Ward Engineering Group
Planning Engineering Surveying
PR: 801 481 1640

CLIENT: CARDINAL FUNDING
DESIGN: PROPOSED BASE CEMENT
JOB NO: 2008
DATE: 08/20/2008

DRAWN BY: JF
DESIGNED BY: JF
CHECKED BY: JF
DATE: 08/20/2008

REVISIONS

NO.	DESCRIPTION	DATE

SHEET

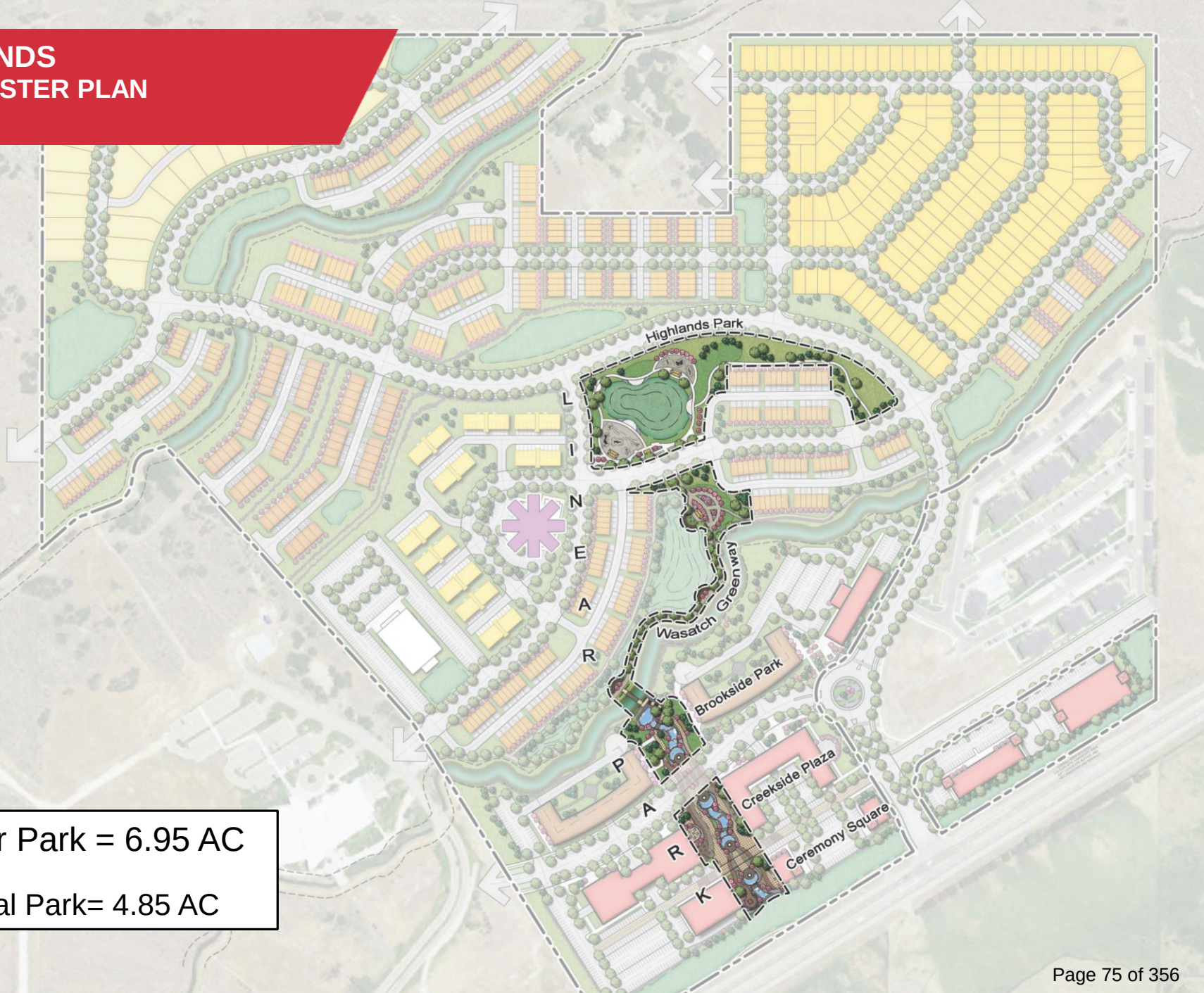
EX-01B

HIGHLANDS

MASTER PLAN AMENDMENT



HIGHLANDS
PARK MASTER PLAN



Linear Park = 6.95 AC
Original Park= 4.85 AC

HIGHLANDS LINEAR PARK RENDERING



HIGHLANDS LINEAR PARK ENLARGEMENT



HIGHLANDS

LINEAR PARK – 5 PARK ELEMENTS

Linear Park

- **6.95 acres of the required 43.47** acres per the Master Development Agreement. Original Neighborhood Park = 4.85 acres
- Pursuant to the standards outlined in *Section 5.0 Parks, Trails & Natural Lands Preservation* of the NVOZ
- **Exact layout of following elements is subject to change.**

Highlands Park

- Adventure Park (6-10 years old)
- Tot Lot (2-6 years old)
- Active Lawn Play
- Restrooms
- Pavilions
- Wildflower, Butterfly, & Hummingbird Basins
- Overlooks with Interpretive/Informational Signage
- Trailhead

Wasatch Greenway

- Trailhead(s)
- Water Filling Stations
- Crusher Fines Trail
- Arbors
- Reading Nooks
- Sensory/Music Gardens
- Pavilion

Brookside Park

- Water Wall
- Pedestrian Bridge
- Shade Shelter
- Cascading Water Feature w/ Check Dams
- Overlook Platform
- Sculptures
- Passive Lawn Area
- Landscape Steps
- Specialty Paving

Creekside Plaza

- Cascading Water Features w/ Check Dams
- Overlook Platform
- Specialty Paving
- Sculptures
- Pedestrian Bridges
- Plaza
- Ample Seating and Gathering Space

Ceremony Plaza

- Flagpoles
- Monument Signs
- Cascading Water Features w/ Check Dams
- Overlook Platform
- Specialty Paving
- Sculptures
- Pedestrian Bridges
- Plaza
- Waterfall

HIGHLANDS

NVOZ BASIC AMENITY LIST

PARK AND OPEN SPACE AMENITIES	
BASIC AMENITY	REQUIREMENTS
Park Bench	1 per 1/4 mile of paved or gravel trail, 4 per first 1/2 acre and 2 additional per acre for Urban Gathering Places, Local, and larger parks
Water Stations	Minimum 1 per Urban Gathering Places, 1 per park amenity node (pavillions, bath-rooms, etc.) for larger parks
Pavilion	Minimum one per Plaza, Square, Local Parks (15 person size), 2 per 3 acres of park for Neighborhood/Community Parks (30 person)
Playground	Minimum one per Local and 1 per 10 acres for larger parks
Picnic Area	Minimum 1 per Local and larger parks, Minimum 4 tables, 2 barbeques, shade, hard surfacing
Restrooms	1 per Neighborhood and larger parks (interior & exterior lighting)
Amenity Options	
Baseball Field	1 baseball field
Softball Field	1 softball field
Passive Lawn	Well graded 1/2 acre of turf grass lawn with 5-10 large park trees per acre
Sports field	1 multi sport field (soccer lacrosse, rugby, etc)
Tennis courts	2 Tennis Courts
Pickleball courts	4 Pickleball Courts
Outdoor Basketball	1 Outdoor Concrete Basketball Court
Outdoor Pool	1 Outdoor Pool
Rec Center	1 Recreation Center
Community Center	1 Community Center
Trail Options	
Trail Head	See Parks and Trails Master Plan for standards
Fitness system nodes	1 Trailhead Sign and 10 Parking Stalls, 1 water station to include equestrian water access.
On Trail Sign	1 per 1/4 mile includes a combination of physical/active stations and activity signs
	Trail directional sign at all trail intersections

Table 5.1 (1). Area Park Open Space Requirements by Sub-District

Qualifying Uses for Parks and Open Space		
Use	Meets Park Requirements	Meets Open Space Requirements
Trails within Parks	Yes	Yes
Trails in Open Space	No	Yes
Ball Courts	Yes	Yes
Farm or Agricultural Lands	No	Yes
Stormwater for Parks ^a	Yes	Yes
Stormwater for Development ^a	No	Yes
Stormwater in Common Areas ^a	No	Yes
Parking for Parks	Yes	Yes
Plazas, Courtyard, Park	Yes	Yes
Pocket Park, Community Park	Yes	Yes
Landscape around Private Buildings	No	Yes See #14
Recreation Center Buildings	Yes	Yes
Agriculture Buildings	No	No
Rooftop Gardens ^b	Partial	Partial
Playgrounds	Yes	Yes
Common Areas for Developments	Yes	Yes
Amphitheater	Yes	Yes
Sports fields	Yes	Yes
Community pools & pool areas	Yes	Yes
Sensitive Lands Preserved ^c	Yes	Yes
Recreation Center	Yes	Yes

Note: For illustrative purposes only. Final design is subject to change.

HIGHLANDS
CREEKSIDE ENLARGEMENT



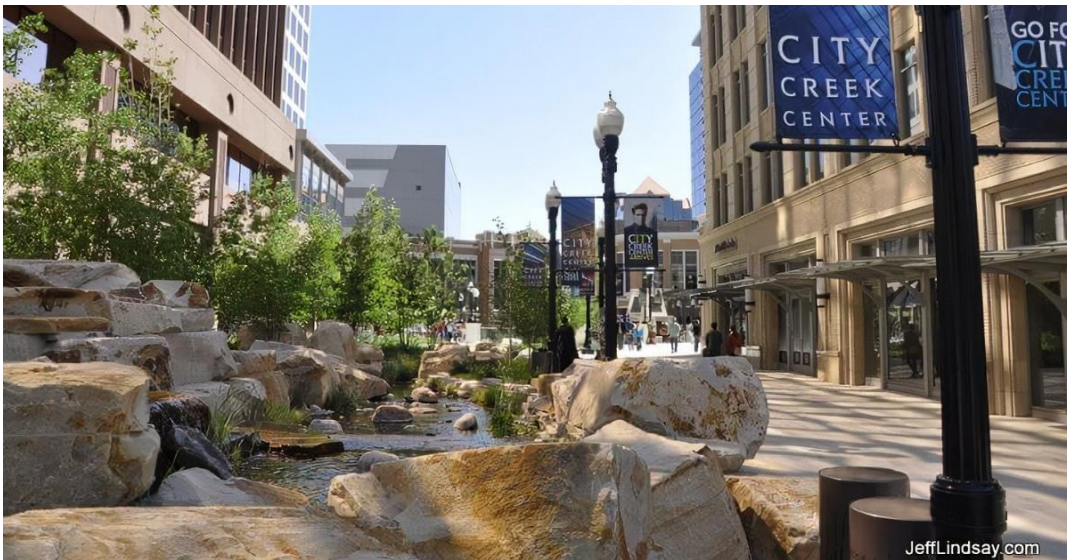
HIGHLANDS
TOWN CENTER ENLARGEMENT



HIGHLANDS TOWN CENTER SECTION



HIGHLANDS
PEDESTRIAN PLAZAS



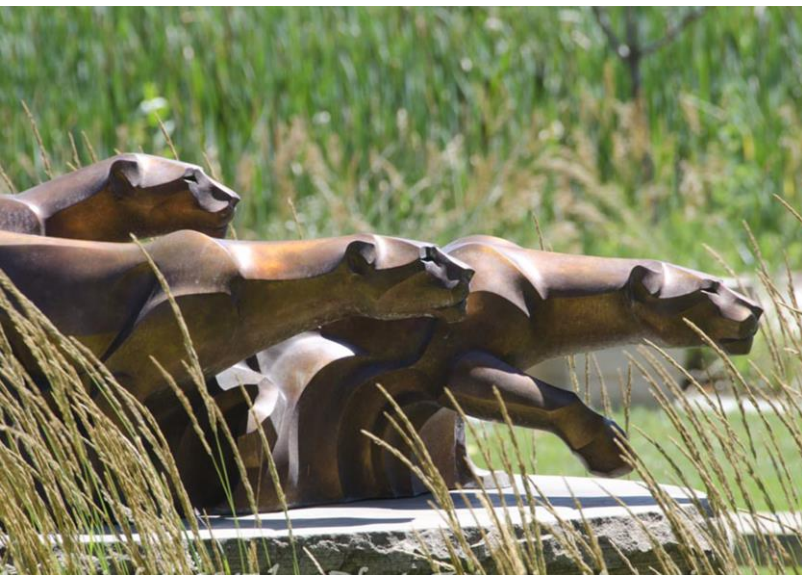
HIGHLANDS PARKS & SHELTERS



HIGHLANDS
PARK FEATURES



HIGHLANDS PUBLIC ART



HIGHLANDS

NATIVE LANDSCAPE PLANTINGS





THANK YOU



Design
for when it
Matters

88 Inverness Circle East Building J, Suite 101 - Englewood, CO 80012

T: 303.734.1777

E: info@LAIdesigngroup.com

POSTT Committee

Council Presentation January 2023

Advisory for Trails, Parks, and Open Space Master Plans

Committee Vision Statement

The Heber City Parks, Open Space, Trails, and Trees Advisory Committee commits to sustain, preserve, and expand Heber Valley's cherished system of parks, trails, and open spaces for the purpose of enhancing our residents' quality of life, for protecting the historic, scenic, ecological, and geological value of our community, and to promote a healthy balance preserving the community's rural character especially during times of economic and developmental growth.

Committee Members

- Ashley Farrell, *Co - Chair*
- Scott House, *Co - Chair*
- Nathanael Adams
- Christen Thompsen
- Mia Yue
- Don Taylor
- John Crook
- Sarah Simons
- Tori Broughton

Founded to support the
Trails, Parks, and Open
Space Master Plans as part
of Envision 2050

Highlights of Past Successes

- 300 S Trail (Heber Central Trail)
- Muirfield Park Expansion (acquired 10+ acres of perpetual open space held by conservation easement and helped design natural scape amenities)
- TAP Tax

Ride Wasatch Proposal

- General overview of community commitment to safe trails for all, partnership with local entities for marketing and transparency, apply for technical grant for funding, signage, and education

TAP Funds for Trail Maintenance

Bicycle Safety at Safe Kids Fair

- May 2024, bicycle safety awareness and general guidelines – looking to partner with the Wasatch County Health Dept.

Continues to support and help
realize the visions of our
community outlined in Envision
2050

HEBER CITY CORPORATION
75 North Main Street
Heber City, UT 84032
Heber City Council Meeting
December 19, 2023

DRAFT Minutes

4:30 p.m. Closed Executive Session
5:00 p.m. Work Meeting
6:00 p.m. Regular Meeting

I. CLOSED SESSION - 4:30 P.M.

Mayor Franco called the meeting to order at 4:31 p.m.

City Council Present:

Mayor Heidi Franco
Council Member Yvonne Barney - arrived 4:35 p.m.
Council Member Mike Johnston
Council Member Rachel Kahler
Council Member Scott Phillips - remotely
Council Member Ryan Stack

Staff Present:

City Manager Matt Brower
City Engineer Russ Funk
City Attorney Jeremy Cook
City Recorder Trina Cooke

1. Strategy session to discuss the purchase, exchange, or lease of real property
(Matt Brower, City Manager)

Motion: Council Member Stack moved to enter Closed Session. **Second:** Council Member Kahler made the second. **Voting Yes:** Council Members Kahler, Johnston, Stack, and Phillips. Council Member Barney had not yet arrived. **Voting No:** None. With a passing vote of 4-0, the meeting entered Closed Session at 4:32 p.m.

Motion: Council Member Stack move to adjourn the Closed Session. **Second:** Council Member Kahler made the second. The Closed Session adjourned at 5:05 p.m.

II. WORK MEETING - 5:00 P.M.

Mayor Franco called the meeting to order at 5:08 p.m. and welcomed everyone present, wishing them Happy Holidays.

City Council Present:

Mayor Heidi Franco
Council Member Yvonne Barney
Council Member Mike Johnston
Council Member Rachel Kahler
Council Member Scott Phillips - remotely
Council Member Ryan Stack

Staff Present:

City Manager Matt Brower
Community Development Director Tony Kohler
Planning Manager Jamie Baron
City Planner Jacob Roberts
Parks and Cemetery Director Mark Rounds
City Engineer Russ Funk
City Attorney Jeremy Cook
City Recorder Trina Cooke

Staff Participating Remotely: IT Specialist Anthon Beales, Engineering Technician Desiree Muheim, Public Works Director Matthew Kennard, City Engineer Russ Funk, Assistant City Manager J. Mark Smedley, Finance Director Sara Jane Nagel, City Treasurer Mindy Kohler, Deputy City Recorder Robin Raines-Bond, Engineering GIS Technician Shiona Howard, and Heber Valley Airport Manager Travis Biggs.

Also Present: Josh Martin, Sid Ostergaard, Joel Brian Butler, Jr., Jason Norlen, Dallin Koecher, Gene Sweeney, Pat Sweeney, Missy Maughan, Tori Broughton, Phil Jordan, Joshua Jewkes, Mike Glenn, Lane Lythgoe, Josh Lythgoe, Del Barney, Greg Whitehead, and others who did not sign in or whose names were illegible.

Also Attending Remotely: (names are shown as signed-in online) John Janson, Sam Taylor - Landmark Design, Aaron Cheatwood, AJ, Grace - KPCW, the Wasatch Wave, and Shorty 5.

1. Aaron Gabrielson discuss permitted uses in the Business & Manufacturing Zone (Tony Kohler, Community Development Director) - *15 min*

Community Development Director Tony Kohler explained the permitted uses in the Business and Manufacturing Zone did not allow certain service-oriented businesses. Petitioner Aaron Gabrielson hoped the Council would expand the scope of permitted uses in the area to include service-oriented businesses.

Council Member Johnston felt the zone was outdated from when it was originally established. He felt the requested uses were appropriate uses that supported the community. Council Member Kahler supported City-sponsorship of the zone change as she felt it was beneficial to the community rather than an individual private party. General consensus of the Council was to update the permitted uses in the area discussed.

2. 200 S Plaza Concept Plan (Jamie Baron, Planning Manager) - 30 min

City Planner Jamie Baron shared a PowerPoint reflecting examples of other cities' street plazas and the proposed band-shell and plaza design options for Heber City's Main Street Park on 200 South. Planning consultant Sam Taylor described three design concept options and detailed the proposed alterations to existing planters and parking spaces.

City Manager Matt Brower reviewed the timeline and grant funding for the project. Sid Ostergaard expanded on the details of the three options. Council discussion followed.

Joel Brian Butler, Jr. wished to submit a bid for the band-shell project and provided suggestions for materials to be used.

III. BREAK - 15 MIN

IV. REGULAR MEETING - 6:00 P.M.

1. Call to Order

Mayor Franco called the meeting to order at 6:12 p.m. and welcomed everyone present. She wished everyone Happy Holidays and a Happy New Year.

2. Pledge of Allegiance (Rachel Kahler, Council Member)

Council Member Kahler led the recitation of the Pledge of Allegiance.

3. Prayer/Thought by Invitation (Scott Phillips, Council Member)

Council Member Phillips shared his love of Christmas and a quote from Charles Dickens' book "A Christmas Carol" as follows: "I have always thought of Christmas time, as a good time: a kind, forgiving, charitable, pleasant time: when men and women seem by one consent to open their shut-up hearts freely, and to think of people below them as if they really were fellow-passengers to the grave, and not another race of creatures bound on other journeys." Council Member Phillips asked that everyone reach out, be more neighborly, lend a helping hand, give where they could, and support each other, not just through Christmas but throughout the year.

V. CONFLICT OF INTEREST DISCLOSURE:

There were no conflicts disclosed.

VI. AWARDS, RECOGNITION, and PROCLAMATIONS:

1. Recognition of outgoing Council Members Kahler and Stack

Heber City Manager Matt Brower presented outgoing Council Members Rachel Kahler and Ryan Stack with Plaques to commemorate their time served on the Heber City Council as well as a gift basket to thank them.

VII. CONSENT AGENDA:

Motion: Council Member Kahler moved to remove agenda item two from the Consent Agenda. **Second:** Council Member Barney made the second. **Voting Yes:** Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** none. The **Motion Passed unanimously, 5-0.**

Motion: Council Member Stack moved to approve the balance of the Consent Agenda as presented. **Second:** Council Member Kahler made the second. **Voting Yes:** Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** none. The **Motion Passed unanimously, 5-0.**

1. Approval of December 5, 2023, City Council Meeting Minutes (Trina Cooke, City Recorder)
2. Ordinance 2023-40 Adopting update to Subdivision Regulations (Tony Kohler, Community Development Director)

Motion: Council Member Kahler moved to amend Ordinance 2023-40 on the PUE (public utility easement) to increase the setback from 10-feet to not less than 15-feet. **Second:** Council Member Barney made the second.

Discussion: Jason Norlen, Manager with Heber Light and Power, shared reasons the Power Company needed the larger setbacks such as visibility concerns; safety equipment accessibility, and meeting the spacing requirements between the gas lines, power lines, and water utility lines. Council Member Stack wished to await Staff's findings from other cities regarding the resolution of the concern of setback size. Council Member Barney felt it was important to listen to the power company, the City's Engineering Department, and Public Works Department, who had all asked to have the 15-foot minimum.

Council Member Stack called the question.

Vote on original motion made by Council Member Kahler: Voting Yes: Council Members Kahler and Barney. **Voting No:** Council Members Johnston, Stack, and Phillips. The **Motion Failed 2-3.**

Motion: Council Member Phillips moved to table the agenda item until there was more information provided by Staff. **Second:** Council Member Kahler made the second.

Discussion: Council Member Johnston felt the Council needed to adopt the Ordinance as there were other important factors included. He noted the Council could amend the Ordinance at a later date. City Manager Matt Brower pointed out that the adoption of Ordinance 2023-40 would finalize the City's updates for Envision Heber 2050 general plan. Council Member Stack felt the Council should proceed with the adoption of the Ordinance as well.

Motion Withdrawn: Council Member Phillips withdrew his motion to table the agenda item.

Motion: Council Member Stack moved to approve Ordinance 2023-40 as presented with further instruction to Staff to return with additional information regarding how best to amend, if necessary, the code provisions pertaining to public utility easements.

Second: Council Member Phillips made the second.

Discussion: Planning consultant John Janson informed Council that Section 22.03.09 gave the City Engineer discretion over the size of the setbacks. Council Member Kahler felt the referred to section would allow developers to argue the City Engineer's determination for the width of the PUEs. City Engineer Russ Funk indicated he was comfortable with the ordinance as-is and supported the Council moving forward.

Vote: Voting Yes: Council Members Johnston, Stack, and Phillips. **Voting No:** Council Members Kahler and Barney. **The Motion Passed 3-2.**

3. 2024 Holiday Schedule (Cherie Ashe, Human Resources Director)
4. Ordinance 2023-47 adopting amendments to Chapter 18.08 Definitions (Tony Kohler, Community Development Director)

VIII. PUBLIC COMMENTS: (3 min per person/20 min max)

Council Member Ryan Stack shared a prepared message expressing his gratitude to fellow Council Members, City Staff, and the public. The entire message is included at the conclusion of this City Council Minutes document.

Council Member Barney shared an emailed comment from CJ Dunning requesting a bus stop location in the center of town. City Manager Matt Brower agreed to get the message to High Valley Transit. She then expressed her appreciation and thanks to Ryan Stack and Rachel Kahler for their service to the City.

Mayor Franco read another emailed comment received by Mr. Tony Pericle with regard to short-term rentals and HOAs as attached to the end of the Meeting Minutes.

IX. GENERAL BUSINESS ITEMS:

1. GAAP Financial Statement FY2023 Presentation (Sara Nagel, Finance Manager)

Finance Director Sara Jane Nagel explained the State Code requirement to provide the Council with an annual financial statement as attached to the meeting materials. There was no further presentation.

X. ACTION ITEMS: (Council can discuss; table; continue; or approve items)

Mayor Franco returned the meeting to agenda item two on the Consent Agenda.

1. Public Hearing regarding Resolution 2023-23 for Fiscal Year 2023-2024 Budget Amendment followed by Council Consideration to Approve (Sara Nagel, Finance Manager) - *10 min*

Finance Director Sara Nagel reviewed the proposed budget amendments as listed in the attached Staff Report.

Mayor Franco opened the Public Hearing at 7:00 p.m. With no one from the public coming forward to comment, the Public Hearing was closed at 7:01 p.m.

Motion: Council Member Stack moved to approve Resolution 2023-23 regarding the Fiscal Year 2023-2024 budget amendment as presented. **Second:** Council Member Phillips seconded the motion. **Voting Yes:** Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** none. The **Motion Passed unanimously, 5-0.**

2. Ground Lease and Parking Agreement for Performing Arts Center (Matt Brower, City Manager, Phil Jordan) - *10 min*

City Manager Matt Brower explained the minor changes to the ground lease agreement had been implemented and Council was being asked to approve the proposed ground lease agreement with the Wasatch County Arts Council (WCAC) for the future Arts Center. Pat Sweeney, President of the WCAC, thanked the Council and City Manager for their work with the Arts Council. She was very excited to see the project coming to fruition, offering local artists a place to create. Phil Jordan, member of WCAC, expressed his gratitude as well and noted the opportunities the proposed Arts Center would bring to the Valley. Mayor Franco felt there was no quality of life without the arts.

Motion: Council Member Kahler moved to approve the item as presented with the findings and conditions in the Staff Report. **Second:** Council Member Phillips seconded the motion. **Voting Yes:** Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** None. The **Motion Passed unanimously, 5-0.**

3. Parks and Cemetery Administration Building Request for Proposal (RFP) & Cemetery Master Plan Amendment (Matt Brower, City Manager, Mark Rounds, Parks and Cemetery Director) - *15 min*

City Manager Matt Brower explained there were two approvals requested from Council that night. The first was to approve an amendment to the Cemetery Master Plan document. Second was approval of the elevations, site plan, and orientation of the building, in order to put the project out to bid by the end of January 2024.

Josh Lythgoe, with Lythgoe Design Group, presented the details of the elevations the proposed amendment to the Master Plan. A roundabout was added for a drop-off zone in front of the building. A celebration of life area was included. The building orientation was shifted to optimize the view of Mount Timpanogos. An amphitheater style seating area was added to fit the topography change in elevation to be used as another life celebration area or a place for reflection. Lane Lythgoe did not have firm numbers for the construction costs without the project going out for bids. He reviewed phasing options for the project. City Manager Matt Brower felt the City had budgeted the necessary amount to fund the project. Parks and Cemetery Director Mark Rounds reminded Council that as the grave and niche sites sold, the project would be self-funded.

Mayor Franco opened the discussion for public comment. With no-one coming forward to comment, the public comment period was closed.

Council Member Johnston complimented Lythgoe Design Group for the effort dedicated to create such a beautiful project and expressed his support of the project. He felt the project would be a great asset for the entire Valley.

Motion: Council Member Kahler moved to approve the item as presented and complimented Mark Rounds for his visionary work on the career-long project.

Second: Council Member Phillips made the second and complimented Mr. Rounds as well. **Voting Yes:** Council Members Kahler, Johnston, Barney, Stack, and Phillips.

Voting No: none. The **Motion Passed unanimously, 5-0.**

4. Jordanelle Ridge Bond Agreement (Jeremy Cook, City Attorney) - 15 min

City Attorney Jeremy Cook explained the hope of Staff to have all the changes implemented in time for the meeting that night but that there were still some outstanding changes needed. He asked the Council to table item but wished to summarize the item for Council. He explained that Jordanelle Ridge was unique due to its size and the Public Infrastructure District (PID). He described the nuances specific to this development's processes.

Motion: Council Member Kahler made the motion to continue the item to the January 2, 2024, City Council Meeting. **Second:** Council Member Stack seconded the motion.

Voting Yes: Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** none. The **Motion Passed unanimously, 5-0.**

5. Evans Property Acquisition (Russ Funk, City Engineer, Jeremy Cook, City Attorney) - 10 min

Action Agenda item five was skipped.

6. Ordinance 2023-45 Amending Heber City Code Section 5.26.040 Related to HOA Consent for Short-Term Rentals (Jeremy Cook, City Attorney) - 10 min

City Attorney Jeremy Cook explained the reasons for Staff returning the item to the Council to reconsider changes to the short-term rental ordinance. Staff preferred the burden be placed on an HOA (homeowners association) to notify the City if short-term rentals were not permitted within the private community.

Council Member Kahler questioned what determined an active HOA. Mr. Cook reviewed the requirements of an active HOA including being registered and having established rules (CC&R's). Council Member Johnston supported the proposed solution. He shared a personal story about members of a defunct HOA trying to impose restrictions when he had built his home. Council Member Stack supported the proposed solution as well but felt the City should notify the HOAs of the City's requirements. Staff agree to include the information in the City newsletter and place on the City website in order to reach as many HOA residents as possible. Council Member Barney felt the HOAs should be required to declare themselves to the City. She felt a formal process was needed. Mr. Cook explained the process was done through the Department of Commerce.

Motion: Council Member Johnston moved to adopt 2023-45; the second option with exhibit "A", and the new portion 5.26.045 "Notice of Short-Term Rental Restrictions", as discussed and found shown in the meeting materials. **Second:** Council Member Phillips made the second.

Discussion: Council Member Stack urged that the information be blasted to the public. Council Member Johnston felt the information could be included with the water-bill mailing. Council Member Kahler noted that Midway had districts where short-term rentals were and were not permitted. Council Member Stack hoped the new Council would consider implementing overlay zones.

Voting Yes: Council Members Kahler, Johnston, Barney, Stack, and Phillips. **Voting No:** none. The **Motion Passed unanimously, 5-0.**

XI. COMMUNICATION:

City Manager Matt Brower shared the following:

1. Updated copy of the 2024 City Council Retreat agenda with a working lunch, inviting the County Council and Rail Road Board to discuss the proposed Arts District, the Recreation District, the urban boundary, and the Heber Valley Corridor.

2. The Interlocal meeting scheduled for January 10, 2024, was asking for agenda items

He commended Council Members Kahler and Stack and felt it was great they had been able to see the Envision Heber 2050 through to completion and to have participated in establishing the Ground Lease agreement with the Wasatch County Arts District. He wished everyone a Merry Christmas and Happy New Year.

1. Meeting Handout - Retreat Agenda

XII. ADJOURNMENT:

Motion: Council Member Kahler made the motion to adjourn. **Second:** Council Member Stack made the second. The Heber City Council Meeting adjourned at 8:08 p.m.

Trina Cooke, City Recorder

Message shared by Ryan Stack:

As I wrap up these four years in office I want to express my gratitude to my colleagues on the Council (current and former), City staff, and most important - the citizens of Heber City. I remain humbled and honored by the trust placed in me to serve our community.

Heber City has taken significant strides forward during the past four years. Our city is proactive, responsive, engaged, and visionary, and I firmly believe that its best days are yet to come. From our work these past four years Heber City now has an award winning general plan, a central Heber plan, a parks master plan (with new and expanded parks), a cemetery master plan, an airport master plan, the North Village Overlay Zone (with a plan to secure funding for open space preservation), the foundation for a successful CRA, and needed substantial updates to transportation and critical infrastructure (with more still on the way). This list is far from exhaustive. So to my colleagues, city staff, and our city manager - thank you for your collaboration in crafting a vision and making Heber extraordinary. And to the citizens - thank you for your input, feedback, emails, and participation in the myriad public workshops and open houses these past several years.

To my family: thank you. Thank you for sacrificing to afford me this opportunity to serve. I've tried to use my time on council as a springboard for conversations with my kids, to explain and hopefully model the importance of standing up and working to be part of the solution. It's easy enough to be part of the problem, and anyone can lob hand grenades from the cheap seats. But to do work that matters we must be willing to be vulnerable, to lead out, and to daily reaffirm our commitment to collaborate and be part of the solution.

Finally, to my fellow council members, and to Aaron and Sid - thank you for putting yourselves out there, and your willingness to be part of the solution. Heber City will be in good hands.

Thanks everyone.

Ryan P.C. Stack
Heber City Council

From: Tony Pericle
Sent: Tuesday, December 19, 2023 5:14 PM
To: CC Public Comments <ccpublic@heberut.gov>
Subject: (EXTERNAL) short-term housing

Dear Honorable Mayor and City Council Members

I hope the attached thoughts will be helpful in making decisions that will be in the best interest of the community regarding short-term rentals.

Tony Pericle

Attachment:

December 16, 2023

1 | Page

Subject: Heber City's Approach to Short-Term Rentals

As a follow up to the City Council meeting on December 5, 2023, I wish to offer additional perspective regarding the short-term rental topic.

Short-Term Rental Concerns

Below is a summary of short-term rental concerns discussed during recent City Council meetings, along with my comments:

1. **Lack of Affordable Housing:** Less than 3% of Heber City homes are used as vacation/short-term rentals. The argument that short-term rentals have created a lack of affordable housing is not supported by housing data. (Refer to the 'Affordable Housing Challenge' section at the end of this letter for supporting statistics).
2. **Noise/Disturbance:** According to our City administrators, there have been only a handful of minor disturbances attributed to short-term rentals in recent years. The argument that shortterm rentals disrupt community peace lacks meaningful evidence.
3. **Safety:** The city's current processes for licensing short-term rentals include comprehensive health and fire safety inspections by Wasatch County officials.

Current Code Challenges

The current short-term rental code poses a variety of administrative and legal challenges. The city will be exposed to excessive burden and potentially significant expense to administer, monitor, enforce and potentially litigate disputes related to interpreting and equitably enforcing an HOA's CC&R.

As a point of reference, City Code 5.26.010 (the introduction to short-term rentals) reads:

The purpose of this chapter is to provide a fair process for the licensing and administration of Short Term

Rental Licenses in Heber City.

The current licensing administration requirements for the short-term rentals go against the stated

purpose of the code itself.

Suggestions/Ideas for Balancing Interests

To harmonize the interests of the community and short-term rental operators, I suggest the following:

1. **Licensing Adjustments:** Increase the initial business license fee for short-term rentals, incorporating a sliding scale for renewals that reflects the property size. This approach can ensure a fair contribution from operators based on the size of their rental property.
2. **Tax Adjustments:** Adopt a progressive tax structure for operators who own more than one short-term rental property. (You can mirror the state's practice of higher property taxes for secondary homes. To discourage aggressive investors, apply escalating tax to owner/operators of multiple short-term and long-term rentals.) (An argument could be made that investors of multiple long-term rental units are a possible reason for increased house prices).

December 16, 2023

2 | Page

3. **Simplify the Short-term Rental Code:** Adjust sections of the code that will create unnecessary burdens and expenses. Adopting the proposed Ordinance 2023-45 is a start. This revision creates a manageable path for an HOA to say "No" to short-term rentals by displaying the provision within the CC&Rs specifically prohibiting short-term rentals, with a signed document by a legal (and I would assume elected*) representative of an active HOA.

* My only suggestion to ensure clarify of the proposed code is to make is to require that the legal representative is an HOA officer who was elected within the past 12 months by the members of the HOA.

My Perspective

Short-term rentals can offer many benefits to Heber City to include:

- 1) Access to short term lodging for community members and their visiting family and friends.
- 2) Competitive prices for short-term lodging.
- 3) Additional revenue for the city, with adjustments to the tax code

The primary argument that short-term rentals materially impact housing affordability seems overstated, especially when compared to similar housing market trends in neighboring communities with a much higher proportion of short-term rentals to total housing.

To address any argument that investors are causing inflation to house prices, consider a progressive tax for multiple homes owned within the community used as both short-term and/or long-term rentals.

To conclude, I urge the City Council to:

- Remove or adjust code provisions that are difficult or potentially expensive to administer and allow neighborhoods to self-regulate through their own governing boards. (See 'HOA Commentary' for more on this topic.)
- Implement tax policies that discourage excessive accumulation of short-term (and long-term) rental properties.

Thank you for considering my viewpoints. I appreciate your commitment to our community and hope my insights contribute to decisions that will lead to a fair and balanced outcome.

Sincerely,

Anthony J. Pericle

804/370-3693

December 16, 2023

3 | Page

Affordable Housing Challenge

Heber City house prices have increased by about 70% during the past 5 years (from \$450K to \$750).

Source: <https://www.zillow.com/home-values/396506/heber-city-ut/>

The main argument against short-term rentals appears to be that they have caused a shortage of

affordable short-term housing. To determine the validity of this argument, we should compare adjacent communities.

In the same period, Midway house prices increased around the same rate of 70% (from \$500K to \$850K). And Park City has increased 75% (from \$850K to \$1.5M).

Source: <https://www.zillow.com/home-values>

Now let's look at the % of houses that are used for vacation/short-term purposes.

According to the bestplaces.net website, the "Vacant Vacation" metric for Heber City is 2.9%. This metric indicates that 2.9% of all houses are used for vacation/short-term rental purposes.

Source: <https://www.bestplaces.net/housing/city/utah/heber>

Heber City officials have indicated there are about 40-80 short-term rental units in Heber City. This would indicate that about .5% to 1% of all houses are used for short-term rental.

Below is the "Vacant Vacation" metric for neighboring communities:

Midway: 18% (6 times greater than Heber City)

Park City: 50% (16 times greater than Heber City)

Source: <https://www.bestplaces.net>

It's difficult to measure how many short-term rental units operate in each of these locations. According to Airbnb, there are over 1,000 for Park City (which is about 25% of the total homes). And about 200 for Midway (which is about 10% of the total homes).

House prices have absolutely soared in the Heber City area over the last 5 years. Home ownership is now out-of-reach for most people looking to purchase their first home. However, are short-term rentals the primary cause of the dramatic increase in home prices in Heber City?

With the backdrop of the data presented above, why would the rate of house price increase for Midway or Park City not be dramatically higher, given that the Midway and Park City short-term and/or "vacant vacation" metrics are many times greater than Heber City?

My conclusion is that the primary reason for this increase of affordable housing is not short-term rentals, but rather:

location, location, location.

Heber City is a very desirable area. And people who are looking (increased demand) to move to those desirable areas will be willing to pay a premium (inflation) for the limited housing (lack of supply) in those areas.

December 16, 2023

4 | Page

Based on the data, I believe the argument that short-term rentals are a material cause for the lack of Heber City affordable housing is weak at best. Housing in desirable areas (near mountains, beaches, etc.)

has increased dramatically over the past few years.

It should also be noted that 50% of the Airbnb listings are homes that are in the 75th percentile of house prices, which wouldn't be considered affordable.

There could be a case made that owners of multiple long-term rental units have affected house prices.

HOA Commentary

There were two points made in the December 2023, meeting regarding the HOA approval letter requirement:

- 1) This provision was put into the Code related to HOA approval was to give the HOA "teeth," and
 - 2) The question was raised whether or not HOAs can apply penalties and liens for breaking CC&Rs
- The government's purpose is to protect the peace of and provide services to its citizens. This particular requirement puts an unnecessary burden on government administrators, and according to the city attorney, sets a precedence that could lead to having the government enforce non-criminal HOA code violations as criminal, such as whether or not you can fly a flag, how many dogs you can have, or to

force

an owner to rectify his/her 2 story house when the CCNRs indicate that there should be only one story. HOAs have the responsibility to monitor and authority to enforce their CCNRs. Their purpose is to regulate non-criminal behavior. If a community wants to give its CCNRs “more teeth,” they have the ability to propose and adopt provisions that include particular conditions to governing short-term rentals to include penalties, liens, etc.

Conclusion: Don’t put the burden on city administrators to navigate the waters of HOAs. It is in the best interest of the city to allow the individual communities to legislate how they govern, monitor, administer, prohibit, and/or enforce the particulars of their rules, including short-term rentals.

HEBER CITY COUNCIL BOARD ASSIGNMENTS

Jan 2024

BOARD	MEETING DAY/TIME/PLACE	COUNCIL MEMBERS ASSIGNED:
Airport Advisory Board (AAB)	2 nd Wed/Quarterly in CC Chambers	Scott Phillips
Animal Control Board	Last Thursday of each month, 6 p.m.	Mayor
Heber Valley Special Service District Board (Sewer Board)	2 nd Thursday/ usually 4 pm at HVSSD Sewer Plant Office	Mayor Yvonne Barney Mike Johnston
Heber Valley Historic Railroad Authority (HVRR)	3 rd Monday, 1 pm	Mayor
Heber Valley Tourism & Economic Development Board (HVTED)	2 nd Monday at HV Economic Development Office, 3:30 pm	Scott Phillips
Historic Preservation Board	3 rd Wed/ 4 pm Downstairs Conference Room	Aaron Cheatwood
Interlocal Planning Meeting	2 nd Tuesday, 9 am, Downstairs County Building Conference Room	All invited to attend.
North Village Special Service District (NVSSD)	2 nd Tuesday/ 4:30 pm	Mayor Yvonne Barney
Parks, Open Space, Trails, and Trees Committee (POSTT)	3 rd Thursday/ 4 pm City Hall, Downstairs Conference Room	Yvonne Barney
Personnel Committee	2 nd Thursday at Noon, Downstairs Conference Room/online, City Hall	Scott Phillips Sid Ostergaard
Timpanogos Irrigation Board	Once annually - TBD	Aaron Cheatwood
Wasatch County Fire District Advisory Board	1 st Thursday, 4 pm, Midway Fire Station	Mayor
Wasatch Housing Authority (WCHA)	2 nd Monday Wasatch County Administration Building, Room 104, 6:00 p.m.	Sid Ostergaard Todd Anderson
Wasatch Irrigation Board	Once annually - TBD	Mike Johnston
Wasatch Open Lands Board (WOLB)	2 nd Monday, 6:30 pm Wasatch County Downstairs Conference Room/online	Mayor

Wasatch County Weed Control	1 st Wed; 1 pm or 2 pm, Wasatch County Admin Building, room 100	Mike Johnston
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Mayor's Appointment according to HL&P Bylaws (no council confirmation required):

Heber Light & Power Board (HL&P)	4 th Wed/ 4 pm at HL&P Downstairs Conference Room	Mayor Sid Ostergaard Aaron Cheatwood
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Each Council member is assigned to at least 2 monthly meetings, along with the two regular Council meetings.

Other assignments are 2 once a year meetings for irrigation companies, and one quarterly meeting in the AAB.

YB	AC	MJ	SO	SP
HVSSD	HL&P	HVSSD	WCHA	HVTED
POSTT	Historic Pres	Weed Board	HL&P	Personnel
NVSSD	Timp Irri	Wasatch Irrig	Personnel	AAB



Planning Commission Report

January 2, 2023

Summary

- **Actionable Envision Central Heber Items**

- Parking
- Recreation & Events

- **Bypass**

- Bypass Landscaping & Screening
- High School Area Land Use
- Sprawl

- **Other Issues**

- Night Sky
- Growth
- Affordable Housing

Envision Central Heber: Parking

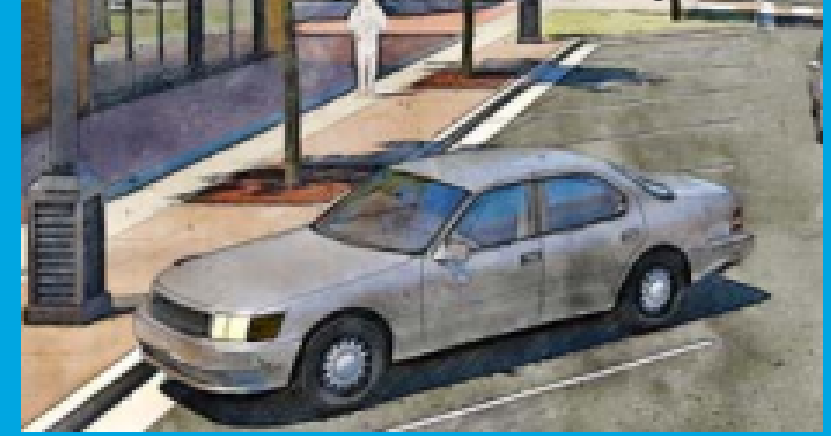
Improve street with utilities



No C-3 Required Parking



Angled Parking



Downtown Parking Garage



Envision Central Heber: Recreation & Events

Plaza Street



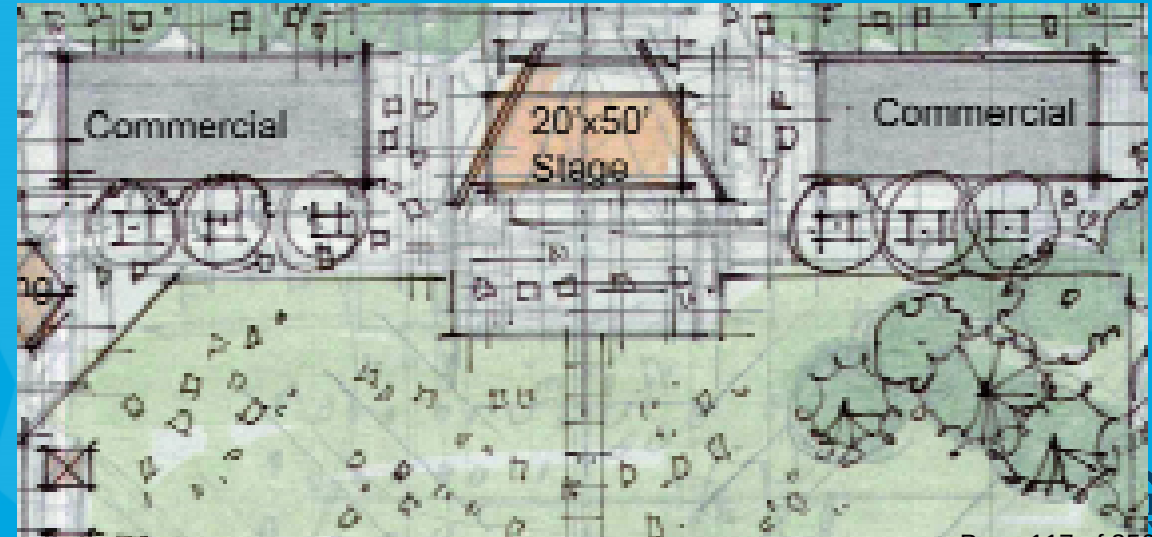
Pedestrian Alley



Events

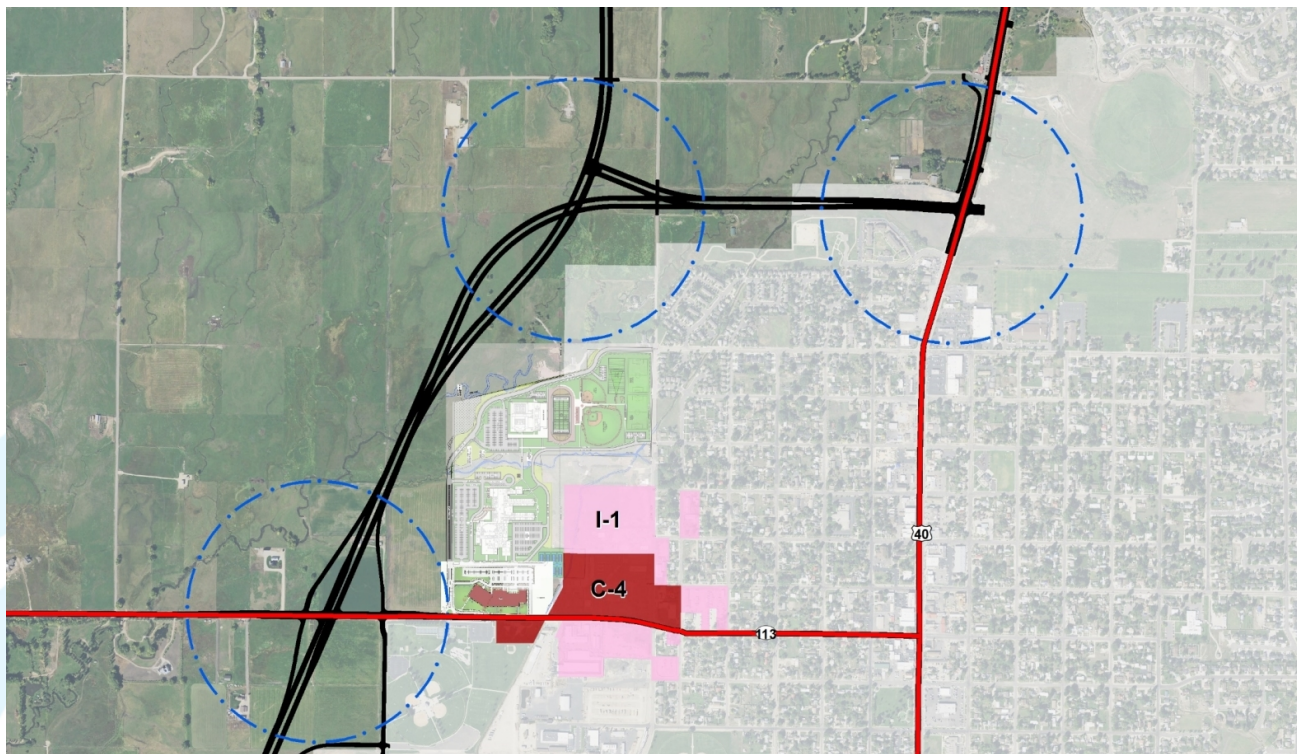


Main Street Park Improvements

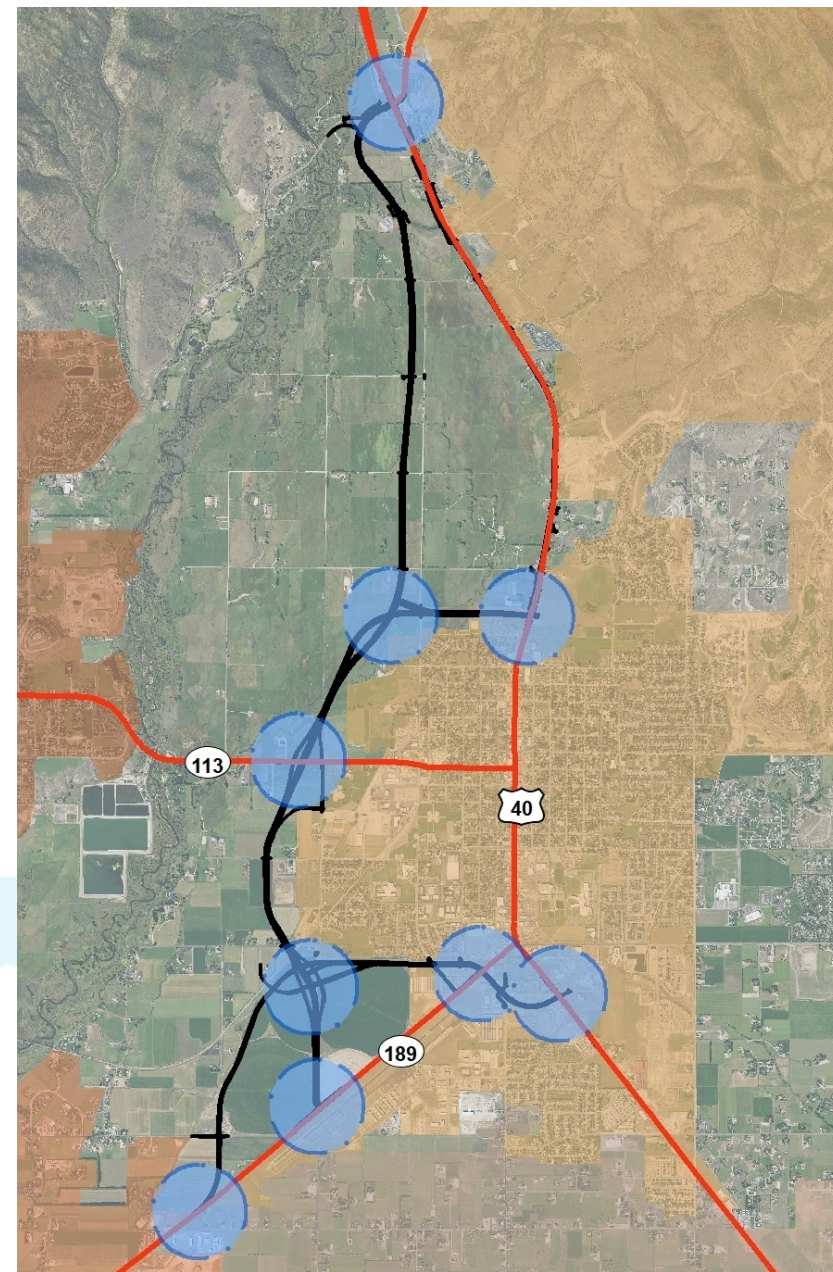


Bypass

Bypass landscaping, berm & fencing



High School Area Land Use



Sprawl

Other Issues

Growth Management



Dark Skies



Affordable Housing



Heber City Airport

Advisory Board

Council Briefing 1.2.24

Purpose of AAB

- "to advise the City Council and the Mayor in matters pertaining to the policies of the Heber Valley Airport."

- AAB Bylaws

Makeup of AAB

- One City Council Member
 - 3 Residents of Heber City
 - 1 Resident of Wasatch County
 - 1 Resident of Daniel
 - 1 Representative of OK3
-
- AAB members are generally aeronautical users or other informed operators that can provide technical knowledge and insight to policymakers.

AAB Objectives

- Self funding Airport with a financial plan towards enacting the recently approved Airport Master Plan.
- Promote a variety of Aeronautical activities including light GA, GA, Business Aviation, and diverse commercial aeronautical activities.
- Promote community involvement with the Airport and aeronautical activities (youth programs, community events, etc)

Work in Progress

- Rates Study by Aeroplex Partners to compare Heber City Rates vs similar airports and provide proposals for changes, if any.
- Environmental Study for south FBO location as denoted on new Airport Layout Plan.
- Revision of Airport Minimum Standards for Commercial Activities.
- Consideration of other business that properly comes before the AAB or is assigned by Council.

Public Works SWOT Analysis

Council Retreat 2023

STRENGTHS: 1. A good mix of long-term employees with a solid historical knowledge of the City's infrastructure, and new employees with new perspectives/ideas. 2. Employees with a culture of teamwork, cross-training, & high-level customer service skills (both internal & external customers & other departments), creating a positive & productive work environment. 3. Persistence in ensuring jobs are completed correctly & thoroughly. 4. Strong network of professional colleagues, vendors & outsource contractors to help us succeed. 5. Improving truck & equipment inventory w/ more up-to-date features & better quality & less age. 6. Increased community outreach (PW Week, Halloween Fest Booth, CJC Donation Drive, and Market on Main presence.)	OPPORTUNITIES: 1. New budgeting software implementation will help streamline & improve the budgeting process. 2. Outsource concrete and asphalt projects utilizing budgetary funds in order to help allow our staff to tackle other important, time-sensitive tasks. 3. Water, Wastewater, Fleet Management, CDL & other certification/training opportunities expand our knowledge regarding managing/improving our infrastructure, utilities, and fleet, allowing us to be better qualified and better fulfill the essential functions of our jobs. 4. New Safety Program & Safety Team will provide a safer workplace and a stronger team with a culture of safety. 5. Snowplowing cameras allow us to check road conditions without physical driving around the City to determine whether plows need to be called out.
WEAKNESSES: 1. Lack of electrical back-up & security systems for our Well Sites & Water Tanks. 2. Cross Connection Program, Backflow Inspections, & FOG Program are not as effective as they could be. (New software program for tracking backflow inspections will help.) 3. Inadequate software for completing manhole inspections. (It is our hope that the impending Cityworks implementation will remedy the mapping issue.) 4. Ever-increasing workload and growth of the City has presented overwhelming demands on our relatively lean staff on the Tech & Water crews, thereby taking time away from annual preventative maintenance. 5. Pelorus timekeeping payroll system's lack of web-based capabilities which does not accommodate accurate, on-call/offsite clock-in access for our after-hours crew.	THREATS: 1. Enormous growth of the City population and building developments has dramatically increased the need for more employees to maintain levels of service. 2. High cost of living in Heber City & Wasatch County exceeding employee wages, creating obstacles for retaining employees. 3. Inflation and material/equipment expenses have skyrocketed faster than available budgeted funds. 4. Vehicle & equipment suppliers are so overwhelmed with orders that it now takes 2-3 years to purchase/receive a new vehicle/equipment into the fleet. 5. Lack of understanding by community members regarding the challenges, operations, state regulations, etc. faced by Public Works.

SWOT ANALYSIS – POLICE DEPARTMENT JAN. 2024

STRENGTHS:

- Staffing Levels
- State of the art facility
- Community outreach
- Relationships with surrounding agencies
- Volunteers (VIPS)
- The trust of our local citizens
- Accountability with our staff
- Rewarding and recognizing outstanding work by our staff
- Youth outreach (Peer Court)
- Department Culture
- Teamwork
- Responsive to GRAMA requests
- Evidence Process
- Career ladders/advancements
- Recognizing our businesses and citizens (Busted Program)
- Promoting education with our employees
- No kill animal shelter
- Suicidal response & protocols
- Crossing Guard Program
- CIT Training
- Investigations unit returning to Heber City
- State Accredited agency

WEAKNESSES:

- Competitive wages/benefits
- Reality of our staff owning homes
- Cost of living for rent
- Keeping up with the increased population and traffic
- Increasing Staffing with the Population
- Utilizing Technology as a force multiplier

OPPORTUNITIES:

- Proposed & newly adopted annexations
- Collaboration with statewide shelters & human society
- Strengthening our ties with Utah County agencies. In forming a civil disorder unit & possible SWAT partnership.
- Shelter Review & change
- Relationship development
- Expand traffic Unit
- Midway and Charleston Contracts
- County Emergency Management Plan (CEMP)
- City Bypass
- New High School
- City Expansion/Annexation
- Shelter Realignment

THREATS:

- Mental illness & suicidal tendencies
- Drugged drivers (marijuana & opioids)
- Traffic on Main Street
- Tankers with hazardous materials on board
- Increased audits by the State of Utah
- Mass shootings
- Wildland fire mitigation plans
- Tier 2 retirement
- State/Federal mandates
- City Expansion/Annexation
- Civil unrest & protests
- 1st Amendment audits
- More growth, means more animals
- Employee Rentention

SWOT Analysis Council Retreat 2023

SWOT ANALYSIS

STRENGTHS: -Full-time Arborist/Weed sprayer was added to our department -Plan and schedule created for application of fertilizer/weed spraying. This includes more time/effort spent on weed control/fertilizing throughout the city -Storage at Muirfield Park -Central Control water saving system, which conserves water. -Utilizing newer and more reliable equipment. New mower. -We have a lot of experience in what we do. -We work well as a team and with other departments. -We have a well-rounded diversified team that can step in for other team members as needed. -Willingness to listen to special committees and organizations on new projects.	OPPORTUNITIES: -Central Control Sprinkling System throughout the city -TAP tax -City Works System -Expanded break/training room. New office -New dirt shed -Lean-to on storage building to allow for more storage -New Cemetery Office Building and Cremation Courtyard coming. -Grants -Working with other departments and entities. -Separating crews (Cemetery/Parks) to focus on each department better. -Having more employees allows more opportunities/time for more specialized training. Continuing education credits.
WEAKNESSES: -Seasonal need more training -More safety training needed -Lack of seasonal applicants/employees -We are a small department and do not have time for taking care of special projects. -Fast-growing community with lots of new development/parks without adding more employees. Department is spread thin at times. We can't take care of it the way it deserves to be cared for. -Department is outgrowing the existing shop and storage needs. -Small cemetery office connected to noisy shop. -Unreliable phone system in office.	THREATS: -Construction company expanding more takes away storage and parking for our department. -City growth. Adding more parks/facilities to maintain but not adding more staff to maintain it. -Learning so many new software/apps takes time -Not enough space for current equipment/staff. -Not having staff official on-call with on-call pay to handle it. -Dealing with special committees wanting us to focus on them and using our budget for their projects. -Reliable seasonal help. -Grant matching money coming out of the operational budget.

SWOT ANALYSIS – HUMAN RESOURCES

DECEMBER 2023

<i>STRENGTHS:</i> • Customer service - responsiveness • Knowledge of employment laws • Documentation • Benefit negotiation/administration skills, knowledge & experience; adding Blomquist Hale as EAP • Ongoing improvement to the Personnel Policies & Procedures Manual • Legal, ethical, and fiscal responsibility • Employee Satisfaction Index – P.A.R.T survey indicated that 31% of employees are Satisfied, 43% are happy, and 20% are overjoyed working for Heber City. • HR technology adoption – Bamboo HR, Slido, Canva	<i>OPPORTUNITIES:</i> • Birthday and holiday celebrations need consistency. • Source and recruit a Staff Engineer • Departmental representative visibility • Attend monthly intra-departmental staff meetings • Improve internal communications with • Practice fire and earthquake drills through Emergency Management • New employees encouraged to attend City Council • Safety carnival definition • Rewards for employees at Top of Payscale • Kantola.com usage • Succession planning • Celebrating employee achievements & victories
<i>WEAKNESSES:</i> • Records retention & compliance – clean-up and archive historical records • Manual PayScale research • Infrequent Citywide new hire orientation • Lack of City-branded items to offer new hires. • Employees unaware of all Citywide benefits like bilingual and 5% certification increases. • Employees unable to find policies • Departments are in cultural silos. • Managers need managerial training.	<i>THREATS:</i> • Recruiting challenges unemployment rates at 2.2% in Wasatch County, 2.3% in Summit County, and • Seasonal staffing challenges • Lack of affordable housing in Heber City. • Overall compensation strategy compared with neighboring City/Counties. • Inflation rates, Cost of Living, CPI • Time to fill recruitments is high averaging more than 60 days • 20% of full time regular employees have 2nd jobs.

SWOT ANALYSIS – FINANCE DEPARTMENT

JANUARY 2024

STRENGTHS: • Creative, problem-solving team • K&C, CPAs accounting consultants • New budgeting software	OPPORTUNITIES: • New Finance Director – new perspective • Re-thinking how we get things done • Re-thinking collaboration with other departments
WEAKNESSES: • New Finance Director – lost institutional knowledge • Few established written policies and procedures • Limited bandwidth to manage increasing demands	THREATS: • Constantly changing regulations • Staff burnout



Heber City Council Staff Report

MEETING DATE: 1/2/2024
SUBJECT: Ordinance 2024-01 Highlands MDA Amendment
RESPONSIBLE: Denna Woodbury
DEPARTMENT: Planning
STRATEGIC RELEVANCE: Community Development

SUMMARY

Highlands and their potential home builder, DR Horton, have analyzed their home models in relation to the Highlands Master Plan and are asking for modification to the Highlands Master Development Agreement (MDA) to address some of the required zoning design elements (including those contained in the North Village Overlay Zone) for the proposed homes. The State Code requires that the City go through the rezoning process when considering development agreements that permit deviations from the zoning ordinance requirements and overlay zones. Highlands is requesting the City consider permitting 10 changes to their Master Development Agreement related to Design, Street Facade, and Topography.

RECOMMENDATION

Staff recommends Council adopt Ordinance 2024-01, approving the amendments to the Highlands MDA.

BACKGROUND

Earlier this year, Highlands submitted a request to amend its MDA, particularly addressing the City's Transportation Master Plan. On July 18, 2023, the City Council agreed to have these amendments processed as Administrative Amendments, approved by the City Manager, as City Administration. The application is still pending and has not yet been finalized due to recent issues identified by the developer. A Public Hearing with the Planning Commission was held on October 24, 2023. The City Council held a work session on this item on November 7, 2023. The Planning Commission again discussed this item on November 14, 2023, and recommended approval for the proposed amendment to the MDA.

Staff continue to work with The Highlands development group and DR Horton with their amendment requests and home designs. The topography has created some challenges in implementing the

NVOZ code provisions, which necessitates that the MDA be amended. The number of amendment requests has been reduced from thirteen to ten. The proposal provides three different housing products; single-family detached, townhomes, and stacked flats. The Applicant has reduced the overall number of approved units in this portion of the Master Plan, originally approved with the Concept Plan, from 851 to 806.

DISCUSSION

The NVOZ presents challenges with hillside development. The NVOZ concept creates short streets and blocks, which increases connectivity and walkability. NVOZ also encourages pushing buildings toward the streets. However, challenging topography can make it more difficult to meet the standards without carving up the hillsides to provide the grades needed to meet street and building standards. DR Horton's amendment requests are intended to comply with the intent of the NVOZ standards while trying to minimize hillside disturbance in cut and fill.

Requested Amendments to the MDA

The changes requested to the Design Guidelines relate to the design of the residential units and the physical location that is impacted by the topography. The requests are listed by section. The developer's proposal and Staff's explanation are referenced below:

Design

1. Section 3.6. 2. footnote 2. Townhome Green Courtyards. Page 19. Requirement for up to 3 of each 5 buildings to front upon a courtyard with a minimum width of 50 feet. Proposal: The developer is requesting to permit more than 3 out of 5 buildings to front on a courtyard and is asking for the 50-foot width minimum to be reduced.

City Staff reviewed and found that the locations where this request would apply either meet a one-to-one ratio of height-to-distance separation, creating a room effect that the Design Guidelines are trying to achieve, or the average courtyard width exceeds the 50-foot minimum requirement. The locations where this request applies also provide 20-foot driveways for each of the townhomes, in addition to the garages.

2. Section 3.7. 2. Line i and footnote 5. Garage Façade Setback Page 21. Requirement for garages to be setback 5 feet further than living space.

The Proposal: The developer is asking for that living space to be reduced to 2 feet and be measured from the second story and include other design elements to reduce the visual impact of the garage.

This request provides housing products and variations that minimize the garage and better street frontage than if the front porch and entryway were located in front of the garage.

3. Section 3.0 Buildings Page 25 – Craftsman, Farmhouse, Mountain Modern, North Village Natural/MDA Defined- Minimum Required Elements Front porch that addresses the street, either full or partial-width (60 square feet minimum).

Proposal: The developer is requesting that the requirement for some of the porches be relaxed and

be allowed to be less than 60 square feet.

In order to provide variation to the facade, the size of the porches needs to vary. Each unit has at least 200 square feet of private open space.

4. Section 3.1. 5. Unique Architecture. Page 12 Requirement of no single-family buildings on the same block face may have the same street facing façade within a 400-foot distance.

Proposal: The developer is seeking that it be based on the frontage distance of the lot adjacent and across the street within a 120-foot distance.

The proposed single-family lot sizes are smaller than a typical quarter-acre lot, so the 400-foot distance would require 20 different facades. The proposed 120-foot distance would provide 6 different facades that would ensure that the adjacent homes, across the street directly, to the corner, would not look the same.

5. Section 3.6 Figure 3.6 (5) Townhouse Building. Page 25 - Townhouses facing common greens, must also have three-sided architecture with wrapping porches and windows.

Proposal: The developer is requesting that Townhouses facing common greens, must also have three-sided architecture with windows and not include wrapping porches. Additional architectural elements are cohesive with the architectural style.

In certain locations, the townhomes face each other and not the street. Staff will work with the applicant to include porch-like elements, so the street facade from the private streets is pleasing.

Street Façade Requirements

6. Section 3.2.4, page 12: 360-degree architecture, public right-of-way, parking lot, rear or interior side yards. Proposal: To be discussed with planning staff. 360-degree architecture conflicts with other sections of the NVOZ and within the same paragraph.

The purpose of the 360-degree architecture is to ensure that there are no blank walls along the street frontages. The proposed products do not have blank walls. Staff will work with the applicant to ensure that the intent of the code is met.

Topography

7. Section 3.2.2(d), page 11 Building Height.

Proposal: The requirement only applies to adjacent buildings along the front property line which are facing a public street and on the same side of the street. The height variation requirement does not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.

The topography on the site creates a height variation and makes it challenging to meet the ADA requirements for stacked flats.

8. Table 3.4(1), item B, page 15 Front Build to Zone.

Proposal: The front build-to-zone may be increased to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

The buildings will be located as close to the street as possible, without the need of giant retaining walls.

9. Table 3.4(1) item A, page 15 Front Property Line Coverage (80%).

Proposal: The front property line coverage may be reduced if site topography has unbuildable areas. Access drives from public streets shall be excluded from the front property line coverage calculation.

Due to the topography, to meet this standard, large retaining walls would need to be built to accommodate the stacked flats. In one case, the building would have to be built into the wall because of the grade difference. By allowing less than 80%, it provides a more open feel in between buildings and allows for reduced retaining wall heights.

10. Section 4.2.3.5 and Table 4.2(1) footnote 1, page 39 Maximum Block Perimeter: 2000 ft.

Proposal: The block perimeter may be increased to accommodate topography, which makes street connectivity requirements unachievable. Single parcel communities consisting of multiple buildings may substitute internal parking lots, pathways, and private access drives to achieve connectivity.

Due to the topography and the collector road, the 2000 block perimeter cannot be achieved. The Applicant is providing pedestrian street connectivity so that residents have access to parks trails and nearby amenities.

FISCAL IMPACT

None.

CONCLUSION

The Highlands Master Plan has challenging topography, making it difficult to meet some of the required zoning design elements (including those contained in the North Village Overlay Zone) for the proposed homes. The changes that are being proposed to the MDA address the unique topography challenges and provide design elements to meet the intent of the required zoning design elements.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended

3. Continue
 4. Deny
-

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** Ordinance 2024-01 as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** Ordinance 2024-01 as amended, as follows.

Alternative 3 - Continue

I move to **continue** the Ordinance 2024-01 to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** Ordinance 2024-01 with the following findings.

ACCOUNTABILITY

Department: Planning
Staff member: Denna Woodbury, Planning Consultant

EXHIBITS

1. Ord 2024-01
2. First Amendment to Master Development Agreement - Clean for Packet - 4893-4844-0473 - 1
3. Regional Map (1)
4. 2023-10-19 Highlands Proposed Base V11 B-EX-01
5. NVOZ 11.13.23B
6. 201010_Creeside at Highlands MP Amendment Powerpoint (1)

ORDINANCE NO. 2024-01

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE HIGHLANEDS MASTER PLANNED COMMUNITY.

BE IT ORDAINED by the City Council of Heber City, Utah, the First Amendment to Development Agreement for the Highlands Master Planned Community is hereby approved as shown in Exhibit 1.

This Ordinance shall take effect immediately upon approval.

PASSED, APPROVED and ORDERED TO BE PUBLISHED BY THE HEBER CITY COUNCIL this _____ day of _____ 2024.

	AYE	NAY	ABSENT	ABSTAIN
Yvonne Barney	_____	_____	_____	_____
Aaron Cheatwood	_____	_____	_____	_____
Michael Johnston	_____	_____	_____	_____
Sid Ostergaard	_____	_____	_____	_____
D. Scott Phillips	_____	_____	_____	_____

APPROVED:

Mayor Heidi Franco

ATTEST:

RECORDER

Date: _____

EXHIBIT 1

WHEN RECORDED, RETURN TO:

**Heber City
Attention: City Recorder
75 North Main Street
Heber City, Utah 84032
Tax Parcel Nos.:**

(Space above for Recorder's use only.)

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT
FOR THE
HIGHLANDS MASTER PLANNED COMMUNITY**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE HIGHLANDS MASTER PLANNED COMMUNITY (this "**Amendment**") is entered into this ____ day of November, 2023, by and between HEBER CITY, a political subdivision of the State of Utah (the "**City**"), and CARDINAL FUNDING, LLC, a Utah limited liability company ("**Cardinal Funding**"). Each of Cardinal Funding and the City are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**"

RECITALS:

A. This Amendment amends that certain Development Agreement for the Highlands Master Planned Community (the "**Original Agreement**"), which Original Agreement is dated December 7, 2021 and was recorded in the official records of the Wasatch County Recorder on December ___, 2021 as Entry No. _____ in Book _____ at Page _____ (as such Original Agreement has been modified or amended prior to the date hereof and by this Amendment, the "**Agreement**"). Capitalized terms not otherwise defined in this Amendment shall have the meaning ascribed to them in the Original Agreement.

B. The Original Agreement was entered into by and among the City and Cardinal Funding with respect to that certain real property (the "**Property**") described therein and described on Exhibit A attached hereto, which Property is presently owned by Thackeray Family Holdings II, LLC, a Utah limited liability company ("**TFHII**") and Johansen Family Holdings II, LLC, a Utah limited liability company ("**JFHII**") and together with TFHII, the "**Landowners**"), which are executing this Amendment as owners of the Property.

C. The Original Agreement incorporated certain Design Guidelines, which Design Guidelines "are the approved guidelines for certain aspects of the design and construction of the development of the Property, including setbacks, building sizes, open space, height limitations, parking and signage, and, the design and construction standards for buildings, roadways and infrastructure, as set forth in and adopted as part of [the Original Agreement.]"

D. The Design Guidelines are applied in the context of the Zone, as the Zone is interpreted, clarified and/or modified by the City pursuant to this Agreement, and Cardinal Funding has sought certain interpretive guidance and clarification and certain amendments or other modifications from the City with respect to the Zone.

E. The City’s planning staff and Planning Commission have reviewed the proposed clarifications, modifications and amendments in one or more public hearings and provided a recommendation to the City Council based upon the unique and challenging topography of the Property but also seeking to maintain the overall intent of the required zoning design elements.

F. At the request of the City, Cardinal Funding or its affiliates have exchanged real property (the “**Property Exchange**”) along the eastern boundary of the Property with RE Investment Holdings, L.L.C. (“**REIH**”).

G. The property owned by REIH prior to the Property Exchange was subject to that certain Development Agreement for the Upper Jordanelle Master Planned Community, recorded in the office of the Wasatch County Recorder on November 2, 2020 as Entry No. 487731 in Book 1321 at Page 1398 (as amended, supplemented or otherwise modified, the “**Upper Jordanelle Development Agreement**”).

H. Cardinal Funding and the City desire to amend the Original Agreement so as to recognize the effect of the Property Exchange and to provide for the application of this Agreement to the property received by Cardinal Funding or its affiliates in the Property Exchange.

I. Pursuant to the requirements of Sections 17 and 18 of the Original Agreement, Cardinal Funding and the City are authorized and have the right to amend the Original Agreement and now desire to amend the Original Agreement as more fully set forth below.

AGREEMENT:

T

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants made herein and in the Original Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Amendment agree as follows:

1. **Amendment of Section 1.2.69.** Section 1.2.69 of the Agreement is hereby amended and restated in its entirety as follows:

1.2.69 **Zone** means the City’s North Village Overlay District Zone, as interpreted, clarified, amended or modified by the “NVOZ Specific Application Standards—Highlands Master Planned Community” attached to this Agreement as **Exhibit L**.

2. **Amendment of Section 3.1.** Section 3.1 of the Agreement is hereby amended such that the Base Density Entitlements are increased to 691 ERUs by reason of the property exchange described in Section 5 of this Amendment; provided, however, the twenty-one (21) additional ERUs shall not be used in the calculation of Bonus Density Entitlements under the Agreement.

3. **References to “NVOZ” or “NVOZ Zone and Ordinance”.** All references to the terms “NVOZ” and “NVOZ Zone and Ordinance” included in the Original Agreement are hereby changed to “Zone.”

4. **Exhibits.** Exhibit D to the Original Agreement (i.e. the Master Plan) is hereby replaced with Exhibit D attached to this Amendment (i.e. the A&R Master Plan, dated October 19, 2023).

5. **Addition/Removal of Property.** In recognition of the Property Exchange and from and after the date of this Amendment, the Parties agree that: (a) the real property described on Exhibit M attached hereto shall no longer be subject to the Upper Jordanelle Development Agreement and shall be subject to and governed by the Agreement; and (b) the real property described on Exhibit N attached hereto shall no longer be subject to the Agreement and shall be subject to and governed by the Upper Jordanelle Development Agreement.

6. **Conflicts.** In the event of any conflict between the terms and conditions set forth in this Amendment and those set forth in the Original Agreement, the terms and conditions of this Amendment shall control.

7. **Ratification.** Except as expressly set forth in this Amendment, the Agreement is ratified and confirmed as written.

[Signatures appear on the following pages]

CITY:

Heber City, a political subdivision of the State of Utah

Heidi Franco, Mayor

Approved as to form and legality:

Attest:

City Attorney

City Recorder

By:_____

By:_____

CITY ACKNOWLEDGMENT

STATE OF UTAH

)

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CITY OF HEBER

)

On the ____ day of _____, 2023, personally appeared before me Heidi Franco, who being by me duly sworn, did say that she is the Mayor of City of Heber, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its governing body.

NOTARY PUBLIC

CONSENT AND ACKNOWLEDGMENT OF LANDOWNERS

Each of the undersigned Landowners hereby: (a) confirms and acknowledges such Landowner's receipt of this Amendment and confirms that the Agreement, as amended by this Amendment, is in full force and effect with respect to the to the properties owned by such Landowner and located within the Property; and (b) consents and agrees to abide by the terms and conditions of the Agreement, as amended pursuant to this Amendment, each to the extent applicable to the properties owned by such Landowner.

LANDOWNERS:

Thackeray Family Holdings II, LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

Date of Execution: _____, 2023

STATE OF UTAH)

§.

CITY OF _____)

On the _____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the Manager of Thackeray Family Holdings II, LLC, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

By: _____
Name: _____
Title: _____

STATE OF UTAH)
CITY OF _____) :§.

NOTARY PUBLIC

**Exhibit A
to
First Amendment
to
Development Agreement for Highlands Master Planned Community**

(Description of Property)

[See attached.]

NORTH PARCEL:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19 AND THE WEST HALF OF SECTION 20 ALL IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF COMMONS BOULEVARD AND THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 40 PROJECT NO. F-019-1(1), SAID INTERSECTION BEING EAST 214.59 FEET AND SOUTH 1260.57 FEET FROM THE 2005 WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE NORTH 32°00'02" WEST 1,057.48 FEET TO THE SOUTHEASTERLY LINE OF PARCEL 2 AS DESCRIBED IN THAT WARRANTY DEED TO UTAH VALLEY STATE COLLEGE RECORDED AS ENTRY NO. 333087 OF SAID RECORDS AND ALSO DESCRIBED ON RECORD OF SURVEY NO. OWC-035-019-0-1157 AS FILED IN THE WASATCH COUNTY SURVEYORS OFFICE; THENCE ALONG SAID SOUTHEASTERLY LINE THE FOLLOWING TWO COURSES (1) NORTH 58°00'22" EAST 1,112.69 FEET (NORTH 57°59'34" EAST 1,111.85 FEET BY RECORD); AND (2) NORTH 48°11'59" EAST 1,098.03 FEET (NORTH 48°11'11" EAST 1,097.66 FEET BY RECORD) TO THE CENTERLINE OF THE TIMPANOGOS CANAL AS DESCRIBED IN THAT CONTRACT AND GRANT OF EASEMENT RECORDED AS ENTRY NO. 212641 OF SAID RECORDS; THENCE ALONG SAID CENTERLINE THE FOLLOWING NINE COURSES: (1) NORTH 17°22'52" WEST 54.83 FEET (NORTH 17°22'52" WEST 54.71 FEET PER SAID PARCEL 2); (2) NORTHWESTERLY 62.66 FEET ALONG A 57.21 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 62°45'14" AND A LONG CHORD OF NORTH 48°45'29" WEST 59.57 FEET; (3) NORTH 80°08'06" WEST 50.43 FEET; (4) NORTHWESTERLY 80.09 FEET ALONG A 77.16 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 59°28'06" AND A LONG CHORD OF NORTH 50°24'03" WEST 76.54 FEET; (5) NORTH 20°40'00" WEST 67.54 FEET TO STA 212+38 OF SAID TIMPANOGOS CANAL WHICH STA 212+38 IS SOUTH 1318.48 FEET AND EAST 1244.36 FEET FROM THE 1976 WASATCH COUNTY BRASS CAP MONUMENT FOR THE NORTHWEST CORNER OF SECTION 20 PER PARCEL NO. WCWEP-T-0584(P) OF SAID ENTRY NO. 212641; (6) CONTINUING NORTH 20°40'00" WEST 39.32 FEET; (7) NORTHWESTERLY 26.35 FEET ALONG A 73.32 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 20°35'35" AND A LONG CHORD OF NORTH 30°57'47" WEST 26.21 FEET; (8) NORTH 41°15'35" WEST 114.29 FEET; AND (9) NORTHWESTERLY 11.22 FEET ALONG A 3,029.45 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 00°12'44" AND A LONG CHORD OF NORTH 41°09'13" WEST 11.22 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE SOUTH 89°54'54" EAST 1,524.20 FEET TO THE NORTH-SOUTH CENTER SECTION LINE OF SAID SECTION 20; THENCE ALONG SAID NORTH-SOUTH CENTER SECTION LINE SOUTH 00°00'09" WEST 1,774.05 FEET TO THE

CENTERLINE OF THE SAID TIMPANOGOS CANAL; THENCE ALONG SAID CENTERLINE THE FOLLOWING EIGHT COURSES: (1) NORTH 10°34'34" WEST 26.14 FEET; (2) NORTHERLY 18.66 FEET ALONG A 63.10 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°56'26" AND A LONG CHORD OF NORTH 19°02'47" WEST 18.59 FEET TO STA 236+55 OF SAID TIMPANOGOS CANAL WHICH STA 236+55 IS NORTH 2238.88 FEET AND WEST 10.76 FEET FROM THE 2005 WASATCH COUNTY ALUMINUM PIPE CAP MONUMENT FOR THE SOUTH QUARTER CORNER OF SECTION 20 PER SAID PARCEL NO. WCWEP-T-0584(P) OF SAID ENTRY NO. 212641; (3) CONTINUING NORTHWESTERLY 31.79 FEET ALONG SAID 63.10 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28°51'57" AND A LONG CHORD OF NORTH 41°56'59" WEST 31.45 FEET; (4) NORTH 56°22'57" WEST 51.03 FEET; (5) NORTHWESTERLY 56.42 FEET ALONG A 130.89 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 24°41'49" AND A LONG CHORD OF NORTH 44°02'03" WEST 55.98 FEET; (6) NORTH 31°41'08" WEST 60.09 FEET; (7) NORTHWESTERLY 126.00 FEET ALONG A 664.07 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°52'18" AND A LONG CHORD OF NORTH 37°07'17" WEST 125.82 FEET; AND (8) NORTH 42°33'26" WEST 8.76 FEET TO THE NORTH LINE OF PARCEL 1 DESCRIBED IN A WARRANTY DEED RECORDED AS ENTRY NO. 462588 OF SAID RECORDS (WHICH SAID PARCEL 1 IS THE SAME AS PARCEL 4 AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY EVERGREEN ENGINEERING FILED AS NO. OWC-035-020-0-881 IN THE WASATCH COUNTY SURVEYORS OFFICE, WHICH BEARINGS ARE ROTATED 0°00'48" CLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS); THENCE ALONG SAID NORTH LINE NORTH 89°59'12" WEST 303.12 FEET (WEST BY DEED) TO THE NORTHWEST CORNER OF SAID PARCEL 1; THENCE ALONG THE WEST LINE OF SAID PARCEL 1 SOUTH 00°00'48" WEST 425.00 FEET (SOUTH BY DEED) TO AN EXISTING EVERGREEN ENGINEERING REBAR & CAP AND THE NORTHWEST CORNER OF PARCEL 2 OF SAID WARRANTY DEED (WHICH SAID PARCEL 2 IS THE SAME AS QUIT CLAIM #2 AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY BUHLER ASSOCIATES FILED AS NO. 0001830 IN THE WASATCH COUNTY SURVEYORS OFFICE); THENCE ALONG THE WEST LINE OF SAID QUIT CLAIM #2 SOUTH 00°32'12" EAST 134.12 FEET (SOUTH BY DEED) TO AN EXISTING BUHLER ASSOCIATES REBAR & CAP; THENCE ALONG THE SOUTH LINE OF SAID QUIT CLAIM #2 NORTH 89°49'38" EAST 528.67 FEET (EAST BY DEED) EXTENDING THROUGH AN EXISTING BUHLER ASSOCIATES REBAR & CAP TO SAID NORTH-SOUTH CENTER SECTION LINE; THENCE ALONG SAID NORTH-SOUTH CENTER SECTION LINE SOUTH 00°00'09" WEST 1,263.25 FEET TO A BING CHRISTENSEN REBAR & CAP AS DEPICTED ON A RECORD OF SURVEY MAP PREPARED BY MCM ENGINEERING AND FILED AS NO. 1033 IN SAID WASATCH COUNTY SURVEYOR'S OFFICE; THENCE ALONG AN EXISTING FENCE NORTH 89°59'12" WEST 676.35 FEET TO STATION 154+09 ON THE CENTERLINE OF THE WASATCH CANAL AS DESCRIBED IN SAID CONTRACT AND GRANT OF EASEMENT RECORDED AS ENTRY NO. 212641 OF SAID RECORDS, SAID POINT BEING 676.32 FEET WEST AND 668.13 FEET NORTH OF THE SOUTH QUARTER CORNER OF SAID SECTION 20; THENCE CONTINUING NORTH 89°59'12" WEST 52.77 FEET TO THE WESTERLY LINE OF SAID WASATCH CANAL; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FOURTEEN COURSES: (1) NORTHWESTERLY 36.10 FEET ALONG A 180.84 FEET RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 11°26'10" AND A LONG CHORD OF NORTH 48°19'44" WEST 36.04 FEET; (2) NORTH 42°36'39" WEST 243.31 FEET; (3) NORTHWESTERLY 59.37 FEET ALONG A 244.36 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 13°55'16"

AND A LONG CHORD OF NORTH 49°34'17" WEST 59.23 FEET; (4) NORTH 56°31'55" WEST 141.96 FEET; (5) NORTHWESTERLY 52.18 FEET ALONG A 139.48 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 21°26'10" AND A LONG CHORD OF NORTH 45°48'50" WEST 51.88 FEET; (6) NORTH 35°05'45" WEST 32.66 FEET; (7) NORTHWESTERLY 24.90 FEET ALONG A 52.16 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 27°21'17" AND A LONG CHORD OF NORTH 48°46'23" WEST 24.67 FEET; (8) NORTH 62°27'02" WEST 31.01 FEET; (9) NORTHWESTERLY 59.68 FEET ALONG A 100.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 34°11'34" AND A LONG CHORD OF NORTH 45°21'15" WEST 58.80 FEET; (10) NORTH 28°15'28" WEST 46.48 FEET; (11) NORTHWESTERLY 27.92 FEET ALONG A 75.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 21°19'55" AND A LONG CHORD OF NORTH 38°55'26" WEST 27.76 FEET; (12) NORTH 49°35'23" WEST 30.70 FEET; (13) NORTHWESTERLY 89.92 FEET ALONG A 200.95 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 25°38'22" AND A LONG CHORD OF NORTH 36°46'12" WEST 89.18 FEET; AND (14) NORTH 23°57'01" WEST 0.10 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF COMMONS BOULEVARD PER WASATCH COMMONS SUBDIVISION PHASE 1 RECORDED AS ENTRY NO. 362478 OF SAID RECORDS, WHICH SAID PHASE 1 BEARINGS ARE ROTATED 0°01'39" COUNTERCLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES: (1) WESTERLY 252.73 FEET ALONG A 483.50 FEET RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 29°56'58" AND A LONG CHORD OF NORTH 75°05'36" WEST 249.86 FEET; AND (2) NORTH 60°07'07" WEST 29.46 FEET; THENCE NORTH 29°52'53" EAST 67.00 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID COMMONS BOULEVARD; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING EIGHTEEN COURSES (1) NORTH 60°07'07" WEST 50.00 FEET; (2) NORTHWESTERLY 13.57 FEET ALONG A 17.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 44°24'55" AND A LONG CHORD OF NORTH 37°54'40" WEST 13.23 FEET; (3) NORTH 60°07'07" WEST 103.22 FEET; (4) WESTERLY 391.17 FEET ALONG A 488.50 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 45°52'49" AND A LONG CHORD OF NORTH 83°03'31" WEST 380.80 FEET; (5) WESTERLY 30.50 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 49°13'32" AND A LONG CHORD OF NORTH 81°23'10" WEST 29.57 FEET; (6) WESTERLY 50.41 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 30°33'53" AND A LONG CHORD OF NORTH 72°03'20" WEST 49.82 FEET; (7) NORTHWESTERLY 34.27 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF NORTH 59°41'11" WEST 32.95 FEET; (8) NORTH 32°02'05" WEST 11.88 FEET; (9) SOUTH 50°08'15" WEST 77.72 FEET; (10) SOUTH 32°02'05" EAST 1.29 FEET; (11) SOUTHERLY 34.27 FEET ALONG A 35.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF SOUTH 04°22'59" EAST 32.95 FEET; (12) SOUTHERLY 26.91 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 16°18'53" AND A LONG CHORD OF SOUTH 15°06'41" WEST 26.82 FEET; (13) SOUTHWESTERLY 31.61 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 51°00'41" AND A LONG CHORD OF SOUTH 32°27'35" WEST 30.57 FEET; (14) SOUTH 57°57'55" WEST 24.11 FEET; (15) SOUTHWESTERLY 21.44 FEET ALONG A 135.00 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°05'55" AND A LONG CHORD OF SOUTH 62°30'53" WEST 21.42 FEET; (16) SOUTH 67°03'50" WEST

52.01 FEET; (17) SOUTHWESTERLY 26.20 FEET ALONG A 165.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 09°05'55" AND A LONG CHORD OF SOUTH 62°30'53" WEST 26.17 FEET; AND (18) SOUTH 57°57'55" WEST 27.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,038,681 SQUARE FEET OR 138.629 ACRES.

SOUTH PARCEL:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20 ALL IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 40 PROJECT NO. F-019-1(1), SAID POINT BEING NORTH 0°08'37" WEST 687.06 FEET ALONG THE SECTION LINE AND EAST 659.19 FEET FROM THE 1999 WASATCH COUNTY SURVEY ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); THE PARCEL 2 DESCRIPTION AS RECORDED AS ENTRY NO. 396936 OF SAID RECORDS, WHICH SAID PARCEL 2 BEARINGS ARE ROTATED 0°01'39" COUNTERCLOCKWISE TO AGREE WITH THE ABOVE DESCRIBED BASIS OF BEARINGS; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE NORTH 32°00'02" WEST 748.34 FEET ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID STATE HIGHWAY 40 TO THE BOUNDARY LINE OF WASATCH COMMONS SUBDIVISION, SAID BOUNDARY ALSO BEING THE SOUTH RIGHT OF WAY LINE FOR COMMONS BOULEVARD; THENCE ALONG THE SAID SOUTH RIGHT OF WAY LINE AND BOUNDARY LINE NORTH 57°57'55" EAST 146.97 FEET; THENCE NORTHEASTERLY 33.19 FEET ALONG A 35.50 FEET RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 53°33'54" AND A LONG CHORD OF NORTH 84°44'52" EAST 31.99 FEET; THENCE SOUTHEASTERLY 31.12 FEET ALONG A 94.50 FEET RADIUS REVERSE CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 18°52'06" AND A LONG CHORD OF SOUTH 77°54'14" EAST 30.98 FEET; THENCE SOUTHEASTERLY 34.27 FEET ALONG A 35.50 FEET RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 55°18'12" AND A LONG CHORD OF SOUTH 59°41'11" EAST 32.95 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE FOR GREEN VALLEY ROAD; THENCE ALONG SAID RIGHT OF WAY LINE AND SAID BOUNDARY LINE SOUTH 32°02'05" EAST 10.00 FEET; THENCE NORTH 57°57'55" EAST 12.00 FEET; THENCE SOUTH 32°02'05" EAST 44.05 FEET; THENCE SOUTHEASTERLY 14.86 FEET ALONG A 153.00 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 5°33'55" AND A LONG CHORD OF SOUTH 34°49'02" EAST 14.86 FEET; THENCE SOUTH 37°36'00" EAST 36.75 FEET; THENCE SOUTHEASTERLY 59.80 FEET ALONG A 447.00 FEET RADIUS CURVE TO THE

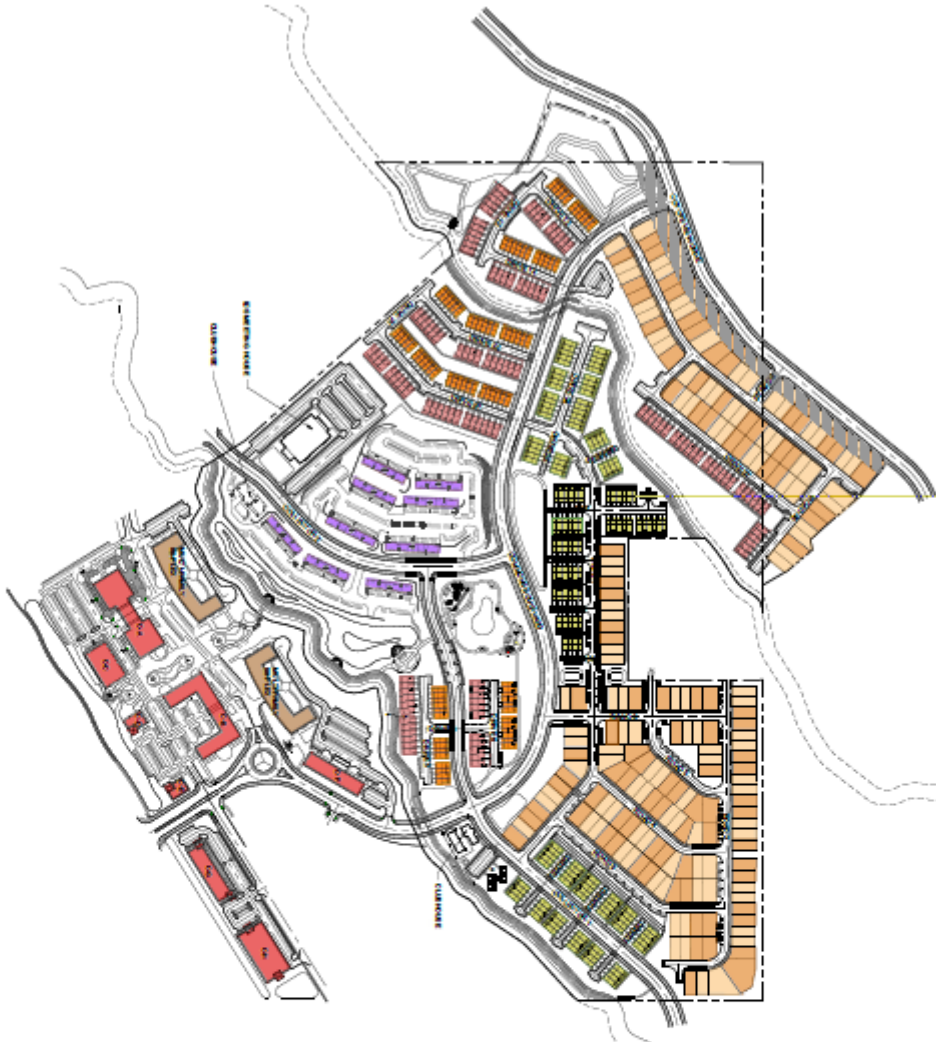
RIGHT THROUGH A CENTRAL ANGLE OF 7°39'55" AND A LONG CHORD OF SOUTH 33°46'03" EAST 59.76 FEET; THENCE SOUTH 29°56'05" EAST 24.60 FEET; THENCE SOUTHEASTERLY 92.27 FEET ALONG A 2517.50 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 2°06'00" AND A LONG CHORD OF SOUTH 30°59'05" EAST 92.26 FEET; THENCE SOUTH 32°02'05" EAST 544.50 FEET; THENCE NORTH 89°59'12" WEST 270.18 FEET TO THE POINT OF BEGINNING.

CONTAINS 185,067 SQUARE FEET OR 4.249 ACRES

**Exhibit D
to
First Amendment
to
Development Agreement for Highlands Master Planned Community**

(Master Plan)

[See attached.]



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Exhibit L
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

(NVOZ Specific Application Standards—Highlands Master Planned Community)

Article and Section references are to the General Provisions of the North Village Overlay District Code referenced in the 18.21.010 of the Zone:

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 4 Street Façade Requirements, is hereby amended to eliminate the last phrase of the first sentence (i.e., “including a parking lot”) and the second sentence in the introductory paragraph (i.e. 360-degree architecture is not required), provided, however, all facades facing a public or private right-of-way shall satisfy the “Blank Wall Limitations” set forth in sub-party (2) of sub-paragraph 4.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 5 Unique Architecture, is hereby amended to reduce the 400-foot distance to 120 feet for lots that are less than a quarter acre in size so long as there are at least 6 different building facades within such 120-foot distance on both sides of the street.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 2 Building Height, Sub-paragraph 2(d), is hereby amended to provide that the stated requirements only apply to adjacent buildings on the same side of the street and facing a public street and to indicate that the height variation requirements do not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.

Article 3.0 Buildings, Section 3.6 Townhouse Building, Sub-paragraph 2, Footnote 2, is hereby amended to eliminate the 3-building requirement and to impose a 50-foot average courtyard width requirement where the courtyard is non-linear; provided, in no event shall a non-linear courtyard be less than 30 feet in width at any location.

Article 3.0 Buildings, Section 3.9 Craftsman, Sub-paragraph 9, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.10 Farmhouse, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.11 Mountain Modern, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement shall be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.6 Townhouse Building, Figure 3.6 (5), is hereby amended to require Townhouses facing common greens to have three-sided architecture with windows (but not a wrap-around porch), provided, where a townhouse faces another row of townhouses, the façade shall include architectural elements approved by the City planning staff that present a pleasing facade to the facing properties.

Table 3.4(1), Line a, is hereby amended to allow the City planning staff to reduce the “Front Property Line Coverage” percentage to accommodate site topography and to provide that access drives shall be excluded from the “Front Property Line Coverage” calculation.

Table 3.4(1), Line b, is hereby amended to allow the City planning staff to increase the “Front Build-to-Zone” requirements to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

Table 3.7(1), Line I, together with footnote 5, are hereby amended to allow the garage to be set back from the building Façade not less than 2 feet, measured from any floor of the building where one or more of the following design elements are incorporated into the design of the building or street face to reduce visual impact of the garage[s], as approved by the City’s planning department:

1. Utilize private streets to minimize City burden of plowing and parking enforcement.
2. Require multiple wall planes along the front face of each building Façade.
3. Require a window in each projecting wall plane of the building Façade.
4. Require a 2-foot projection beyond the garage face on the second story of the building.
5. Require alternating (a.k.a. flipped) floor plans from lot to lot to maximize on-street parking.

6. Require differing lot sizes to maximize on-street parking and enhance the feel or architectural mix.
7. Require front door to face the street.
8. Require a covered porch.
9. Require supportive pillars in front of the garage face.

Table 4.2(1), Line I, Maximum Block Perimeter, together with footnote 1, are hereby amended to indicate that block perimeters may be increased by the City's planning department by more than 20% to accommodate the topography of the site, and to allow for increased maximum block perimeters where internal parking lots, pathways, and private access drives are proposed to achieve pedestrian connectivity.

Exhibit M
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

Parcel 1:

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 1307.75 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 1717.20 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); AND RUNNING THENCE NORTH 21°24'08" EAST 258.16 FEET; THENCE SOUTH 70°03'55" EAST 252.30 FEET; THENCE SOUTH 26°05'49" EAST 172.53 FEET TO A POINT ON THE NORTH LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; THENCE NORTH 89°54'54" WEST 407.29 FEET ALONG THE NORTH LINE OF SAID PROPOSED HIGHLANDS DEVELOPMENT TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 64,087 SQUARE FEET, OR 1.471 ACRES

Parcel 3:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 512.50 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 2641.36 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); AND RUNNING THENCE SOUTH 50°47'07" EAST 630.14 FEET; THENCE SOUTH 39°12'53" WEST 160.00 FEET; THENCE SOUTH 48°47'41" WEST 209.84 FEET;

THENCE SOUTH 47°21'15" WEST 58.64 FEET; THENCE SOUTH 11°49'56" EAST 40.21 FEET; THENCE SOUTH 49°46'59" WEST 126.86 FEET; THENCE SOUTH 59°43'42" WEST 112.86 FEET TO A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; THENCE NORTH 0°0'09" EAST 878.48 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 224,569 SQUARE FEET, OR 5.155 ACRE

Note: The above-referenced Parcels 1 and 3 are depicted on Highlands Residential Land Swap Exhibit, a copy of which is attached to Exhibit N.

Exhibit N
to
First Amendment
to
Development Agreement for Highlands Master Planned Community

PARCEL 2:

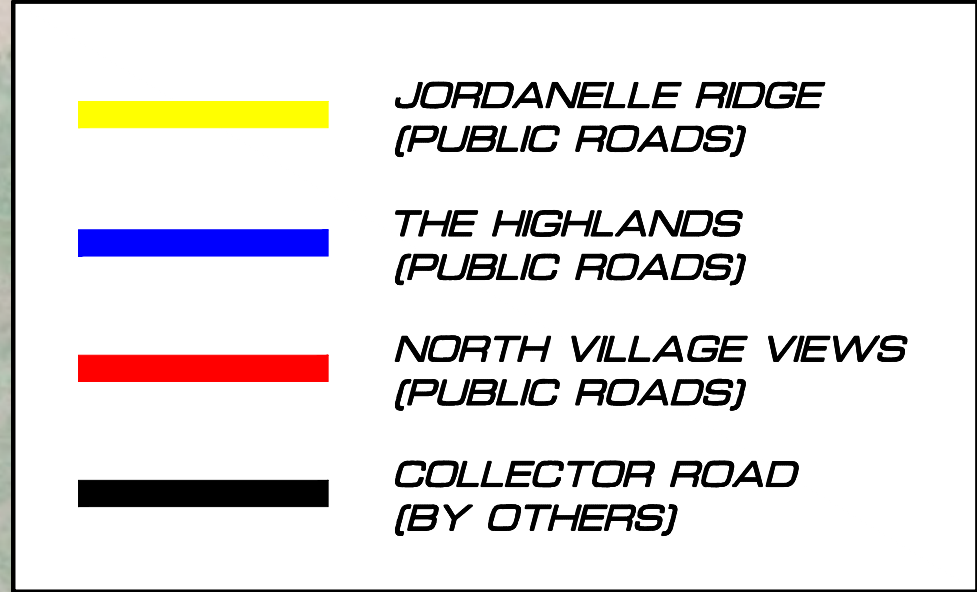
A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, IN TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, WASATCH COUNTY, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE PROPOSED HIGHLANDS DEVELOPMENT; SAID POINT BEING NORTH 00°29'50" WEST 512.50 FEET ALONG THE SECTION LINE AND NORTH 89°30'10" EAST 2641.36 FEET FROM THE WASATCH COUNTY SURVEY ALUMINUM PIPE CAP MONUMENT MARKING THE WEST QUARTER CORNER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; (BASIS OF BEARINGS FOR THIS DESCRIPTION IS SOUTH 04°04'03" EAST 2857.85 FEET ALONG A LINE DEFINED BY WASATCH COUNTY WATER SERVICE AREA NO. 1 SURVEY CONTROL MONUMENTS NO. 706 AND NO. 708 (BOTH ALUMINUM PIPE CAP MONUMENTS) (SEE THE SURVEY CONTROL SHEET FOR THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, WASATCH COUNTY WATER EFFICIENCY PROJECT, DRAWING NO. G-8 AS RECORDED IN BOOK 630 AT PAGES 766-767 AND AS ENTRY NO. 259146 OF THE WASATCH COUNTY RECORDS); SAID POINT OF BEGINNING ALSO BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF A PROPOSED COLLECTOR ROAD; AND RUNNING THENCE NORTHERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING FIVE (5) COURSES & DISTANCES; (1) NORTH 50°47'07" WEST 49.30 FEET TO A POINT OF CURVATURE; (2) NORTHWESTERLY 96.86 FEET ALONG THE ARC OF A 384.00 FOOT RADIUS CURVE TO THE RIGHT; CHORD BEARS NORTH 43°33'32" WEST 96.60 FEET; (3) NORTH 36°19'58" WEST 219.31 FEET TO A POINT OF CURVATURE; (4) NORTHWESTERLY 109.47 FEET ALONG THE ARC OF A 384.00 FOOT RADIUS CURVE TO THE RIGHT; CHORD BEARS NORTH 28°09'56" WEST 109.10 FEET; (5) NORTH 19°59'55" WEST 438.90 FEET; THENCE SOUTH 89°54'54" EAST 436.34 FEET; THENCE SOUTH 00°00'09" WEST 785.83 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS: 209,989 SQUARE FEET, OR 4.820 ACRES

Note: The above-referenced Parcels 2 is depicted on Highlands Residential Land Swap Exhibit, a copy of which is attached to this Exhibit N.

SINGLE FAMILY LOTS	39	16	-23	198	213	15
TOWNHOUSE UNITS	178	98	-80	491	353	-138
STACKED FLAT UNITS	0	224	224	120	235	115
TOTAL UNITS	217	338	121	809	801	-8
TOTAL ERUs	230	212	-18	558	579	21



 *JORDANELLE RIDGE
(RESIDENTIAL PODS)*

 *CIVIC AREA
(ART DISTRICT/UVU)*

 *THE HIGHLANDS*

 *NORTH VILLAGE VIEW*

**JORDANELLE RIDGE
NORTH VILLAGE
COMBINED CONCEPT!**

The logo for Momentum Development Group features a stylized orange and grey 'M' shape on the left, followed by the word 'MOMENTUM' in large, bold, grey capital letters, and 'DEVELOPMENT GROUP' in smaller, bold, grey capital letters below it.

SCALE
HORIZONTAL: 1" = 400'
VERTICAL: 1" = X'

JOB NUMBER
47-0117

Unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.

DATE SUBMITTED: 7/11/2023

PREPARED FOR: **RAINTREE**



HIGHLANDS-CONCEPTUAL MASTER PLAN-V11B

DEVELOPMENT SUMMARY

TOTAL SITE ACREAGE = 114.458 AC.

DR HORTON	UNITS	ERUs/UNIT	ERUs
SINGLE FAMILY RESIDENTIAL ALTA LOTS (40.5x93)	111	0.75	83.25
SINGLE FAMILY RESIDENTIAL COTTAGE LOTS (46.5x93)	96	1.0	96.0
STACKED FLATS	235	N/A	104.6
TOWNHOMES - OLIVER	89	1.0	89.0
TOWNHOMES - MILLBROOK	119	0.75	89.25
TOWNHOMES - DALTON	156	0.75	117.0
TOTAL UNITS = 806		TOTAL ERUs = 579	

EDITED 10/19/2023

Scale 1" = 200'

HIGHLANDS
HEBER CITY, UT
PROPOSED BASE V11B

231 West 800 South Salt Lake City Utah 84101
Ward Engineering Group
Planning • Engineering • Surveying
PH: 801.487.8040

CLIENT: DR. HORTON
DWG: 2023-10-19 HIGHLANDS PROPOSED
JOB NO: 3591-DRH01-22
DATE: 10/19/2023

DRAWN BY: WARD
DESIGN BY: WARD
CHECKED BY: AJS
DATE: 10/19/2023

REVISIONS

SHEET
EX-01

North Village Overlay Zone



NVOZ CHAPTER 18.21

PURPOSE:

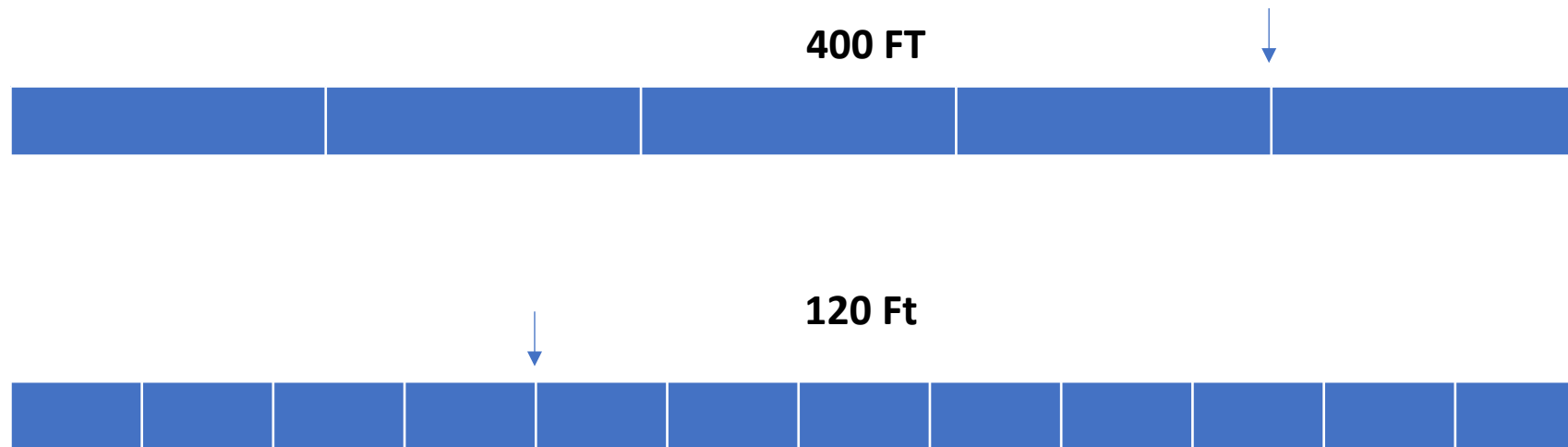
- DR Horton is requesting changes to the Development Agreement due to topographic conditions and proposed site grading that preclude our ability to comply with some of the NVOZ design standards.
- DR Horton is also seeking clarification regarding urban design principles contained in the current code and how to correctly apply them within the master plan in the following amendment principles.

NVOZ CHAPTER 18.21

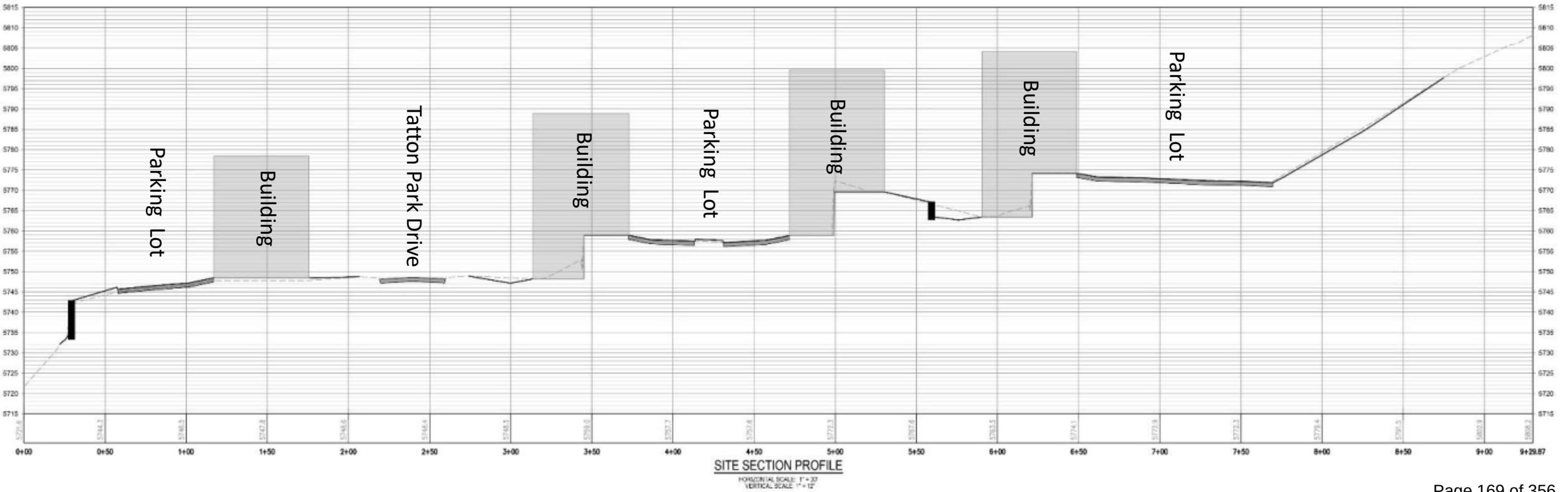
Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 4 Street Façade Requirements, is hereby amended to eliminate the last phrase of the first sentence (i.e., “including a parking lot”) and the second sentence in the introductory paragraph (i.e. 360-degree architecture is not required), provided, however, all facades facing a public or private right-of-way shall satisfy the “Blank Wall Limitations” set forth in sub-party (2) of sub-paragraph 4.

Staff commentary - 360-degree architecture conflicts with other sections of the NVOZ and within the same paragraph. The purpose of the 360-degree architecture is to ensure that there are not blank walls along the street frontages. The proposed products do not have blank walls. Staff will work with the applicant to ensure that the intent of the code is met.

Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 5 Unique Architecture, is hereby amended to reduce the 400-foot distance to 120 feet for lots that are less than a quarter acre in size so long as there are at least 6 different building facades within such 120-foot distance on both sides of the street.



Article 3.0 Buildings, Section 3.2, Explanation of Building Standards, 2 Building Height, Sub-paragraph 2(d), is hereby amended to provide that the stated requirements only apply to adjacent buildings on the same side of the street and facing a public street and to indicate that the height variation requirements do not apply if the natural topography of the site enables a perceived height variation between adjacent buildings. 3 / 4 split buildings shall be treated as 3-story buildings with respect to height variation requirements.

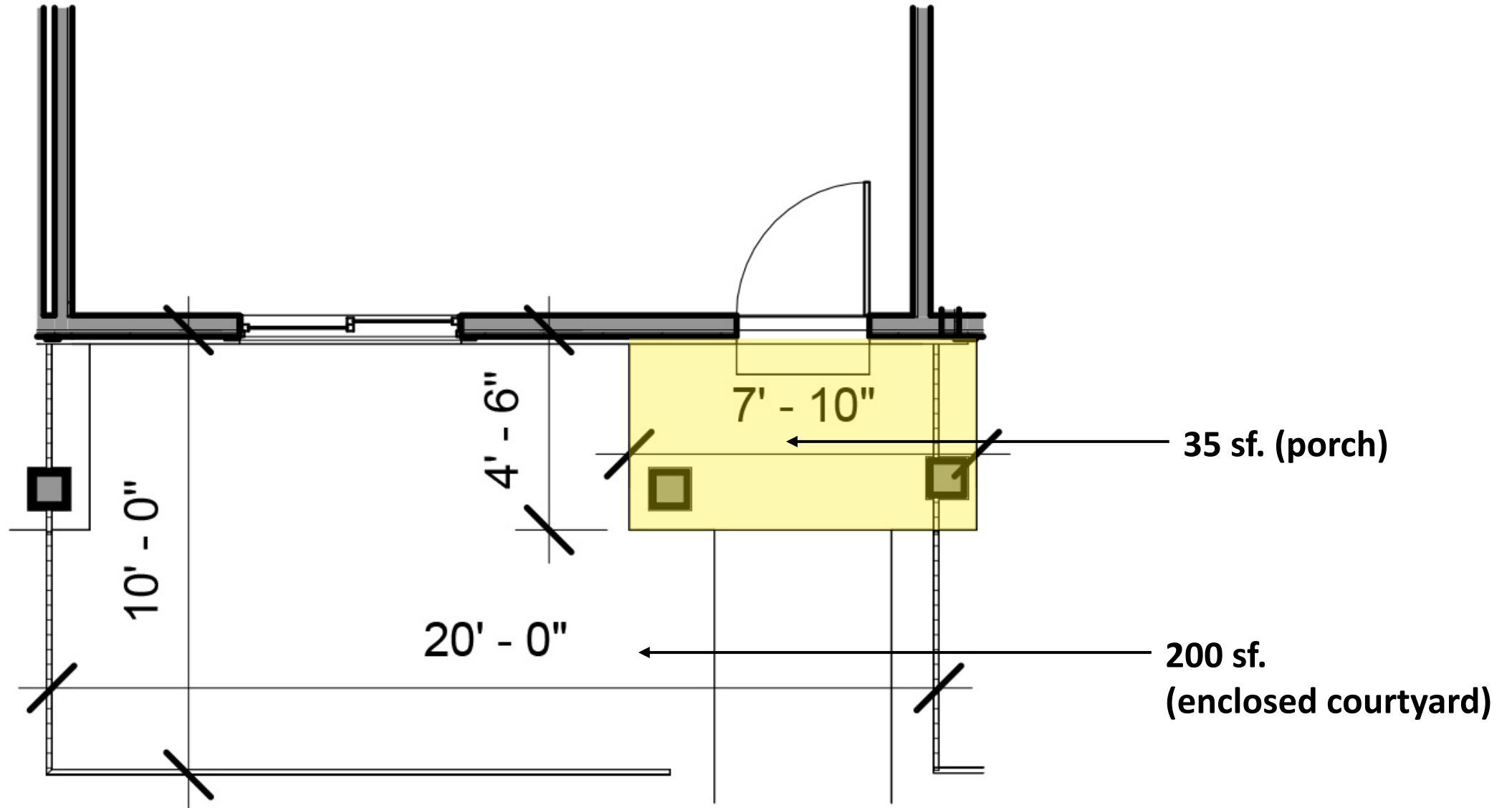


Article 3.0 Buildings, Section 3.6 Townhouse Building, Sub-paragraph 2, Footnote 2, is hereby amended to eliminate the 3-building requirement and to impose a 50-foot average courtyard width requirement where the courtyard is non-linear; provided, in no event shall a non-linear courtyard be less than 30 feet in width at any location.

Article 3.0 Buildings, Section 3.9 Craftsman, Sub-paragraph 9, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.10 Farmhouse, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.

Article 3.0 Buildings, Section 3.11 Mountain Modern, Sub-paragraph 7, is hereby amended to allow for Front Porches of varying sizes to promote a variation in facades; provided, an exception to the minimum 60 square-foot requirement be satisfied by providing a private enclosed courtyard of at least the same size.



Article 3.0 Buildings, Section 3.6 Townhouse Building, Figure 3.6 (5), is hereby amended to require Townhouses facing common greens to have three-sided architecture with windows (but not a wrap-around porch), provided, where a townhouse faces another row of townhouses, the façade shall include architectural elements approved by the City planning staff that present a pleasing facade to the facing properties.

Avoid “orphaned porches” on the end units by requiring them to be oriented to the street

The courtyard becomes the primary pedestrian space (not the street)

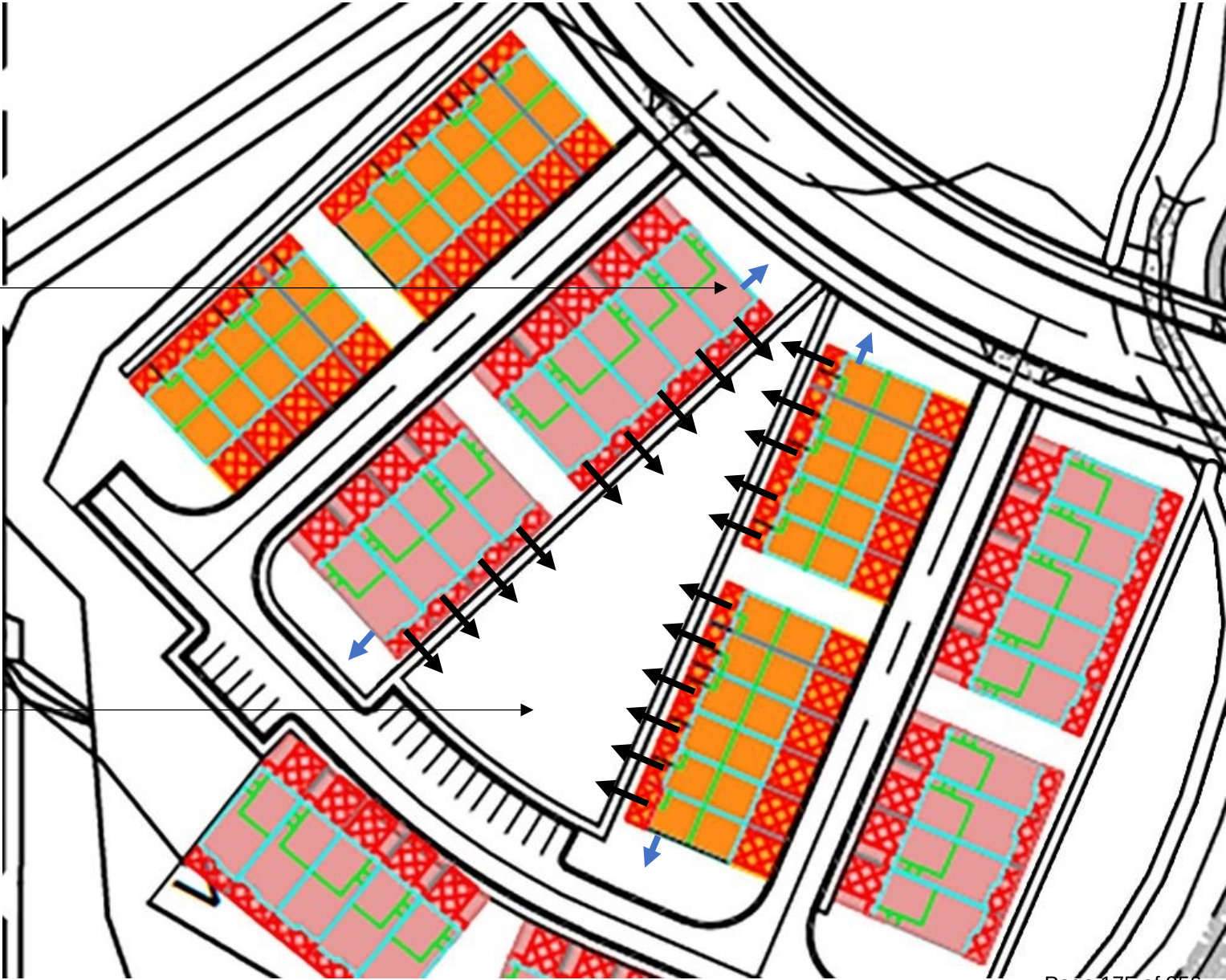


Table 3.4(1), Line a, is hereby amended to allow the City planning staff to reduce the “Front Property Line Coverage” percentage to accommodate site topography and to provide that access drives shall be excluded from the “Front Property Line Coverage” calculation.

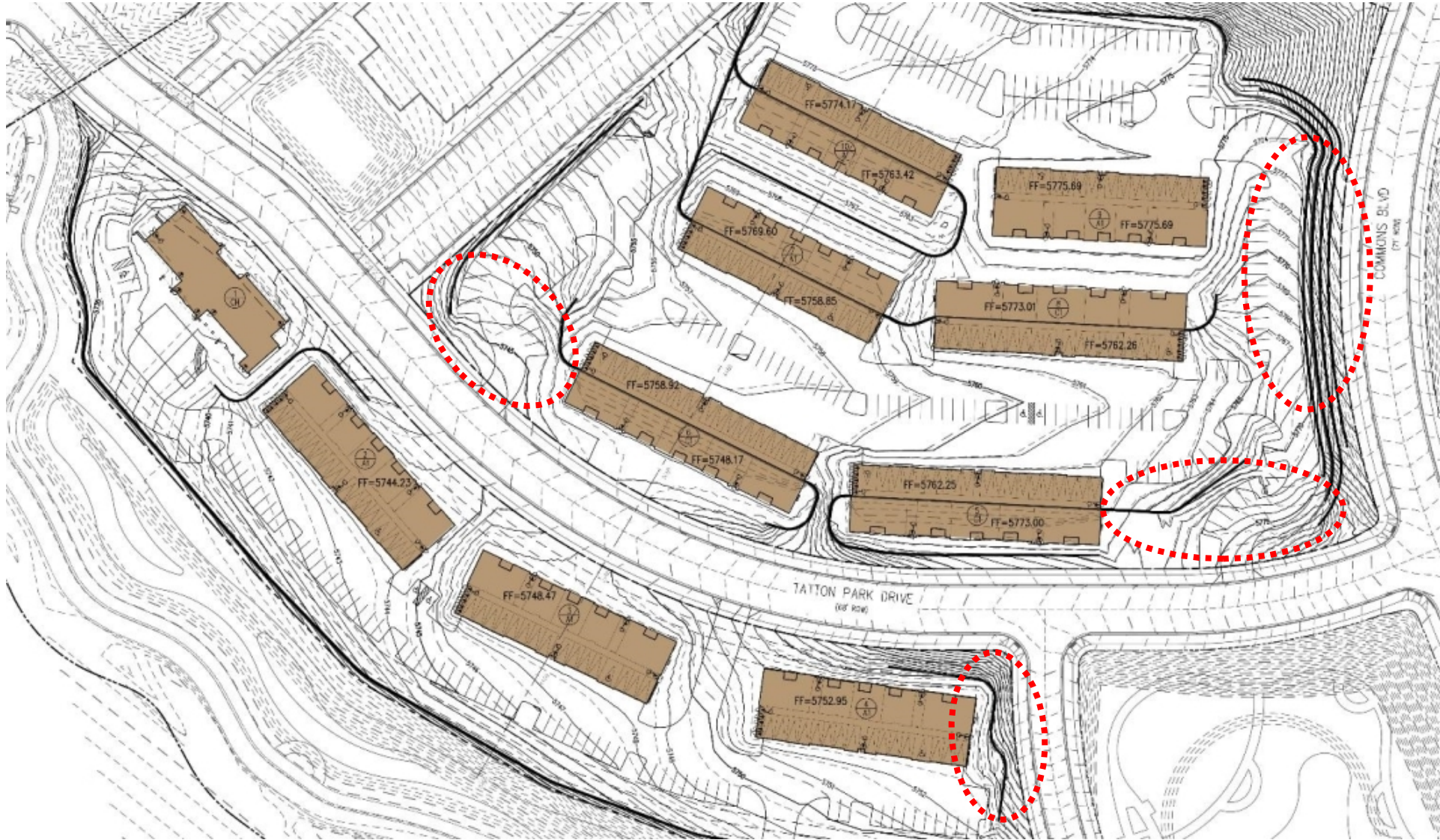


Table 3.4(1), Line b, is hereby amended to allow the City planning staff to increase the “Front Build-to-Zone” requirements to accommodate topography or when the front property line curves such that a 10'-20' front build-to-zone is not reasonably achievable.

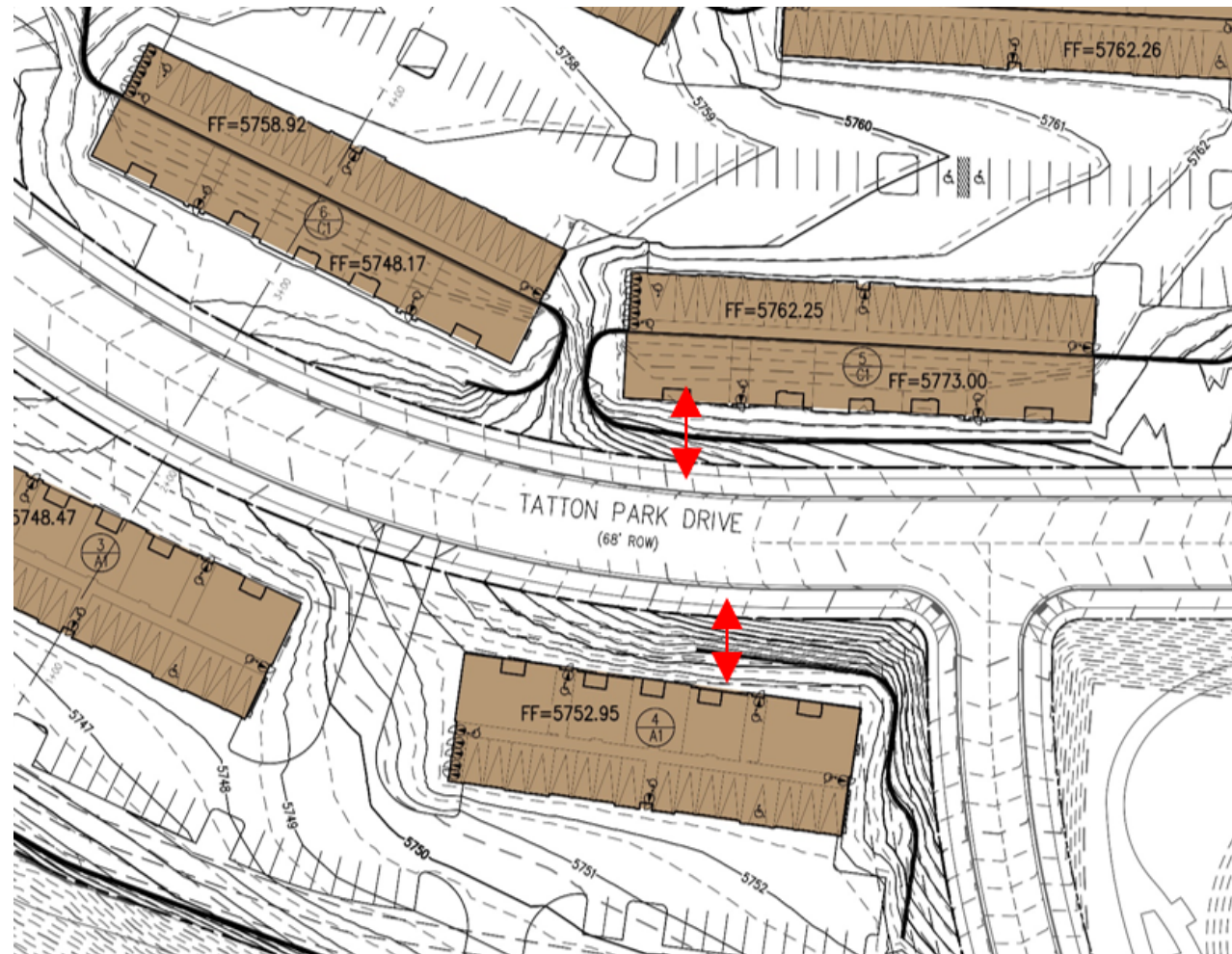


Table 3.7(1), Line I, together with footnote 5, are hereby amended to allow the garage to be set back from the building Façade not less than 2 feet, measured from any floor of the building where other design elements are incorporated into the design of the building to reduce visual impact of the garage and such additional design elements are approved by the City's planning department.

Snout Garages on Narrow Frontage

1. Aesthetics
 - a. Garages aren't attractive building faces
 - b. Interesting wall features of home can't be seen
2. Functionality
 - a. Snow Plowing: Driveways take up most of street frontage
 - b. Parking: Driveways take up most of street frontage
3. Safety:
 - a. Eyes on the Street: Can't see the street from living space

Solutions to Snout Garages

1. Rear yard garages
 - a. Topography limitations
 - b. Desire to differentiate between townhomes and single family
2. Wider lots
 - a. Balance with affordability
3. Home design: de-emphasize garage
 - a. Living space in front of garage
 - b. Windows facing the street
 - c. Doors facing the street
 - d. Differing architecture from home to home
4. Maintenance of streets for narrow lots
 - a. Use private streets to ease public burden of plowing and parking

Recommendations

1. Utilize private streets to minimize burden of plowing and parking enforcement
2. Require multiple wall planes along the front face
3. Require a window in each projecting wall plane
4. Require a 2-foot projection beyond garage face on second story
5. Require alternating (aka flipped) floor plans from lot to lot to maximize on-street parking
6. Require differing lot sizes to maximize on-street parking and mix the architecture
7. Require front door to face the street
8. Require a covered porch
9. Require supportive pillars in front of the garage face

CODE INTENT: WHAT TO AVOID



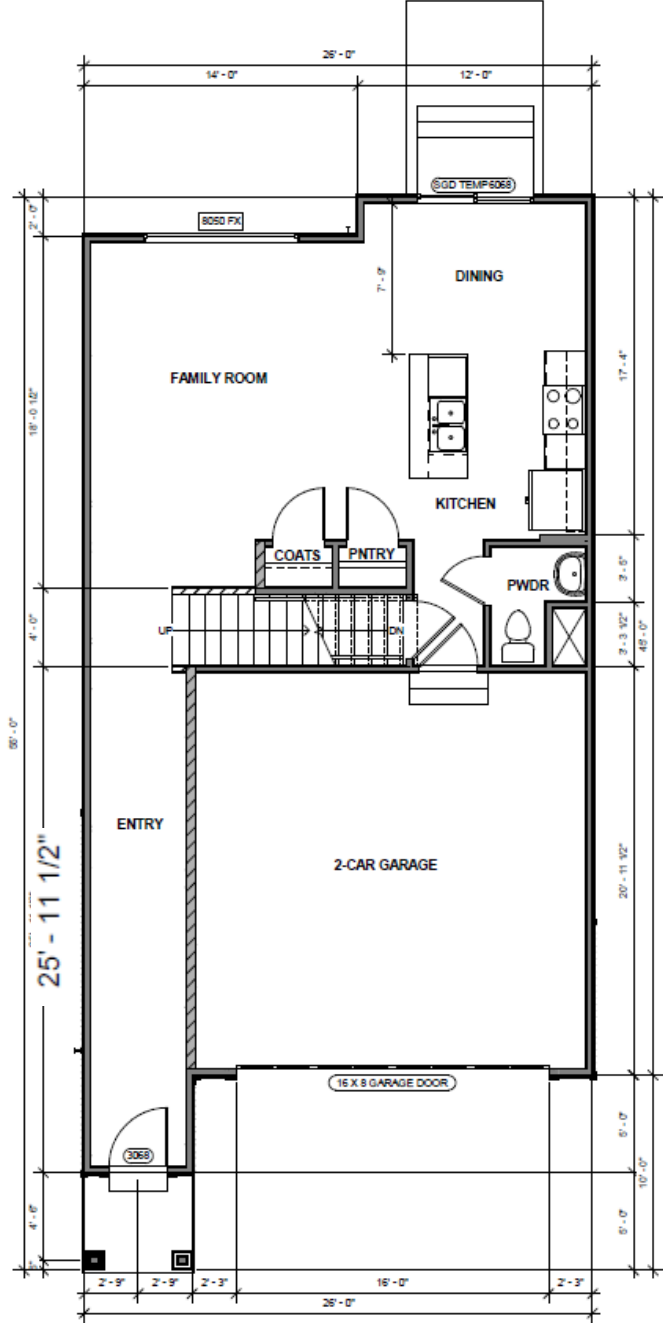
CODE INTENT: WHAT TO AVOID



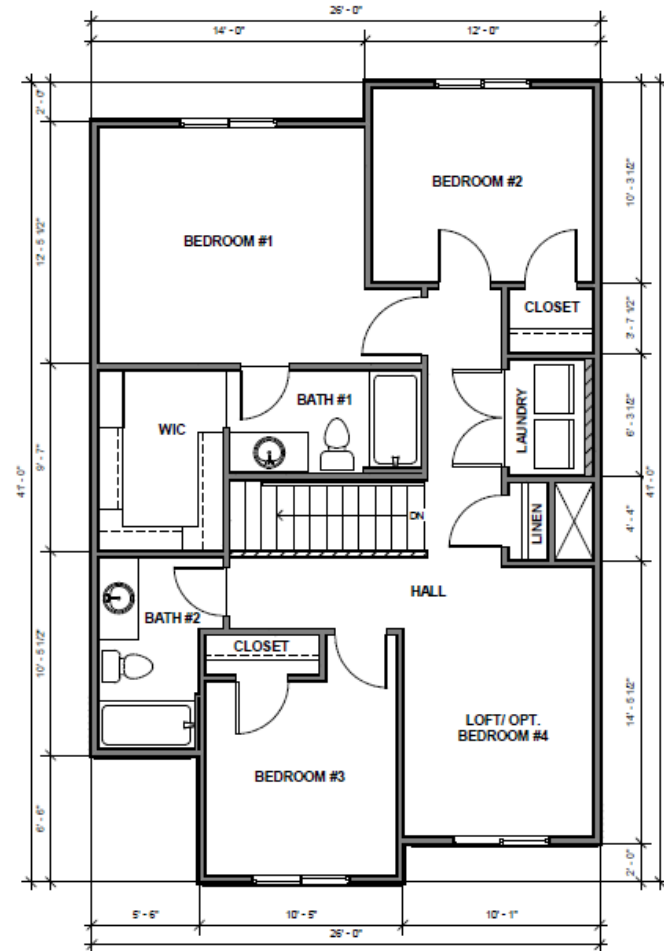
CODE INTENT: WHAT TO AVOID



CURRENT CODE REQUIREMENT

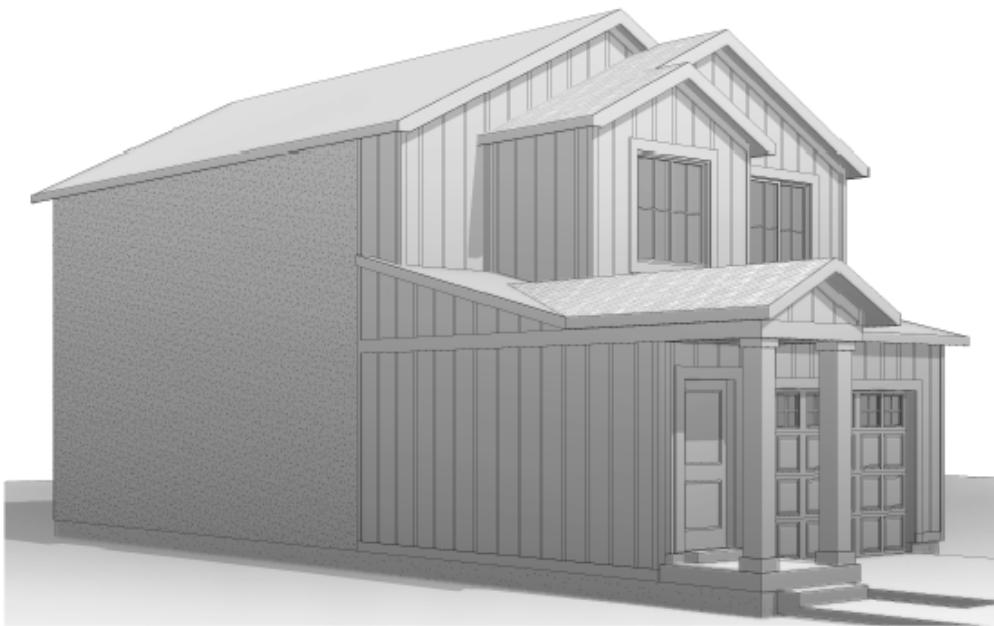


② DD FIRST FLOOR PLAN
1/4" = 1'-0"

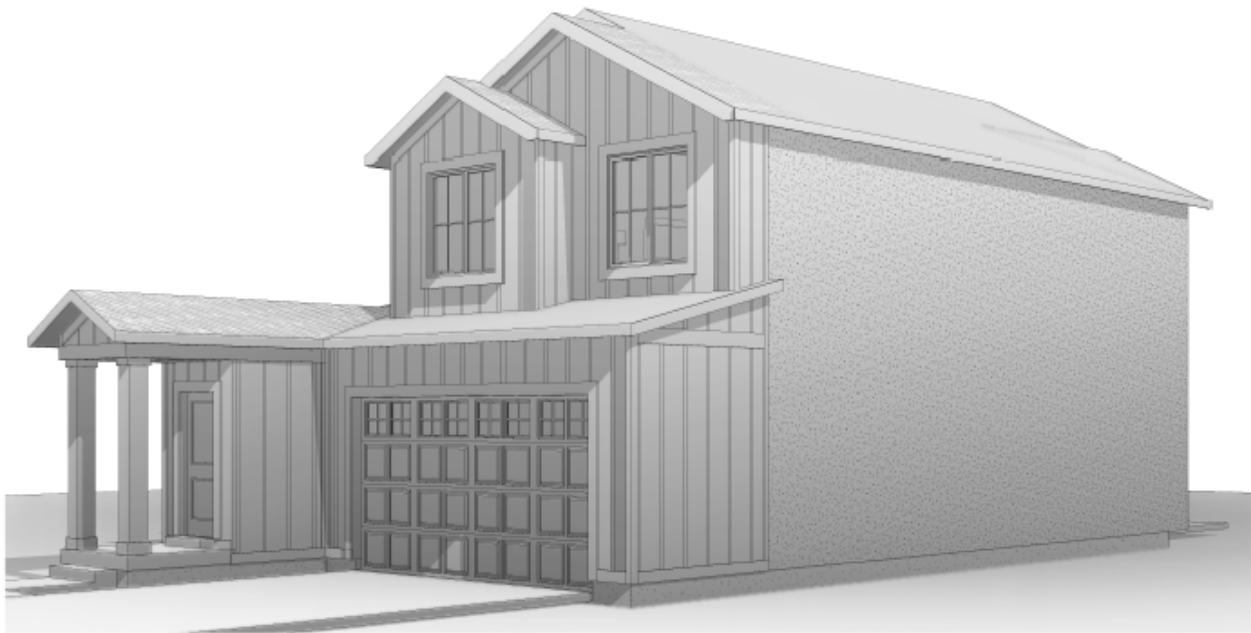


③ DD SECOND FLOOR PLAN
1/4" = 1'-0"

CURRENT CODE REQUIREMENT



① FA - FRONT LEFT 3D VIEW



② FA - FRONT RIGHT 3D VIEW

CURRENT

Garage door remains most dominant visual plane

Awkward 5' architectural appendage for front door



Porch feels exposed

Increased square footage is contained in a corridor

PROPOSED

Garage door becomes a subservient visual plane

Second story 2' cantilever massing with columns becomes focal point



Porch feels enclosed

Increased square footage is contained in a bedroom

PROPOSED SOLUTION



PROPOSED SOLUTION



PROPOSED SOLUTION



PROPOSED SOLUTION



Table 4.2(1), Line I, Maximum Block Perimeter, together with footnote 1, are hereby amended to indicate that block perimeters may be increased by the City's planning department by more than 20% to accommodate the topography of the site, and to allow for increased maximum block perimeters where internal parking lots, pathways, and private access drives are proposed to achieve pedestrian connectivity.



HIGHLANDS

CREEKSIDE AT HIGHLANDS

Master Plan Amendment

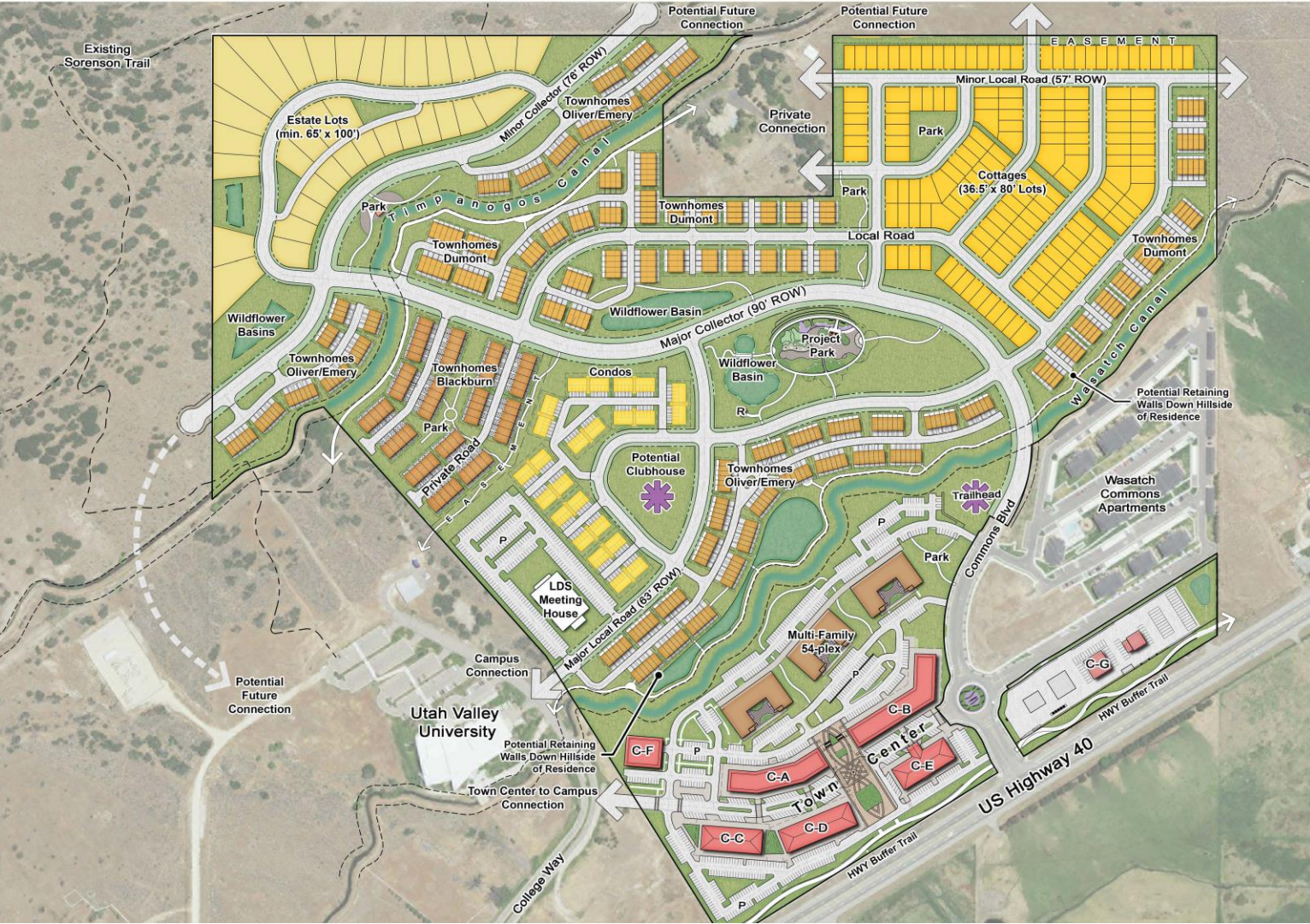
DATE: Tuesday September 20, 2022



HIGHLANDS
ORIGINAL MASTER PLAN

Open Space Required = 43.47 ac
(For Illustrative Purposes Only. Acreages are approximate and subject to change. Master Development Agreement (MDA), Final Plat and NVOZ shall prevail)

737 TOTAL ERU ALLOWED
670 + 67 (10% Affordable Housing Credit)



DEVELOPMENT SUMMARY

Total Site Acreage = 142.88 ac.

Total ERU's = 736.15 Total ERU Allowed = 737

DR Horton Product - 809 Units (557.75 ERU's)

- Estate Lots (>1600 sf) = 35 Units
- Cottages (<1,600 sf) = 163 Units
- Condos (<1200 sf) =
10 Plex x 12 Bldg = 120 Units
- Townhome - Dumont (1174 sf) = 189 Units
- Townhome - Blackburn (1485 sf) = 75 Units
- Townhome - Oliver / Emery = 227 Total Units
Oliver (1899 sf) = 78 Units
Emery (1406 sf) = 149 Units

Town Center Product - 310 Units (178.4 ERU's)

- Multi-Family - 54 Plex; 3 Stories
3 Buildings = 162 Units
- Commercial / Mixed-Use (A): 4 Stories
Retail (1st Floor): 23,500 sf
Residential (2 Floors): 51 Units
Total: 94,000 sf
- Commercial / Mixed-Use (B): 4 Stories
Retail (1st Floor): 28,500 sf
Residential (2 Floors): 57 Units
Total: 114,000 sf
- Commercial / Mixed-Use (C): 1 Story
Retail (Grocery): 16,000 sf
Total: 16,000 sf
- Commercial / Mixed-Use (D): 3 Stories
Retail (1st Floor): 20,000 sf
Residential (2 Floors): 40 Units
Total: 60,000 sf
- Commercial / Mixed-Use (E): 4 Stories
Hotel (4 Floors): 80 Keys
Total: 64,000 sf *
- Commercial (F): 3 Stories + Basement
Storage Unit (4 Floors): 12,000 sf EA
Total: 48,000 sf *
- Commercial (G)
Retail: 8,000 sf

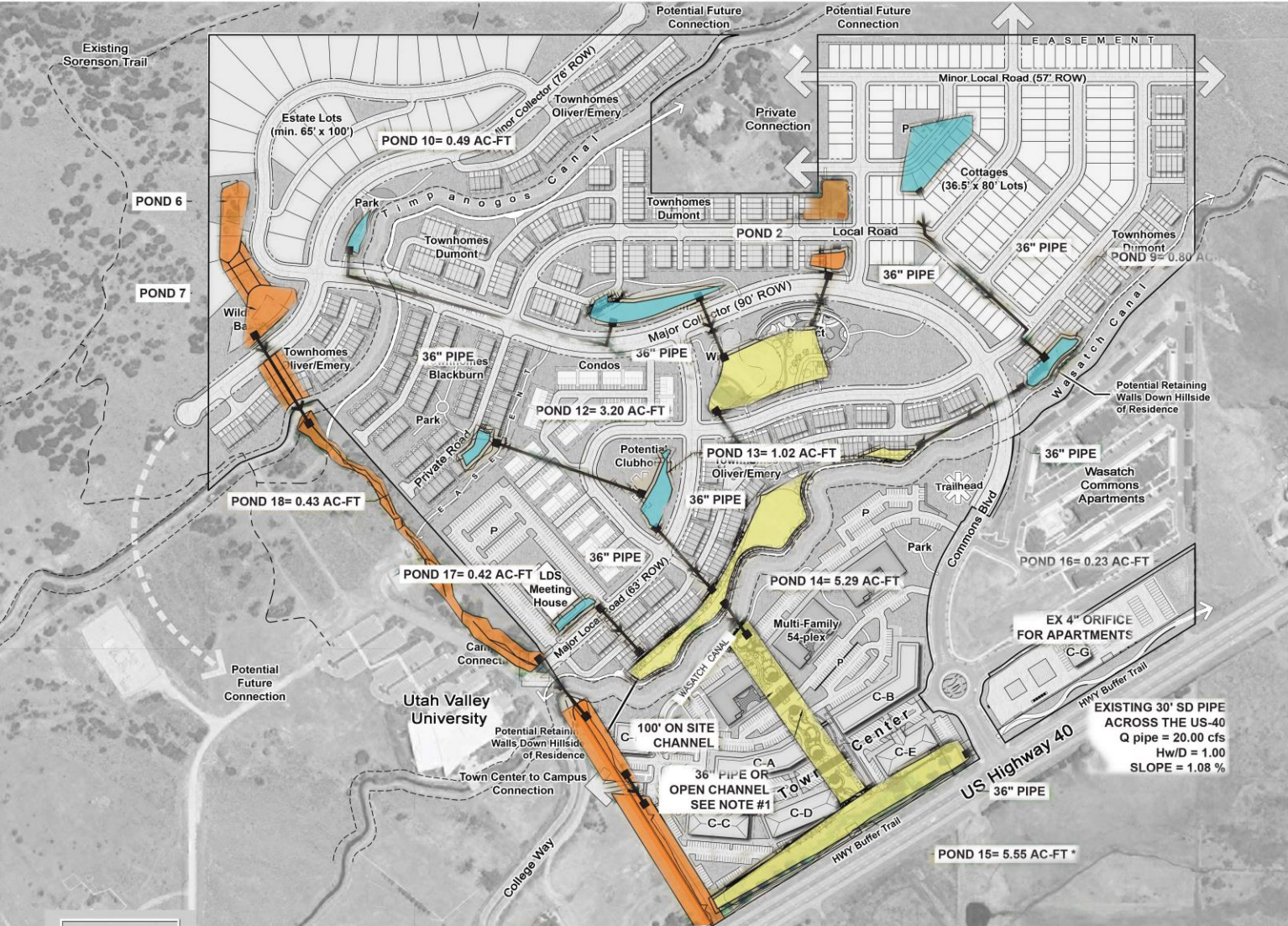
Required Open Space = 43.47 ac

TOTAL COMM / MIXED-USE = 96,000 SF
(*Hotel not included in total)

TOTAL UNITS = 1,119
Market Rate = 1,007
Affordable (10%) = 112
(Student Housing Applies)

NOTE: P=PARKING R=RESTROOM

HIGHLANDS
ORIGINAL MASTER PLAN
ONSITE DRAINAGE OVERLAY



DEVELOPMENT SUMMARY

Total Site Acreage = 142.88 ac.

Total ERU's = 736.15 Total ERU Allowed = 737

DR Horton Product - 809 Units (557.75 ERU's)

- Estate Lots (>1600 sf) = 35 Units
- Cottages (<1,600 sf) = 163 Units
- Condos (<1200 sf) =
 - 10 Plex x 12 Bldg = 120 Units
- Townhome - Dumont (1174 sf) = 189 Units
- Townhome - Blackburn (1485 sf) = 75 Units
- Townhome - Oliver / Emery = 227 Total Units
 - Oliver (1899 sf) = 78 Units
 - Emery (1406 sf) = 149 Units

Town Center Product - 310 Units (178.4 ERU's)

- Multi-Family - 54 Plex; 3 Stories
 - 3 Buildings = 162 Units
- Commercial / Mixed-Use (A): 4 Stories
 - Retail (1st Floor): 23,500 sf
 - Residential (2 Floors): 51 Units
 - Total: 94,000 sf
- Commercial / Mixed-Use (B): 4 Stories
 - Retail (1st Floor): 28,500 sf
 - Residential (2 Floors): 57 Units
 - Total: 114,000 sf
- Commercial / Mixed-Use (C): 1 Story
 - Retail (Grocery): 16,000 sf
 - Total: 16,000 sf
- Commercial / Mixed-Use (D): 3 Stories
 - Retail (1st Floor): 20,000 sf
 - Residential (2 Floors): 40 Units
 - Total: 60,000 sf
- Commercial / Mixed-Use (E): 4 Stories
 - Hotel (4 Floors): 80 Keys
 - Total: 64,000 sf *
- Commercial (F): 3 Stories + Basement
 - Storage Unit (4 Floors): 12,000 sf EA
 - Total: 48,000 sf *
- Commercial (G)
 - Retail: 8,000 sf

Required Open Space = 43.47 ac

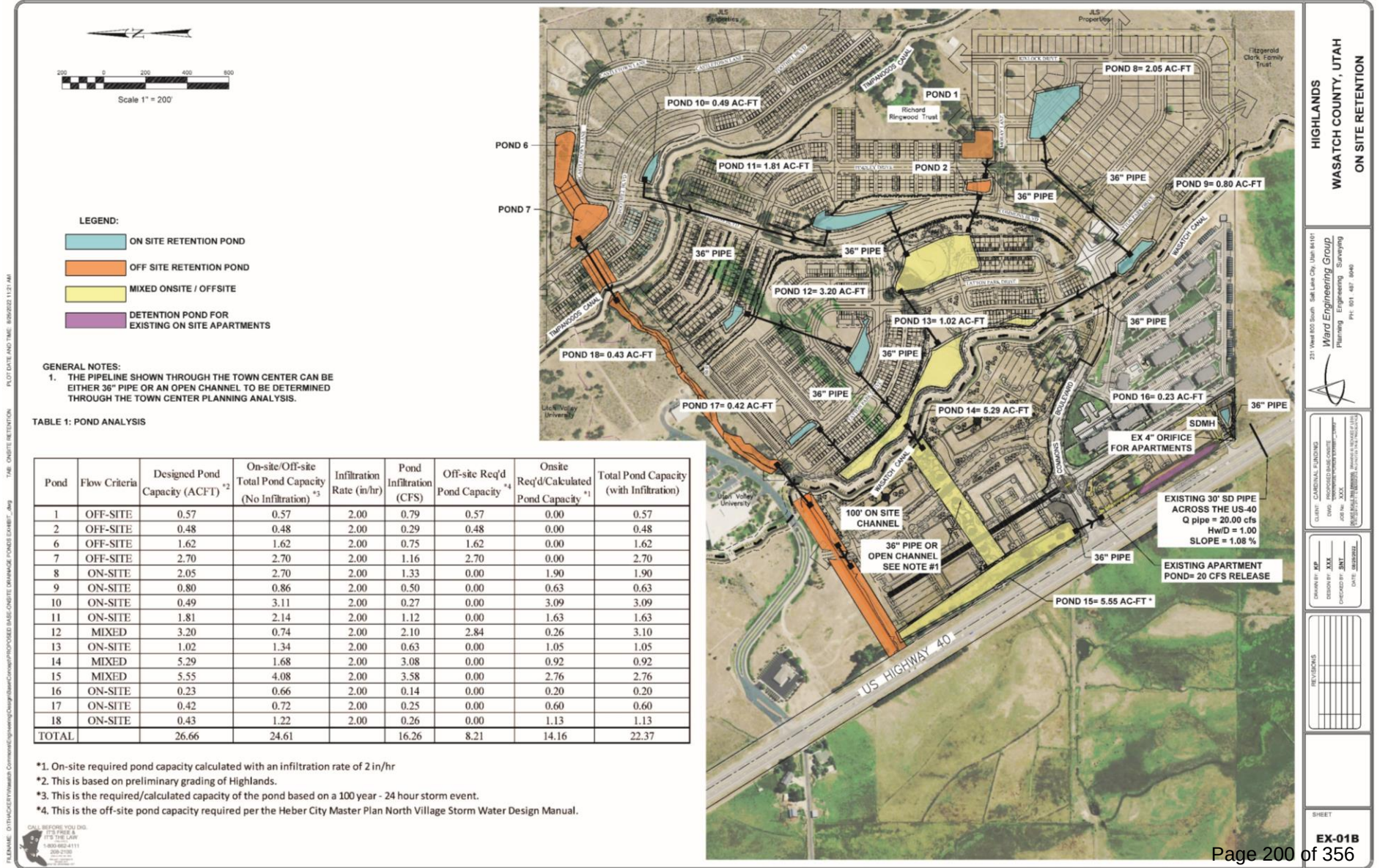
TOTAL COMM / MIXED-USE = 96,000 SF
(*Hotel not included in total)

TOTAL UNITS = 1,119
Market Rate = 1,007
Affordable (10%) = 112
(Student Housing Applies)

NOTE: P=PARKING R=RESTROOM

* For Illustrative Purposes Only

HIGHLANDS
ONSITE DRAINAGE PLAN

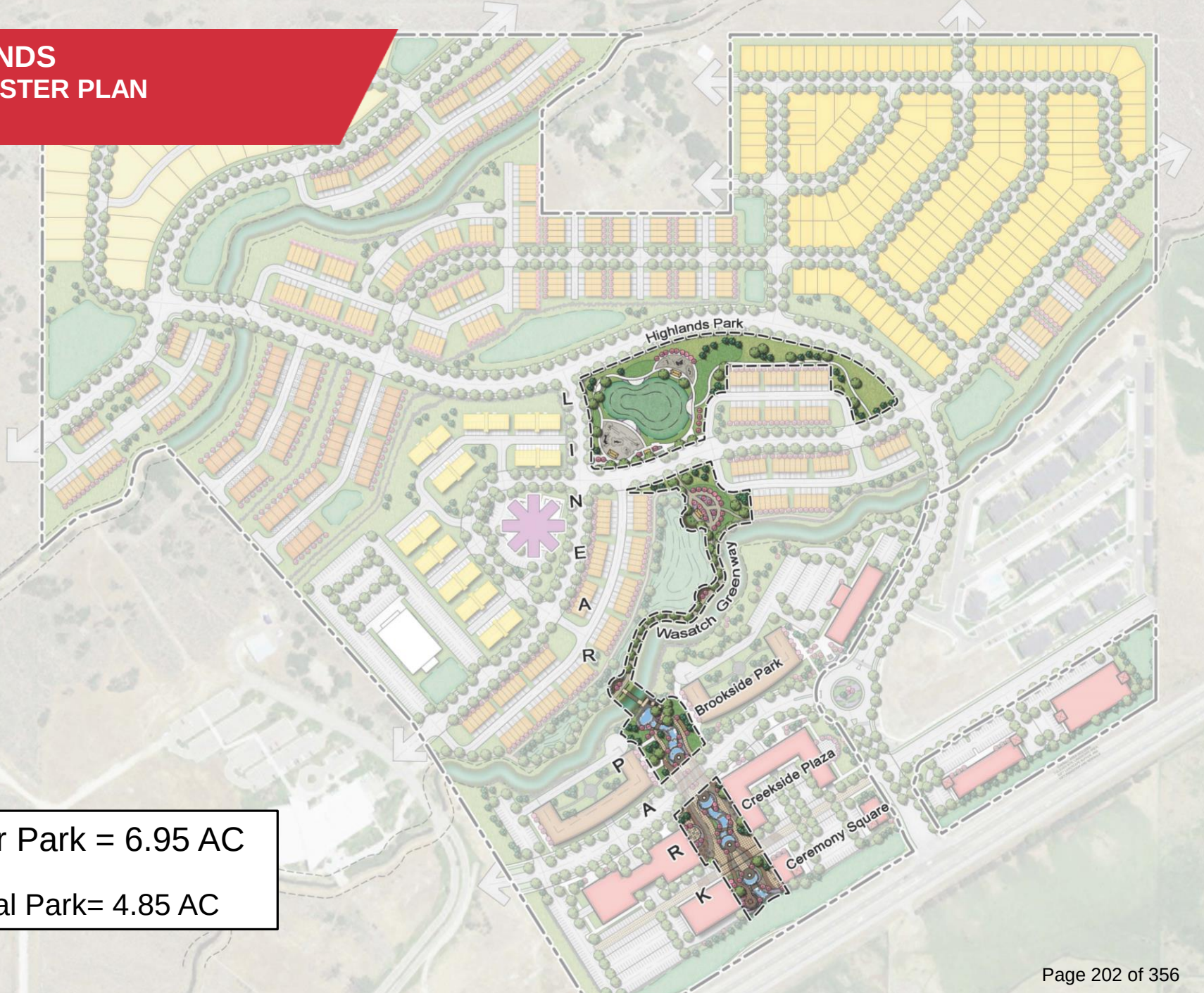


HIGHLANDS

MASTER PLAN AMENDMENT



HIGHLANDS
PARK MASTER PLAN



Linear Park = 6.95 AC
Original Park= 4.85 AC

HIGHLANDS LINEAR PARK RENDERING



HIGHLANDS LINEAR PARK ENLARGEMENT



HIGHLANDS

LINEAR PARK – 5 PARK ELEMENTS

Linear Park

- **6.95 acres of the required 43.47** acres per the Master Development Agreement. Original Neighborhood Park = 4.85 acres
- Pursuant to the standards outlined in *Section 5.0 Parks, Trails & Natural Lands Preservation* of the NVOZ
- **Exact layout of following elements is subject to change.**

Highlands Park

- Adventure Park (6-10 years old)
- Tot Lot (2-6 years old)
- Active Lawn Play
- Restrooms
- Pavilions
- Wildflower, Butterfly, & Hummingbird Basins
- Overlooks with Interpretive/Informational Signage
- Trailhead

Wasatch Greenway

- Trailhead(s)
- Water Filling Stations
- Crusher Fines Trail
- Arbors
- Reading Nooks
- Sensory/Music Gardens
- Pavilion

Brookside Park

- Water Wall
- Pedestrian Bridge
- Shade Shelter
- Cascading Water Feature w/ Check Dams
- Overlook Platform
- Sculptures
- Passive Lawn Area
- Landscape Steps
- Specialty Paving

Creekside Plaza

- Cascading Water Features w/ Check Dams
- Overlook Platform
- Specialty Paving
- Sculptures
- Pedestrian Bridges
- Plaza
- Ample Seating and Gathering Space

Ceremony Plaza

- Flagpoles
- Monument Signs
- Cascading Water Features w/ Check Dams
- Overlook Platform
- Specialty Paving
- Sculptures
- Pedestrian Bridges
- Plaza
- Waterfall

HIGHLANDS

NVOZ BASIC AMENITY LIST

PARK AND OPEN SPACE AMENITIES	
BASIC AMENITY	REQUIREMENTS
Park Bench	1 per 1/4 mile of paved or gravel trail, 4 per first 1/2 acre and 2 additional per acre for Urban Gathering Places, Local, and larger parks
Water Stations	Minimum 1 per Urban Gathering Places, 1 per park amenity node (pavillions, bath-rooms, etc.) for larger parks
Pavilion	Minimum one per Plaza, Square, Local Parks (15 person size), 2 per 3 acres of park for Neighborhood/Community Parks (30 person)
Playground	Minimum one per Local and 1 per 10 acres for larger parks
Picnic Area	Minimum 1 per Local and larger parks, Minimum 4 tables, 2 barbeques, shade, hard surfacing
Restrooms	1 per Neighborhood and larger parks (interior & exterior lighting)
Amenity Options	
Baseball Field	1 baseball field
Softball Field	1 softball field
Passive Lawn	Well graded 1/2 acre of turf grass lawn with 5-10 large park trees per acre
Sports field	1 multi sport field (soccer lacrosse, rugby, etc)
Tennis courts	2 Tennis Courts
Pickleball courts	4 Pickleball Courts
Outdoor Basketball	1 Outdoor Concrete Basketball Court
Outdoor Pool	1 Outdoor Pool
Rec Center	1 Recreation Center
Community Center	1 Community Center
Trail Options	
Trail Head	See Parks and Trails Master Plan for standards
Fitness system nodes	1 Trailhead Sign and 10 Parking Stalls, 1 water station to include equestrian water access.
On Trail Sign	1 per 1/4 mile includes a combination of physical/active stations and activity signs
	Trail directional sign at all trail intersections

Table 5.1 (1). Area Park Open Space Requirements by Sub-District

Qualifying Uses for Parks and Open Space		
Use	Meets Park Requirements	Meets Open Space Requirements
Trails within Parks	Yes	Yes
Trails in Open Space	No	Yes
Ball Courts	Yes	Yes
Farm or Agricultural Lands	No	Yes
Stormwater for Parks ^a	Yes	Yes
Stormwater for Development ^a	No	Yes
Stormwater in Common Areas ^a	No	Yes
Parking for Parks	Yes	Yes
Plazas, Courtyard, Park	Yes	Yes
Pocket Park, Community Park	Yes	Yes
Landscape around Private Buildings	No	Yes See #14
Recreation Center Buildings	Yes	Yes
Agriculture Buildings	No	No
Rooftop Gardens ^b	Partial	Partial
Playgrounds	Yes	Yes
Common Areas for Developments	Yes	Yes
Amphitheater	Yes	Yes
Sports fields	Yes	Yes
Community pools & pool areas	Yes	Yes
Sensitive Lands Preserved ^c	Yes	Yes
Recreation Center	Yes	Yes

Note: For illustrative purposes only. Final design is subject to change.

**HIGHLANDS
CREEKSIDE ENLARGEMENT**



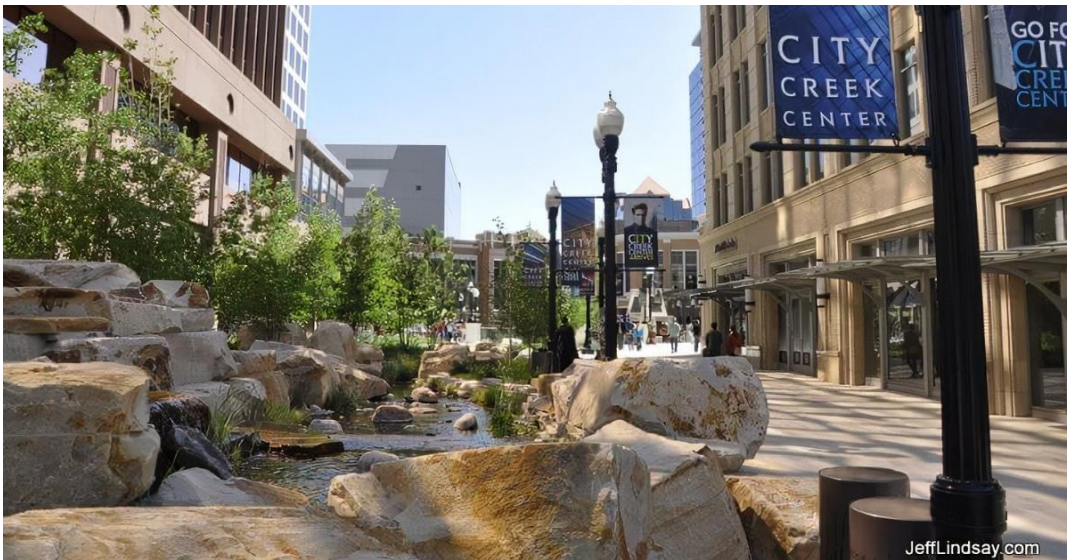
HIGHLANDS
TOWN CENTER ENLARGEMENT



HIGHLANDS TOWN CENTER SECTION



HIGHLANDS
PEDESTRIAN PLAZAS



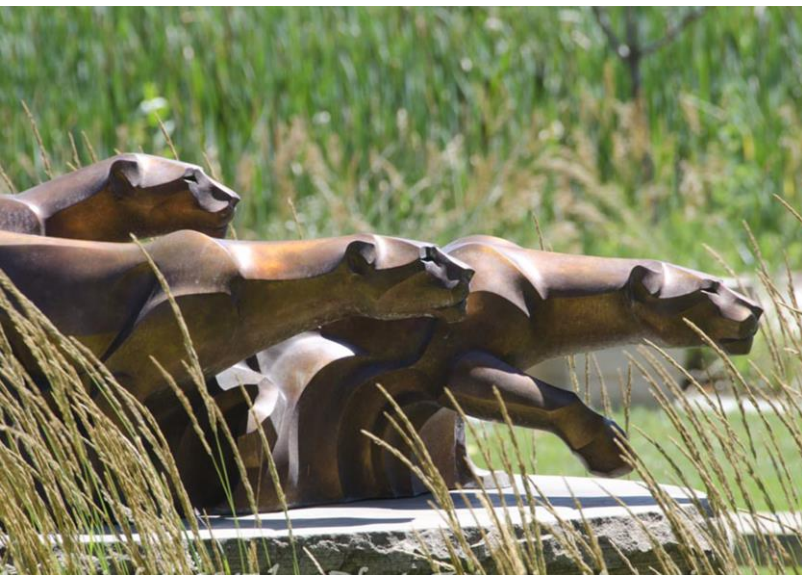
HIGHLANDS PARKS & SHELTERS



HIGHLANDS
PARK FEATURES



**HIGHLANDS
PUBLIC ART**



HIGHLANDS

NATIVE LANDSCAPE PLANTINGS





THANK YOU



Design
for when it
Matters

88 Inverness Circle East Building J, Suite 101 - Englewood, CO 80012

T: 303.734.1777

E: info@LAIdesigngroup.com



Heber City Council Staff Report

MEETING DATE: 1/2/2024
SUBJECT: Agreements for T-hangar Development at the Heber Valley Airport
RESPONSIBLE: Steve Osit
DEPARTMENT: Airport
STRATEGIC RELEVANCE: Community and Economic Development

SUMMARY

At its January 5, 2021, Regular Meeting, the Heber City Council authorized the execution of an Option Agreement with the to-be-formed Heber Hangar Owners Association, Inc. (the “HOA”) to develop an aircraft storage T-hangar condominium complex at the northeast corner of the Airport. The option was contingent on the completion of the Master Plan and the FAA’s approval of an Airport Layout Plan (“ALP”) compatible with the proposed development. Upon the FAA’s approval of the ALP approval in October 2023, the HOA timely notified the City that it intended to exercise this option. The terms of the lease were already substantially negotiated and approved by the City Council in connection with the Option Agreement. However, outside counsel has now worked with the HOA to finalize its terms and review (1) the Covenants, Conditions, and Restrictions that will govern the relationship between the HOA and individual leasehold condominium owners; and (2) a Compliance Agreement that will be required between individual leasehold condominium owners and the City.

RECOMMENDATION

It is recommended that City Council authorize the execution of the Master Lease Agreement in substantially the form of the current drafts, subject to any final, non-material modifications.

BACKGROUND

A plot of ground at the Airport had been designated for T-Hangars on the Airport Layout Plan for many years. In March 2020, the Airport Advisory Board (AAB) was approached by a company with the desire to build these T-Hangars. After receiving direction from City Council to move forward, an MOU between the City and the HOA was drafted. The MOU was brought before and approved by the City Council on July 21, 2020, and subsequently executed by the Mayor and HOA on or about July 28, 2020.

The MOU recognized that the City was in the process of preparing an Airport Master Plan, one

component of which would be an update to the ALP. Accordingly, the MOU was conditioned upon the FAA's concurrence that the project would not limit the alternatives considered by the Airport Master Plan or otherwise prejudice that effort.

At the then-current stage of the Airport Master Plan, neither the City nor the FAA could determine with any degree of certainty whether the updated ALP would continue to reserve the subject property for use as T-Hangars. The FAA accordingly indicated to the City's outside counsel that it would require that any agreement with the HOA was terminable in the event that the proposed development was not in conformity with an updated ALP.

Given that uncertainty, the parties developed an Option Agreement and accompanying form of Ground Lease. This allowed the parties to avoid the full cost of developing and reviewing Covenants, Conditions, and Restrictions ("CC&Rs"), finalizing all other terms of the Ground Lease, and formally entering into a Ground Lease that would be potentially subject to termination upon the conclusion of the Airport Master Plan, while "pre-negotiating" nearly all terms of the Ground Lease and allowing the HOA to conduct appropriate due diligence during the pendency of the Airport Master Plan at its own risk. Council authorized the execution of the Option Agreement and approved the terms of the attached Ground Lease in January 2021.

The City's outside counsel has worked with the HOA to develop and review the CC&Rs, which govern the relationship between the HOA and individual leasehold condominium owners. The developer intends that the T-Hangar Complex will be subdivided into sixteen hangar units, each demised as a leasehold condominium interest. In order to ensure that each individual leasehold condominium owner both understands that their condominium interest is at all times subject to the Master Lease Agreement between the City and the HOA, and to ensure that the City may legally enforce any violation thereof directly against the owner or its sublessees, if necessary, owner and sublessees will also be required to execute a Compliance Agreement, which has been negotiated with outside counsel and the HOA. In accordance with the Option Agreement, the terms of the Master Lease Agreement are materially the same as agreed to by the City in 2021, with minor revisions to accord with the CC&Rs and Compliance Agreement.

DISCUSSION

FISCAL IMPACT

This project will increase airport revenue through the lease of an additional 66,000 square feet of airport property, at the current market aeronautical rent rate of \$0.4193 per square foot (approximately \$27,500 per year). The HOA will also reimburse the City for utility work already conducted in the amount of \$34,200. The City will also collect a transfer fee of three percent of the sale price of a leasehold condominium interest upon the initial sale by the HOA, as well as by each leasehold condominium owner, thereafter.

CONCLUSION

If the T-hangars are constructed:

1. The City would have a more financially self-sufficient airport.
2. Pilots seeking aircraft hangars would be able to purchase them for the term of the lease.
3. Work would be provided for local contractors while helping to improve the airport.

It is recommended the City approve construction of the T-hangars.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

Staff recommends the City Council approve the T-Hangar Master Lease Agreement and forms of CC&Rs and Compliance Agreement, subject to any final non-material modifications agreed to between the parties.

Alternative 2 - Approve as Amended

The City could ask to make changes to the Master Lease Agreement or to other form documents.

ACCOUNTABILITY

Department: Airport
Staff member: Travis Biggs, Airport Director

EXHIBITS

1. 2023-12-28 - CCRs Final Draft
2. 2023-12-12 - Compliance Agreement - T-Hangar Condo Owners
3. 2023-12-28 - T-Hangar Master Lease Agreement

Recorded at the Request of:
Heber Hangar Owners Association, Inc.

**Record against the Leasehold Interest and Property
described in Exhibit C**

After Recording mail to:
JENKINS BAGLEY SPERRY, PLLC
Attn: Richard M. Matheson
5295 South Commerce Drive, Suite #120
Salt Lake City, Utah 84114

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
HEBER HANGAR OWNERS ASSOCIATION
(an Airport Hangar Project)**

Prepared by:



Attn: Richard M. Matheson
5295 South Commerce Drive, Suite #120
Salt Lake City, Utah 84114

TABLE OF CONTENTS

PREAMBLE.....	1
RECITALS.....	2
ARTICLE I: DEFINITIONS.....	3
ARTICLE IA: DESCRIPTION OF PROPERTY	7
ARTICLE II: PROPERTY RIGHTS	8
ARTICLE III: HEBER HANGAR OWNERS ASSOCIATION, INC.	10
ARTICLE IV: VOTING RIGHTS.....	11
ARTICLE V: JURISDICTION OF ASSOCIATION	11
ARTICLE VI: BOARD OF DIRECTORS.....	11
ARTICLE VII: ASSESSMENTS AND LIENS	12
ARTICLE VIII: RESERVES	17
ARTICLE IX: INSURANCE.....	18
ARTICLE X: DESTRUCTION OR DAMAGE AND EMINENT DOMAIN	23
ARTICLE XI: MAINTENANCE AND ALTERATIONS.....	24
ARTICLE XII: USE RESTRICTIONS.....	26
ARTICLE XIII: RENTAL RESTRICTIONS	28
ARTICLE XIV: EASEMENTS.....	30
ARTICLE XV: REINVESTMENT FEE.....	32
ARTICLE XVI: GENERAL PROVISIONS.....	33
ARTICLE XVII: AGENT FOR SERVICE	35
 EXHIBIT “A” – Airport Lease	
 EXHIBIT “B” – Bylaws	
 EXHIBIT “C” – Legal Description / Plat / Site Plan	

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
HEBER HANGAR OWNERS ASSOCIATION**

(an Airport Hangar Project)

PREAMBLE

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Heber Hangar Owners Association (this “Declaration”) affects and governs the Leasehold Interest on real property that is part of the Heber Valley Airport (the “Airport”) located in Wasatch County, State of Utah. The nature and location of the Leasehold Interest at the Airport is set forth in that certain Airport Lease dated _____ between the Association and the Heber City Corporation (the “Airport Lease”). The Airport Lease is attached hereto as **Exhibit “A”** which Exhibit A also contains a description of the real property at the Airport owned by the Heber City Corporation (the “City”) that is subject to the Airport Lease (the “Property”).

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

The Condominium Ownership Act, Utah Code §§ 57-8-1, *et seq.* (the “Act”), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities, and restrictions of that section. The remedies in the Act and this Declaration — provided by law or in equity — are cumulative and not mutually exclusive.

This Declaration is subject to and subordinate in all respects to the terms of the Airport Lease. The Airport and its facilities were funded in part by the U.S. government and this places certain obligations on the City under existing laws and regulations (the “Grant Assurances”). The Association, as a tenant of the City, is also subject to these Grant Assurances and certain obligations and responsibilities which the City is required to pass through to the Association and the Hangar Unit Owners. Therefore, this Declaration and all rights and obligations set forth herein are subject and subordinate to the provisions of any agreements heretofore or hereafter made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport. In the event that this Declaration, either on its own terms or by any other reason, conflicts with or violates the Airport Lease or Grant Assurances, such conflicting or violating provision of this Declaration shall be given no force or effect, without compromising or destroying any remaining portions of the Declaration, which remaining provisions shall remain binding and in full effect. Prior to taking title to a Hangar Unit, any Hangar Unit Owner shall be required to sign a Compliance Agreement in the form provided by the City.

RECITALS

A. Heber Hangar Owners Association, Inc. is a Utah nonprofit corporation (hereafter the “Association”). Pursuant to the Airport Lease, the Association has a “Leasehold Interest” in the Property and will construct sixteen (16) shared wall Hangars designed to hold aircraft along with shared Common Area designed for a common bathroom and Storage on the Property (collectively, the “Leasehold Interest”).

B. The Association, as Declarant, will be vested with powers of, among other matters, controlling, maintaining, and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Leasehold Interest, promulgating Rules and Regulations through its Board of Directors, and collecting and disbursing the assessments and charges hereinafter created and ensuring compliance by the Association and its Hangar Unit Owners with the Airport Lease, including all of its provisions, the Airport rules and regulations referenced therein, and all applicable FAA regulations.

C. The Declarant hereby declares that all of the Leasehold Interest shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions, and equitable servitudes set forth in this Declaration, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of the Leasehold Interest, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Leasehold Interest or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Leasehold Interest and shall be binding upon all Persons having or acquiring any right, title, or interest in the Leasehold Interest, or any part thereof, their heirs, successors, and assigns; shall inure to the benefit of every portion of the Leasehold Interest and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by the City, the Association, each Owner and their respective heirs, executors, and administrators, and successors and assigns.

D. Declarant’s project undertaken hereunder and pursuant to the Airport Lease is referred to as the “Heber Hangar Project.” It is a leasehold hangar project located in Heber City, Wasatch County, State of Utah. The Declarant submits the Leasehold Interest and other improvements to be constructed on the Property to this Declaration, for a period ending on the expiration date of the term of the Airport Lease, including any extensions thereof according to the provisions of Utah’s Condominium Ownership Act, Utah Code §§ 57-8-1 *et seq.*

E. This Declaration shall be recorded against the Leasehold Interest and Property identified on **Exhibit “C”**, attached hereto and incorporated herein by reference.

F. These Recitals shall be deemed covenants as well as recitals.

ARTICLE I DEFINITIONS

The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1. Act. Act means the Condominium Ownership Act, Utah Code §§ 57-8-1, *et seq.*, as such Act may be amended and supplemented from time-to-time.

1.2. Airport Lease. Airport Lease means the lease agreement between the City and Declarant dated _____ regarding the Property. As the context requires, the term “lease” may refer to a lease or other agreement under which a person may rent or occupy an Owner’s Hangar Unit and in such context the term “lease” will not refer to the “Airport Lease.”

1.3. Annual Assessment. Annual Assessment means the annual charge against each Hangar Unit Owner and the Owner’s Hangar Unit, representing a portion of the Common Expenses, which are to be paid by each Hangar Unit Owner to the Association in the manner and proportions provided herein.

1.4. Articles. Articles means the Articles of Incorporation for the Association filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code, as such Articles may be amended from time to time.

1.5. Association. Association means the Heber Hangar Owners Association, Inc., a corporation formed under the Utah Revised Nonprofit Corporation Act, Utah Code §§ 16-6a-101, *et seq.*, and such corporation’s successors and assigns.

1.6. Association Rules. Association Rules means rules and regulations as may be adopted and promulgated by the Board of Directors pursuant to the Bylaws and this Declaration, as the Board of Directors deems necessary or desirable to: (i) aid it in administering the affairs of the Association, (ii) ensure that the Leasehold Interest is maintained and used in a manner consistent with the interests of the Hangar Unit Owners and the terms of the Airport Lease, (iii) regulate the use of the Common Areas and Facilities and to regulate the personal conduct of the Members and their guests thereon, and (iv) establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time. The Association Rules shall be reasonable and not unjustly discriminatory, and not conflict with the Airport Rules and Regulations, as they exist and may from time to time be amended by the City.

1.7. Beneficiary. Beneficiary means a mortgagee under a mortgage or a beneficiary under a deed of trust and the assignees of such mortgagee or beneficiary.

1.8. Board of Directors, Board. Board of Directors or the Board means the governing body charged with and having the responsibility and authority to manage the affairs of the Association, including, but not limited to, making, and enforcing all reasonable Association Rules

covering the operation and maintenance of the Property. The term “management committee” as used in the Act shall be synonymous with the term “Board of Directors” as used in this Declaration.

1.9. Budget. Budget means a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.10. Building. Building means the separately numbered building located on the Property that contains Hangar Units.

1.11. Bylaws. Bylaws means the Bylaws of the Association, attached hereto as **Exhibit “B”**, as adopted by the Board of Directors, as such Bylaws may be amended from time-to-time by the Board of Directors.

1.12. City. City means the Heber City Corporation located in Wasatch County, Utah.

1.13. Common Areas and Facilities. Common Areas and Facilities means the portion of the Leasehold Interest not specifically included in the respective Hangar Units and includes the Limited Common Areas, foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, bathrooms, storage areas, utility chases, stairs, stairways, driveways, aprons, service and parking areas, entrances, exits, and in general all other apparatus, installations, other parts of the Leasehold Interest necessary or convenient to the existence, maintenance, or safety of the Common Areas and Facilities or normally in common use, and areas specifically set forth and designated in the Plat as “Common Area” or defined by the Act, whether or not expressly listed in this Declaration.

1.14. Common Expenses. Common Expenses means: (i) all sums lawfully assessed against the Hangar Unit Owners; (ii) expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities; (iii) expenses agreed upon as Common Expenses by the Association; and (iv) expenses declared Common Expenses by provisions of the Act, this Declaration, or the Bylaws.

1.15. Declarant. Declarant means the Heber Hangar Owners Association, Inc., a Utah nonprofit corporation, its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title, and interest of Declarant in the Leasehold Interest by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Declarant as Declarant under this Declaration.

1.16. Declaration. Declaration means this document, as may be amended.

1.17. Fiscal Year. Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board of Directors from time to time.

1.18. Governing Documents. Governing Documents means the Articles, Declaration, Plat, Bylaws, Association Rules, and any other written instrument by which the Association may

exercise powers or manage, maintain, or otherwise affect the Leasehold Interest, and any amendments to these documents.

1.19. Government Assessments. Government Assessments means assessments required by local governmental authorities having jurisdiction over the Leasehold Interest. Government Assessments include, but are not necessarily limited to, the amount charged by the City to the Association pursuant to the terms of the Airport Lease as a percentage of the sale price of a Hangar Unit when such Hangar Unit is sold.

1.20. Hangar Project. Hangar Project means the project known as the “The Heber Hangar Project,” together with all rights and obligations established by this Declaration, but subject to the terms of the Airport Lease.

1.21. Hangar Unit. Hangar Unit means that separate portion of the Leasehold Interest intended for independent and exclusive use of the Hangar Unit Owner described as individually numbered areas on the Plat and further defined in Section 2.1(a) below.

1.22. Hangar Unit Owner. Hangar Unit Owner means a Person holding a leasehold interest in a Hangar Unit along with the Undivided Interest appurtenant to that Hangar Unit, including Declarant. A Person’s spouse or domestic partner shall be considered a Hangar Unit Owner under the Governing Documents. Regardless of the number of Persons who own each Hangar Unit, those Persons shall be treated collectively as one Hangar Unit Owner. Notwithstanding any applicable theory relating to a Leasehold Mortgage or other Security Instrument, the term Hangar Unit Owner shall not mean or include a Leasehold Mortgagee or lender unless and until such Mortgagee or lender has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.23. Improvement. Improvement means any structure or appurtenance thereto of every type and kind, including but not limited to Hangar Units, the Building, and other walkways, sprinkler pipes, or areas, garages, roads, driveways, aprons, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, railings, poles, signs, storage areas, exterior air conditioning, and water-softening fixtures or equipment, located on the Leasehold Interest now or in the future during the term of the Airport Lease.

1.24. Leasehold Interest. Leasehold Interest means the leased property identified in the Airport Lease, for a term expiring with the Airport Lease, and includes the Building(s), improvements and structures, and easements, rights, and appurtenances belonging thereto and intended for use in connection with the Leasehold Interest.

1.25. Limited Common Area. Limited Common Area means a portion of the Common Areas and Facilities allocated by this Declaration or the Act, and as may be shown on the Plat, intended for the exclusive use of a Hangar Unit. Limited Common Area is further defined in this Declaration.

1.26. Manager. Manager means the Person or Persons appointed by the Association, if any, as the Association's agent. The Manager may perform any act authorized by the Board of Directors unless otherwise provided in the Governing Documents or the Act.

1.27. Member, Membership. Member means any Person holding a Membership in the Association, as provided in this Declaration. Membership shall mean the property, voting, and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws, and Rules and Regulations.

1.28. Mortgage, Mortgagee, Mortgagor. Mortgage means any Recorded first mortgage, first deed of trust, or other security instrument that encumbers all or part of a Hangar Unit. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Hangar Unit to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.29. Period of Administrative Control. Period of Administrative Control means the time period during which Declarant shall have the power to appoint and remove members of the Board of Directors and Officers, as set forth in Sections 3.6 and 3.7.

1.30. Person. Person means an individual, corporation, partnership, association, trustee, or other legal entity with the legal right to hold title to real property.

1.31. Plat. Plat means the Hangar Project Plat, acknowledged by Declarant and recorded in the records of the Wasatch County Recorder, as the same may be modified or amended.

1.32. Property. Property means the real property at the Airport owned by the City that is subject to the Airport Lease, which property is legally described in the Airport Lease.

1.33. Record, Recorded, Filed, or Recordation. Record, Recorded, Filed, or Recordation mean, with respect to any document, the recordation of such document in the office of the Recorder of Wasatch County, Utah.

1.34. Rental Agreement. Rental Agreement means an agreement for the leasing or renting of a Hangar Unit.

1.35. Reconstruction. Reconstruction means restoring the Building to substantially the same condition in which it existed before a fire or other disaster, with each Hangar Unit having the same vertical and horizontal boundaries as before.

1.36. Special Assessments. Special Assessments mean a charge against each Hangar Unit Owner and his Hangar Unit, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VII.

1.37. Trust Deed or Security Agreement for Assessments. Trust Deed for Assessments means the deed of trust created by this Declaration in Article VII to further secure the Hangar Unit Owner's obligation to pay Assessments and to provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code §§ 57-1-19, *et seq.*, as amended from time to time.

1.38. Undivided Interest. Undivided Interest means the undivided equal percentage interest of each Hangar Unit Owner in the use of the Common Areas and Facilities appurtenant to each Hangar Unit for all purposes, including voting. The undivided equal percentage interests provide that all assessments will be equally assessed, and voting will be based on one vote for each Hangar Unit.

ARTICLE IA

DESCRIPTION OF PROPERTY

The Leasehold Interest shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration and the Airport Lease; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Leasehold Interest.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any applicable FAA rule or regulation, Heber City Ordinances, the Airport Rules and Regulations, the Airport Minimum Standards, and the Airport Layout Plan "ALP"; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land underlying the Leasehold interest at such time as construction of all Improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, subject to the provisions of the Airport Lease, such easements and rights of ingress and egress over, across, through, and under the Property, and any Improvements now or hereafter constructed thereon, as may be reasonably necessary for Declarant (in a manner which is reasonable and consistent with the provisions of this Declaration):

(a) To construct and complete the Improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith; and

(b) To improve portions of the Leasehold Interest with such other or additional Improvements, facilities, or landscaping designed for the use and enjoyment of all the Hangar Unit Owners or Declarant or as Declarant or Declarant's assignee or successor may reasonably determine to be appropriate.

The Association is the owner of the Leasehold Interest in the Property pursuant to the Airport Lease dated _____, recorded with the Wasatch County Recorder's office as Document No. _____ on _____, and attached hereto as Exhibit A. The Airport Lease is between the Association and the City, as owner of the land. The Airport Lease expires on _____, subject to a conditional option to extend as referenced in the Airport Lease. No Improvements or rights of use in the Leasehold Interest are owned by the Hangar Unit Owners after the expiration of the term of the Airport Lease, whether individually or in common, except as may be provided for in the Airport Lease. Hangar Unit Owners have no right to remove Improvements upon the expiration of the Airport Lease, except as provided therein. Hangar Unit Owners have no right to extend or renew the Airport Lease beyond its expiration date.

(a) Description of the Leasehold Interest. Under the terms and conditions of the Airport Lease, the Leasehold Interest covers that tract or parcel in Wasatch County, Utah, more particularly described in the Airport Lease.

(b) Description of Improvements. The Building to be constructed by the Declarant is of steel, metal, and concrete construction and contains sixteen (16) Hangar Units.

(1) The recordation of this Declaration constitutes an assumption by the Hangar Unit Owners and the Association of, and an express agreement to be subject to and bound by all rights and obligations of, the Airport Lease. In addition, prior to taking title to a Hangar Unit, any Hangar Unit Owner shall be required to sign a Compliance Agreement in the form provided by the City.

(c) Description of Legal Status of Hangar Units. The Plat shows the Hangar Unit and assigns a number to each Hangar Unit. The Plat also shows the Hangar Unit's location, the Limited Common Area adjoining and appurtenant to the Hangar Unit within the Common Areas and Facilities. All Hangar Units shall be capable of being independently owned, encumbered, and conveyed. Each Hangar Unit shall include that part of the Building which lies within the boundaries of the Hangar Unit, which boundary shall be determined in the following manner:

- (1) the upper boundary shall be the plane of the lower surface of the ceiling;
- (2) the lower boundary shall be the plane of the upper surface of the floor; and
- (3) the vertical boundaries of the Hangar Unit shall be: (i) the interior surface of the outside walls of the building bounding a Hangar Unit; (ii) the center line of any non-bearing interior walls bounding a Hangar Unit; and (iii) the interior surface of any interior bearing walls bounding a Hangar Unit.

ARTICLE II

PROPERTY RIGHTS

2.1. Division into Hangar Units and Common Areas and Facilities. The Hangar Project has been divided into the following separate estates:

(a) Hangar Units. There are sixteen (16) separately designated and legally described leasehold estates consisting of the Hangar Units, as defined above and designated on the Plat.

(b) Undivided Interest in Common Areas and Facilities. Appurtenant to and inseparable from each Hangar Unit shall be the Undivided Interest in the Common Areas and Facilities. The Undivided Interests may not be changed except by amending this Declaration. No Hangar Unit may be further subdivided.

(c) No Severance. No Hangar Unit Owner shall execute any deed, Mortgage, lease, or other instrument conveying, leasing, or encumbering title to the Hangar Unit without including all appurtenant interests. The purpose of this restriction is to prevent any severance of combined ownership. Any deed, Mortgage, or other instrument purporting to affect one or more interests, without including all other interests, shall be deemed to include any omitted interest, even though not expressly mentioned or described therein. Each Hangar Unit Owner has an unrestricted right of ingress and egress to the Hangar Unit, and this right is appurtenant to ownership of the Hangar Unit.

(d) Common Areas and Facilities. Every Hangar Unit Owner shall have a right of use and enjoyment in and to the Common Areas and Facilities, which right shall be appurtenant to and shall pass with the title to every Hangar Unit, subject to the following provisions:

(1) The right of the Association to limit the number of guests of Hangar Unit Owners using the Common Areas and Facilities;

(2) The right of the Association, during any period in which any assessment remains partially or entirely unpaid or for any violation of the Rules and Regulations, to suspend a Hangar Unit Owner's voting rights, any right to receive a utility service for which the Hangar Unit Owner pays as a Common Expense (if any), and the right of access to and use of Common Areas and Facilities;

(3) The right of the Association to take steps as are reasonably necessary or desirable to protect the Common Areas and Facilities against foreclosure; and

(4) The terms and conditions of this Declaration and the Airport Lease.

2.2. Form for Conveyancing. Any deed, lease, Mortgage, deed of trust, or other instrument conveying or encumbering title to a Hangar Unit shall describe the interest or estate involved substantially as follows:

All of Hangar Unit _____ of Heber Hangar Project, according to the official Plat thereof, subject to the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements, on file in the office of the Wasatch County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any Person who acquires any interest in a Hangar Unit.

2.3. Description of Improvements. The significant Improvements in the Hangar Project include one (1) Building and the building curtains around and in front of each Hangar Unit demised

within the Building and, to the extent existing, any driveway or apron or airplane taxiways the Association is required by the Airport Lease to construct and maintain. The Building contains multiple Hangar Units of metal frame construction erected on concrete slabs with a steel roof. The Hangar Project also contains other Improvements such as outdoor lighting, walkways, landscaping, and certain parking.

ARTICLE III

HEBER HANGAR OWNERS ASSOCIATION, INC.

3.1. Organization of Association. Declarant has caused or will cause the Association to be organized and the Articles filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

3.2. Parties and Powers. The Association shall have such duties and powers as set forth in the Governing Documents, as such documents are amended from time to time.

3.3. Membership. Upon becoming the owner of a Hangar Unit and undivided interest in the use of the Common Areas and Facilities, a Hangar Unit Owner shall automatically be a Member of the Association and shall remain a Member of Association until the ownership ceases for any reason, at which time Membership in the Association shall automatically cease. Membership is appurtenant to and may not be separated from ownership of a Hangar Unit. The Association may require that a Member provide proof of ownership as a condition to recognition. All Hangar Unit Owners are subject to all the rights and duties established in the Act and the Governing Documents.

3.4. Non-Liability for Tort. The Association shall not be liable, in any civil action brought by or on behalf of a Member, for bodily injury occurring to a Member, or a Member's guests, invitees, licensees, or trespassers, on the Common Areas and Facilities. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Areas and Facilities by its willful, wanton, or grossly negligent act of commission or omission.

3.5. Board of Directors Acts for Association. Except as limited in this Declaration or the Bylaws, the Board of Directors acts in all instances on behalf of the Association.

3.6. Period of Administrative Control. During the Period of Administrative Control, the Declarant shall have the following powers:

(a) To appoint and remove some or all members of the Board of Directors or the Officers; and

(b) To exercise powers and responsibilities otherwise assigned by this Declaration and by the Act to the Association, the officers, or the Board of Directors.

3.7. Expiration of Period of Administrative Control. The Period of Administrative Control shall expire and terminate upon the first to occur of the following:

(a) The expiration of ten (10) years from the date of Recordation of this Declaration;
or

(b) After three-fourths (3/4) of the Hangar Units together with their undivided interest in the Common Areas and Facilities have been conveyed.

ARTICLE IV

VOTING RIGHTS

4.1. Voting. A Hangar Unit Owner is entitled to one vote for each of the Hangar Units owned. At any vote of the Hangar Unit Owners, a total of 16 votes may be cast. A Hangar Unit that has been acquired by the Association in its own name or in the name of its agents, designee, or nominee on behalf of all Hangar Unit Owners, shall not be allowed any votes as long as it continues to be so held. If more than one Person owns a Hangar Unit, all Persons owning that Hangar Unit, whether as partners, joint tenants, tenants by the entirety, or as tenants in common, shall agree on any matter voted upon and cast their vote for their Hangar Unit. A vote cast at any meeting by co-owners, whether in person, by written ballot, or by proxy, shall be deemed the vote attributable to their Hangar Unit unless a co-owner makes a written objection before the meeting or a verbal objection at the meeting. If such an objection is made, the vote involved shall not be counted for any purpose other than to determine whether a quorum exists.

ARTICLE V

JURISDICTION OF ASSOCIATION

The Association has been organized to provide for the operation, maintenance, and preservation of the Leasehold Interest and Improvements and to administer the Common Areas and Facilities. The Association shall have jurisdiction and authority over the Leasehold Interest and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, and Rules and Regulations, as such documents may be modified from time to time.

ARTICLE VI

BOARD OF DIRECTORS

6.1. Board of Directors. The affairs of the Association are governed by the Board of Directors which shall be comprised of either three or five of the Hangar Unit Owners. The Board of Directors has the power to manage the Leasehold Interest in accordance with the Act and the Governing Documents. Except as otherwise specified in the Act, this Declaration, or the Bylaws, the Board of Directors acts in all instances on behalf of the Association.

6.2. Indemnification. The Association shall indemnify and hold harmless each member of the Board of Directors and each Association officer against all costs, expenses, attorney fees, and liabilities reasonably incurred in connection with any proceeding in which the member or officer may become involved by reason of being or having been a member of the Board of

Directors or officer of the Association. This indemnification does not apply to any costs, expenses, and liabilities resulting from the willful misconduct or gross negligence of the member or officer.

6.3. Rulemaking Power. The Board of Directors may, subject to the provisions of the Act, this Declaration, and the Bylaws, adopt, change, repeal, and enforce Rules governing the use of the Hangar Units, use of the Common Areas and Facilities, and any other activities or Improvements within the Property. Rules have the same force and effect as if they were a part of this Declaration or the Bylaws.

6.4. Fines. The Board of Directors may assess fines against a Hangar Unit Owner for violating the Governing Documents. Fines shall be assessed in accordance with § 57-8-37 of the Act. Fines shall become an individual assessment as provided in Section 7.5 below.

6.5. Suspension of Voting Rights. The Board of Directors may suspend any Hangar Unit Owner's voting rights during any period in which the Hangar Unit Owner fails to comply with the Governing Documents.

ARTICLE VII

ASSESSMENTS AND LIENS

7.1. Assessments. The Association has authority and is required to set and levy assessments on a periodic basis for:

- (a) Payment of taxes, insurance, and common utility charges;
- (b) Payment of the cost of repairing, replacing, maintaining, and constructing or acquiring additions to the Common Areas and Facilities;
- (c) Establishment and maintenance of an adequate reserve fund for the replacement of the Common Areas and Facilities, which by their nature, will require replacement on a periodic basis;
- (d) Payment of the Association's administrative expenses;
- (e) Payment of prior years' deficits;
- (f) Payment for trash collection, sewer, water, or any other utilities or charges that the Association may, in its sole and absolute discretion, determine appropriate or necessary;
- (g) The annual lease payment and all other amounts due or payments and fees exacted when due, pursuant to the Airport Lease; and
- (h) Any other expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration.

7.2. Calculation of Annual Assessments. The Association shall prepare a Budget before the close of each Fiscal Year of the Association for the purpose of calculating and establishing the Annual Assessments for the next Fiscal Year. Annual Assessments shall be based upon the estimated net cash flow requirements of the Association to cover items including, but not limited to: (a) the cost of routine maintenance and operation of the Common Areas and Facilities; (b) premiums for insurance coverage necessary or deemed desirable by the Association; (c) care of the Leasehold Interest, including Building, aprons, and asphalt; (d) common lighting within the Common Areas and Facilities; (e) routine renovations within the Common Areas and Facilities; (f) wages; (g) legal and accounting fees; (h) management fees; (i) expenses and liabilities from a previous assessment period; and (j) the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of Common Areas and Facilities on a periodic basis.

At least thirty (30) days before each new assessment period begins, the Association shall send a written notice of the Annual Assessments to each Hangar Unit Owner. This notice shall include the amount of the past year's Budget, plus a status of reserve funds and anticipated reserve needs. This notice shall not affect the validity of any assessment.

7.3. Special Assessments. In addition to the Annual Assessments, the Association may levy a special assessment for: (a) the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair, or replacement of Common Areas and Facilities; (b) paying attorney fees as the Board of Directors deems necessary for the benefit of the Association; and (c) any other expense incurred or that will be incurred as provided in this Declaration. Any special assessment exceeding one hundred percent (100%) of the annual Budget shall require the assent of at least sixty-seven percent (67%) of the voting interests in the Association at a meeting duly called for this purpose. Written notice setting forth the purpose of such a meeting shall be sent to all Hangar Unit Owners at least thirty (30) days before the meeting. At the first meeting called, the presence at the meeting of Hangar Unit Owners, in person, by proxy, or by ballot, entitled to cast sixty percent (60%) of all voting interests shall constitute a quorum. If the required quorum is not present, another meeting may be called with at least thirty (30) days' advance written notice. The required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting may be held more than sixty (60) days following the preceding meeting.

7.4. Additional Assessments. In addition to the Annual Assessments and special assessments, the Association shall levy assessments necessary from time to time for repairing damage or disruption to streets or other Common Areas and Facilities, resulting from the activities of the City in maintaining, repairing, or replacing utility lines and facilities thereon. The City has installed and owns the utility lines, under Airport or otherwise, up to and including the meters for individual Hangar Units, and the City shall maintain those utility lines and meters according to City specifications.

7.5. Individual Assessments. In addition to any other assessments, the Association may levy assessments to one or more specific Hangar Unit and its Owner for: (a) all fines, penalties, and damages incurred for violating the Governing Documents; (b) damages to the Common Areas and Facilities caused by the negligence or willful misconduct of a Hangar Unit Owner or the Hangar Unit Owner's tenants, guests, or licensees; and (c) any other liability, debt, or obligation

of the Hangar Unit Owner to the Association arising under the Governing Documents, including any Government Assessment charged to the Association by the City or other government entity under the terms of the Airport Lease upon the sale or transfer of a Hangar Unit. A Hangar Unit Owner may elect to pay any Individual Assessment which is levied due to a Government Assessment directly to the City or other government entity on behalf of, or for the benefit of, the Association and provide the Association with documentation showing that such Government Assessment was paid.

7.6. Rates and Periods of Assessments. Annual, special, and additional assessments shall be fixed based on the equal Undivided Interest of each Hangar Unit. The Association may provide for the payment of annual, special, and additional assessments in equal installments throughout the assessment year.

7.7. Date of Commencement of Annual Assessments. Annual Assessments shall commence on all Hangar Units on the first day of the first calendar month following the first close of escrow for the sale of a Hangar Unit in the Hangar Project. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws.

7.8. Lien and Personal Obligation of Assessments.

(a) Each Hangar Unit Owner by acceptance of a deed for a Hangar Unit, whether or not it is expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments described in the Governing Documents , together with interest, late fees, expenses, costs of collection, and attorney fees. All such amounts are a charge against the Owner's Hangar Unit and Undivided Interest and use rights associated with the Common Areas and Facilities and a continuing lien on the Owner's Hangar Unit against which each assessment or amount is charged. All assessments and other amounts are also personal obligations of the Hangar Unit Owner who was the owner of the Hangar Unit at the time when the assessment fell due.

(b) Subject to § 57-8-44 of the Act, the Association has a lien on a Hangar Unit for all assessments and fines, together with amounts incurred in collecting an unpaid assessment, including court costs and reasonable attorney fees, late charges, interest, and any other amount the Association is entitled to recover under this Declaration or the Act.

(c) An Association lien has priority over each other lien and encumbrance on a Hangar Unit except: (i) a first or second security interest on the Hangar Unit secured by a Mortgage or a Security Agreement that is recorded before a notice of lien is recorded by or on behalf of the Association, or (ii) a lien for real estate taxes or other governmental assessments or charges against the Hangar Unit.

(d) To evidence a lien for assessments, the Association may, but is not required to, prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Hangar Unit Owner of the Hangar Unit and a description of the Hangar Unit. The notice of lien must be signed by the Association or its authorized agent and

recorded with the Wasatch County Recorder. A notice of lien may not be recorded until there is a delinquency in payment of the assessment.

(e) The sale or transfer of any Hangar Unit shall not affect the assessment lien. However, the sale or transfer of any Hangar Unit pursuant to foreclosure of a first Mortgage or the workings of a Security Agreement or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer.

(f) A release of the notice of lien shall be recorded with the Wasatch County Recorder upon payment of all sums secured by the lien which has been made the subject of a recorded notice of lien, including after-accruing assessments, interest, costs, and attorney fees.

(g) In a voluntary conveyance, the grantee of a Hangar Unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the assessments up to the time of the conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. Any such grantee shall be entitled to a statement from the Manager or the Board of Directors setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Hangar Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

7.9. Non-Payment of Assessments; Association Remedies.

(a) Delinquency, Interest, and Late Fees. Any assessment or installment thereof not paid within thirty (30) days after the due date determined by the Board shall be delinquent and shall bear simple interest from the due date at the rate of eighteen percent (18%) per year (or such lesser rate as the Association may determine appropriate) until paid. In addition, the Association may assess a late fee for each delinquent installment; the late fee shall not exceed ten percent (10%) of the installment.

(b) Remedies. If a Hangar Unit Owner fails or refuses to pay any assessment or fine when due the Association may:

(1) Bring an action against the Hangar Unit Owner personally obligated to pay without waiving any lien or lien rights;

(2) Foreclose the lien against the Hangar Unit Owner's Hangar Unit in accordance with the laws of Utah applicable to the exercise of powers of sale in deeds of trust or the foreclosure of mortgages or in any other manner permitted by law;

(3) In accordance with Section 7.10 below, terminate the Hangar Unit Owner's utility services (if any) paid as a Common Expense, and terminate the Hangar Unit Owner's right of access to and use of Common Area and Facilities;

(4) Require a Hangar Unit Owner's tenant to pay rent to the Association in accordance with § 57-8-53 of the Act; and

(5) Take any other action authorized in the Act.

(c) There shall be added to the amount of any delinquent assessment or fines, reasonable attorney fees, court costs, and the costs and expenses of any action, sale, or foreclosure.

(d) The Declarant hereby conveys and warrants pursuant to Utah Code §§ 57-1-20 and 57-8-45 to Richard M. Matheson of the law firm, Jenkins Bagley Sperry, PLLC, with the power of sale, the Hangar Unit and all Improvements to the Hangar Unit for the purpose of securing payment of assessments under the terms of this Declaration. The Association has the right to name and appoint any qualified replacement agent from time to time at its sole discretion.

(e) No Hangar Unit Owner may waive or otherwise escape liability for assessments by nonuse of the Common Area or Facilities or by abandonment of the Hangar Unit Owner's Hangar Unit.

7.10. Termination of a Hangar Unit Owner's Utility Rights.

(a) The Board of Directors may terminate a Delinquent Hangar Unit Owner's right to receive a utility service for which the Hangar Unit Owner pays as a Common Expense (if any) or a Delinquent Hangar Unit Owner's right of access to and use of the Common Area or other common facilities. "Delinquent Hangar Unit Owner" means a Hangar Unit Owner who fails to pay an assessment when due.

(b) Before terminating a utility service, the Manager or Board of Directors shall give the Delinquent Hangar Unit Owner notice. The notice shall be delivered not less than fourteen (14) days before it is to take effect and state: (i) that the Association will terminate the Hangar Unit Owner's utility service, if the Association does not receive payment of the assessment within fourteen (14) days; (ii) the amount of the assessment due, including any interest or late-payment fees; and (iii) the Hangar Unit Owner's right to request a hearing. The notice may include the estimated cost to reinstate a utility service if the service is terminated.

(c) A Delinquent Hangar Unit Owner may submit a written request to the Board of Directors for an informal hearing to dispute the assessment. The written request shall be submitted within fourteen (14) days after the date the Delinquent Hangar Unit Owner receives the notice.

(d) If a Delinquent Hangar Unit Owner timely submits a written request for an informal hearing, the Board of Directors shall conduct an informal hearing at which the Delinquent Hangar Unit Owner shall have the opportunity to be heard and, if desired, represented by legal counsel. The Association may not terminate a utility service until after the Board of Directors conducts the hearing and enters a final decision.

(e) If the Association terminates a utility service, the Association shall take immediate action to reinstate the service following the Hangar Unit Owner's payment of the assessment, including any interest and late-payment fees.

(f) The Association may assess a Hangar Unit Owner for the cost associated with reinstating a utility service that the Association terminates and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated if the estimated cost is included in the notice.

7.11. Statement of Unpaid Assessment. The Association shall issue a written statement indicating any unpaid assessment with respect to a Hangar Unit Owner's Hangar Unit upon a written request by the Hangar Unit Owner and payment of Twenty-Five Dollars (\$25.00) (or such higher amount as the Act may allow). This written statement is conclusive in favor of a Person who relies on the written statement in good faith.

7.12. Providing Payoff Information. In accordance with § 57-8-6.3 of the Act, the Association shall provide payoff information needed in connection with the closing of a Hangar Unit Owner's financing, refinancing, or sale of the Hangar Unit Owner's Hangar Unit. The Association is entitled to require a fee of Fifty Dollars (\$50.00) (or such higher amounts as the Act may allow) to be paid after closing for providing such payoff information.

7.13. Initial Capital Contribution. Each initial Hangar Unit Owner shall make an initial capital contribution equal to 1/16th of the projected annual budget for the operation of the Association, which will be collected by the Declarant from the purchaser of a Hangar Unit and transferred to the Association by the Declarant at the time of the sale. Such amounts paid shall not be deemed to be advance payments of the Annual Assessment but shall be in addition thereto. The Board of Directors may apply such funds to cover any deficit in operating expenses or to the reserves.

ARTICLE VIII

RESERVES

8.1. Definitions. As used in this Article: (a) "reserve analysis" means an analysis to determine the need for a reserve fund to accumulate reserve funds and the appropriate amount of any reserve fund; (b) "reserve fund line item" means the line item in an Association's annual Budget that identifies the amount to be placed into a reserve fund; and (c) "reserve funds" means money to cover: (i) the cost of repairing, replacing, or restoring Common Areas and Facilities that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, if the cost cannot reasonably be funded from the general Budget or other funds of the Association; or (ii) a shortfall in the general Budget, if: (1) the shortfall occurs while a state of emergency, declared in accordance with Utah Code § 53-2a-206, is in effect; (2) the geographic area for which the state of emergency is declared extends to the entire state; and (3) at the time the money is spent, more than ten percent (10%) of the Hangar Unit Owners who are not members of the Board of Directors are delinquent in the payment of assessments as a result of events giving rise to the state of emergency.

8.2. Reserve Analysis. The Board of Directors shall cause a reserve analysis to be conducted no less frequently than every six (6) years. The Board of Directors shall also review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Board of Directors may conduct a reserve analysis itself or may engage a

reliable Person or organization, as determined by the Board of Directors, to conduct the reserve analysis. The Board of Directors may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis.

8.3. Content of Analysis. A reserve fund analysis shall include: (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (e) a reserve funding plan that recommends how the Association may fund the total annual contribution.

8.4. Hangar Unit Owners. The Association shall annually provide Hangar Unit Owners a summary of the most recent reserve analysis or update and provide a copy of the complete reserve analysis or update to a Hangar Unit Owner who requests a copy.

8.5. Budget. In formulating its budget each year, the Association shall include a reserve fund line item in an amount the Board of Directors determines, based on the reserve analysis, to be prudent, or an amount required by this Declaration.

8.6. Veto. Within forty-five (45) days after the day on which the Association adopts its annual Budget, the Hangar Unit Owners may veto the reserve fund line item by a vote of fifty-one percent (51%) of the voting interests in the Association at a special meeting called by the Hangar Unit Owners for the purpose of voting whether to veto a reserve fund line item. If the Hangar Unit Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual Budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

8.7. Reserve Fund. Unless a majority of the voting interests in the Association vote to approve the use of reserve fund money for that purpose, the Board of Directors may not use money in a reserve fund: (a) for daily maintenance expenses; or (b) for any purpose other than the purpose for which the reserve fund was established. This Section may not be construed to limit a Board of Directors from prudently investing money in a reserve fund, subject to any investment constraints imposed by this Declaration. The reserve fund shall be maintained separate from other funds of the Association.

ARTICLE IX

INSURANCE

9.1. Types of Insurance. The Association shall obtain and keep in full force and effect at all times all insurance required under § 57-8-43 of the Act and any other relevant sections of the Act, as well as all insurance required under the Airport Lease. In addition to any insurance coverage or limit of coverage provided in this Article and subject to the requirements of this Article, the Association may, as the Board of Directors considers appropriate, obtain any additional

type of insurance than otherwise required or a policy with greater coverage than otherwise required. The Association shall maintain to the extent reasonably available the following types of insurance:

(a) Property Insurance. Subject to § 57-8-43(9) of the Act, blanket property insurance or guaranteed replacement cost insurance on the physical structures in the Hangar Project, including the Common Areas and Facilities and the Hangar Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies. Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Hangar Unit or to Limited Common Areas associated with a Hangar Unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Hangar Unit or to Limited Common Areas appurtenant to a Hangar Unit. Each Hangar Unit Owner shall be an insured person under the property insurance policy. If a loss occurs that is covered by the Association's property insurance and another property insurance policy in the name of a Hangar Unit Owner, the Association's policy provides primary insurance coverage. Notwithstanding the foregoing, the Hangar Unit Owner is responsible for the deductible of the Association's building property coverage, often referred to as coverage A, of the Hangar Unit Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(1) As used in this Article, "covered loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance. "Hangar Unit damage" means damage to a Hangar Unit or to Limited Common Areas appurtenant to that Hangar Unit, or both. "Hangar Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to Hangar Unit damage.

(2) A Hangar Unit Owner who owns a Hangar Unit that has suffered Hangar Unit damage as part of a covered loss is responsible for an amount calculated by applying the Hangar Unit damage percentage for that Hangar Unit to the amount of the deductible under the Association's property insurance. If a Hangar Unit Owner does not pay the amount required under this subsection (ii) within thirty (30) days after substantial completion of the repairs to the Hangar Unit or Limited Common Areas appurtenant to that Hangar Unit, the Association may levy an assessment against the Hangar Unit Owner for that amount.

(3) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds Ten Thousand Dollars (\$10,000.00), an amount not less than Ten Thousand Dollars (\$10,000.00). Hangar Unit Owners are hereby notified that the Association's current deductible is Ten Thousand Dollars (\$10,000.00). The Board of Directors may, by resolution, increase or decrease the amount of the Association's policy deductible. The Association shall provide notice, as provided in the Bylaws or as otherwise provided in § 57-8-42 of the Act, to each Hangar

Unit Owner of the Hangar Unit Owner's obligation under this subsection (iii) for the Association's policy deductible if there is any change in the amount of the deductible. If the Association fails to provide notice of any change in the deductible, the Association is responsible for the portion of the deductible that the Association could have assessed to a Hangar Unit Owner, but only to the extent that the Hangar Unit Owner does not have insurance coverage that would otherwise apply. However, if the Association fails to provide notice of a later increase in the amount of the deductible, the Association is responsible only for the amount of the increase for which notice was not provided. The failure of the Association to provide notice as provided in this subsection (iii) shall not be construed to invalidate any other provision in this Declaration.

(4) If, in the exercise of the business judgment rule, the Board of Directors determines that a covered loss is likely not to exceed the property insurance policy deductible of the Association and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the Association's property insurance insurer: (a) a Hangar Unit Owner's policy is considered the policy for primary coverage for a loss occurring to the Hangar Unit Owner's Hangar Unit or to Limited Common Areas appurtenant to the Hangar Unit; (b) the Association is responsible for any covered loss to any Common Areas and Facilities; (c) a Hangar Unit Owner who does not have a policy to cover the damage to the Hangar Unit Owner's Hangar Unit and appurtenant Limited Common Areas is responsible for that damage, and the Association may recover, as provided for in subsection (ii) above, any payments the Association makes to remediate that Hangar Unit and the appurtenant Limited Common Areas; and (d) the Association need not tender the claim to the Association's insurer.

(5) An insurer under a property insurance policy issued to the Association shall adjust with the Association's loss covered under the Association's policy. Notwithstanding this subsection (v), the insurance proceeds for a loss under the Association's property insurance policy are payable to an insurance trustee that the Association designates or, if no trustee is designated, to the Association, and may not be payable to a holder of a security interest. An insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Hangar Unit Owners, and lien holders. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After the disbursements described herein are made and the damaged property has been completely repaired or restored or the Hangar Project terminated, any surplus proceeds are payable to the Association, Hangar Unit Owners, and lien holders based on the Undivided Interest of each Hangar Unit.

(6) An insurer or the insurer's authorized agent that issues a property insurance policy under this Section 9.1(a) shall issue a certificate or memorandum of insurance to: (a) the Association; (b) a Hangar Unit Owner, upon the Hangar Unit Owner's written request; and (c) a holder of a security interest, upon the holder's written request. A cancellation or nonrenewal of a property insurance policy under Section 9.1(a) is subject to the procedures stated in Utah Code § 31A-21-303, as may be amended and supplemented.

(7) A Board of Directors that acquires from an insurer the property insurance required in this Section 9.1(a) is not liable to Hangar Unit Owners if the insurance proceeds are not sufficient to cover one hundred percent (100%) of the full replacement cost of the insured property at the time of the loss.

(8) Nothing in this Section 9.1(a) shall prevent a Person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.

(9) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(b) Liability Insurance. Subject to § 57-8-43(10) of the Act, liability insurance covering all occurrences commonly insured against for death, bodily injury, property damage, including water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Facilities. The limits of the liability insurance policy shall be in an amount determined by the Association, but not less than Two Million Dollars (\$2,000,000.00) for all claims for personal injury or property damage arising out of a single occurrence. Each Hangar Unit Owner is an insured person under the liability insurance policy the Association obtains, but only for liability arising from: (i) the Hangar Unit Owner's ownership interest in the Common Areas and Facilities; (ii) maintenance, repair, or replacement of Common Areas and Facilities; and (iii) the Hangar Unit Owner's Membership in the Association. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of a Hangar Unit Owner because of negligent acts of the Association or other Hangar Unit Owners.

(c) Availability. If the Association becomes aware that property insurance under Section 9.1(a) above or liability insurance under Section 9.1(b) above is not reasonably available, the Association shall, within seven (7) days after becoming aware, give all Hangar Unit Owners notice as provided in the Bylaws, or as otherwise specified in § 57-8-42 of the Act, that the insurance is not reasonably available.

(d) Workers' Compensation Insurance. If the Association has any employees, it shall obtain and maintain for the benefit of and on behalf of the Association, Workers' Compensation, employer's liability insurance, and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by the Act or other law.

(e) Fidelity Bond. The Association shall purchase a fidelity bond to protect against dishonest acts of members of the Board of Directors, Association officers, the Manager, Association employees (if any), and all others (including volunteers) who handle or are responsible

for handling Association funds. This fidelity bond shall name the Association as the insured and shall be written in an amount equal to at least three (3) months' assessments plus all reserve funds. The fidelity bond shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. The fidelity bond shall also provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days prior written notice to the Association and the first Mortgagee.

(f) Director's and Officer's Insurance. The Association shall acquire Director's and Officer's errors and omissions insurance to satisfy the Association's indemnification responsibilities under Section 6.2 above.

9.2. Additional Insurance Provisions. The following additional provisions shall apply with respect to insurance:

(a) All insurance policies shall be written by a company holding a financial rating of Class VI or better as designated in Best's Insurance Reports. Each insurer must be specifically licensed to transact business in Utah. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions or assessments may be made against the borrower or the Mortgagee; or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Mortgagee or the borrower from collecting insurance proceeds.

(b) The Association shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held only by Hangar Unit Owners or their Mortgagees.

(d) Each insurance policy obtained by the Association for the benefit of the Association shall provide: (i) a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located; (ii) a waiver (if available) of the insurer's subrogation rights with respect to the Association; members of the Board of Directors; Association officers; the Manager; each Hangar Unit Owner; any Person residing with a Hangar Unit Owner if the Hangar Unit Owner resides in the Hangar Unit; each Hangar Unit Owner's servants, agents, and guests; and the City, its elected officials, employees and contractors; (iii) that it cannot be canceled, suspended, or invalidated due to the conduct of any member of the Board of Directors, officer, employee of the Association, or the Manager without a prior written demand that the defect be cured; (iv) that any "no other insurance" clause therein shall not apply with respect to insurance held only by Hangar Unit Owners; and (v) a mortgagee clause endorsement, which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof, at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(e) Insurance coverage required by this Article shall not be prejudiced or voided by: (i) a Hangar Unit Owner's act or omission, unless the Hangar Unit Owner is acting within the scope

of the Hangar Unit Owner's authority, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control, such as the personal property of Hangar Unit Owners.

9.3. Premiums. All insurance premiums shall be Common Expenses.

9.4. Hangar Unit Owner's Insurance. No insurance policy issued to the Association may prevent a Hangar Unit Owner from obtaining insurance for the Hangar Unit Owner's own benefit. The Association has no responsibility to insure personal property of Hangar Unit Owners or their installed fixtures.

ARTICLE X

DESTRUCTION OR DAMAGE AND EMINENT DOMAIN

10.1. Destruction or Damage.

(a) Application of Insurance Proceeds to Reconstruction. In case of fire or any other disaster, the insurance proceeds, if sufficient to reconstruct an Improvement in the Property, shall be applied to such reconstruction.

(b) Insufficient Insurance Proceeds. If an Improvement in the Leasehold Interest is destroyed or substantially damaged and the insurance proceeds are insufficient to reconstruct the Improvement, the Improvement shall be promptly reconstructed by the Manager or Board of Directors, using proceeds of insurance, if any, on the Improvement for that purpose. The Hangar Unit Owners shall be liable for assessment for any deficiency according to their Undivided Interests in the Common Areas and Facilities. However, if seventy-five percent (75%) or more of an Improvement is destroyed or substantially damaged and if the Hangar Unit Owners, by a vote of at least seventy-five percent (75%), do not voluntarily, within one hundred days (100) days after destruction or damage, make provision for reconstruction, the Manager or Board of Directors shall record with the Wasatch County Recorder, a notice setting forth such facts. Upon recording of that notice, the provisions of § 57-8-31 of the Act shall apply and govern the rights of all parties having an interest in the Property.

(c) Determination of Extent of Destruction or Damage. Any determination regarding the extent of the destruction or damage of an Improvement under this Article shall be made by three (3) MAI Appraisers selected by the Association. The decision of any two (2) such appraisers shall be conclusive.

10.2. Eminent Domain. If any portion of the Leasehold Interest is condemned, then § 57-8-32.5 of the Act shall apply and govern.

10.3. Association to Represent Hangar Unit Owners. Each Hangar Unit Owner hereby appoints the Association as an attorney-in-fact to represent the Hangar Unit Owner in negotiations, settlements, agreements, and related proceedings resulting from damage or destruction to the Property, from condemnation of all or a part of the Leasehold Interest, or from the breach or termination of the Airport Lease. Proceeds from a settlement will be paid to the Association for

the benefit of the Hangar Unit Owners and the Mortgagees. Any losses, awards, or proceeds from destruction or damage, condemnation, or liquidation of all or a part of the Leasehold Interest, or from the breach or termination of the Airport Lease, shall be allocated among Hangar Unit Owners based on the Undivided Interest of each Hangar Unit.

10.4. Priority to Proceeds. Nothing in this Article may be construed to give the Association or Hangar Unit Owners priority over a Mortgagee or Security Agreement to proceeds of insurance.

ARTICLE XI

MAINTENANCE AND ALTERATIONS

11.1 Maintenance by the Association. The Association shall maintain, repair, or replace:

(a) All portions of the Hangar Unit which contribute to the support of the Building, including main bearing walls, but excluding painting, wall papering, decorating, or other work on the interior surfaces of walls, ceilings, and floors in the Hangar Unit;

(b) All Common Areas and Facilities (which includes all Limited Common Areas, except as provided in Section 12.2 below); and

(c) All incidental damage caused by the work done at the Association's direction.

11.2 Maintenance by the Hangar Unit Owner. The Hangar Unit Owner shall be responsible, at the Hangar Unit Owner's expense:

(a) To maintain, repair, or replace all portions of the Hangar Unit, including all windows, man doors, and sliding or overhead hangar access doors;

(b) To maintain the fire-suppression sprinklers (if any) serving only the Hangar Unit, including, but not limited to, the responsibility to inspect and test the sprinklers at least once every year;

(c) To paint, and maintain the interior surfaces of all walls, ceilings, and floors within the Hangar Unit;

(d) To maintain, repair, or replace all glass in exterior windows, and all glass in sliding glass doors; all replacement glass must be approved by the Association;

(e) To maintain, repair, or replace all exterior-window screens and exterior-door screens;

(f) To perform all responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other Hangar Unit Owners;

(g) To maintain, repair and replace at the Hangar Unit Owner's sole expense any heating, ventilation, and air conditioning serving the Hangar Unit Owner's Unit; and

(h) To refrain from repairing, altering, replacing, painting, decorating, or changing the exterior of the Hangar Unit or any exterior appendages whether exclusively used by the Hangar Unit Owner or otherwise without obtaining prior written consent of the Association.

11.3 Access for Maintenance and Emergencies. Some Common Areas and Facilities are or may be located within the Hangar Units or may be conveniently accessible only through the Hangar Units. After reasonable notice to the occupants of the Hangar Unit being entered, the Manager or Board of Directors may access a Hangar Unit:

(a) From time to time during reasonable hours, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities or for making emergency repairs.

(1) "Reasonable notice" means written notice that is hand delivered to the Hangar Unit at least twenty-four (24) hours before the proposed entry, or in the case of emergency repairs, notice that is reasonable under the circumstances.

(2) "Emergency repairs" means any repairs that, if not made in a timely manner, will likely result in immediate and substantial damage to the Common Areas and Facilities or to another Hangar Unit or Hangar Units.

(b) The Association is liable to repair damage it causes to the Common Areas and Facilities or to a Hangar Unit the Association uses to access the Common Areas and Facilities. The Association shall repair damage described in this Section 12.3 within a time that is reasonable under the circumstances.

(c) If a Hangar Unit Owner fails to properly maintain the Hangar Unit Owner's Hangar Unit, the Association has the right, but not the obligation, to enter the Hangar Unit under the provisions of this Section 12.3 and perform all upkeep to the Hangar Unit that is necessary under the circumstances, including any inspection, maintenance, repair, replacement, or any other act necessary to maintain the Hangar Unit in a decent, safe, and sanitary condition. Any costs or other amounts incurred by the Association under this subsection (c) shall be assessed as an individual assessment.

11.4 Alteration or Improvement of Hangar Units. No alteration or improvement to the Hangar Unit that would alter or affect the Common Areas and Facilities may be made by any Hangar Unit Owner without the prior written consent of the Association. No application may be filed with any governmental authority for a permit covering an addition, alteration, or improvement to be made in a Hangar Unit that alters or affects the Common Areas and Facilities unless approved and executed by the Association without, however, incurring any liability on the part of the Association to any contractor, subcontractor, materialman, architect, or engineer by reason of such addition, alteration, or improvement or to any Person having any claim for death, bodily injury, or damage to property arising from any addition, alteration, or improvement. Approval shall be

requested and granted or denied in writing. The Association may require the Hangar Unit Owner making such improvement, alteration, or addition to obtain insurance coverage in amounts as the Association deems proper.

11.5 Certain Work Prohibited. No Hangar Unit Owner shall do any work or make any alterations or changes or install or attach anything in or outside of any Hangar Unit that results or involves the penetration of a demising wall or ceiling or which in any way jeopardize the soundness or safety of the Property, reduce its value, or impair any easement or hereditament in the sole and absolute discretion of the Board of Directors without, in every such case, first obtaining the unanimous written consent of the Board of Directors.

ARTICLE XII

USE RESTRICTIONS

12.1 Use of Hangar Units. All Hangar Units are restricted for use by the Hangar Unit Owner and the Hangar Unit Owner's tenants, guests, or licensees as an airplane hangar for privately owned, personal aircraft and ancillary aeronautical equipment and repairing and maintaining the same, and subject to the terms of the Airport Lease.

12.2 Use of Common Areas and Facilities. Except for the rights of ingress and egress, Hangar Unit Owners shall not use any Common Areas and Facilities other than as permitted in the Airport Lease and these Governing Documents. This restriction is for the mutual benefit of all Hangar Unit Owners and is necessary for the protection of the interests of all Hangar Unit Owners and the Common Areas and Facilities. The Board of Directors, by rule, may restrict a sex offender, as defined in Utah Code § 77-27-21.7 from accessing a protected area that is maintained, operated, or controlled by the Association, subject to the exceptions described in § 77-27-21.7(3).

12.3 Responsibility for Damage. Any Person who causes damage to Common Areas and Facilities shall be personally responsible for those damages and for repair or restoration.

12.4 Prohibited Uses. Hangar Unit Owners shall comply with the Airport Rules and Regulations, the Airport Minimum Standards, the Wasatch County Fire Marshall guidelines for a Group II building which include NO welding, torching, painting or interior fueling. Each Unit Owner shall also comply with all laws, ordinances, and regulations of any governmental authority and shall not permit anything to be done or kept in any Hangar Unit or other part of the Property that violates any law, ordinance, or regulation of any governmental authority. Commercial aeronautical activities of any sort are prohibited within the Hangar Units unless specifically authorized in writing by Heber City. No Hangar Unit or any other portion of the Property shall be used, occupied, or altered in violation of the ordinances, rules, regulations, laws and standards promulgated from time to time by the FAA, the City, the Airport Lease, or the Association. The Association reserves the right to enforce the same against any Hangar Unit Owner and to promulgate rules and regulations from time to time governing the Association and its Hangar Unit Owners. A copy of the then current Association Rules shall be provided as part of the Association's disclosures at the time of the initial sale of a Hangar Unit and delivered to Hangar Unit Owners or made available thereafter if and when modified by the Association. No Hangar Unit or any other portion of the Property shall be used, occupied, or altered to create a nuisance or

interfere with the rights of any Hangar Unit Owner or that would result in an increase in the cost of any insurance covering the Common Areas and Facilities as determined in the sole discretion of the Association, acting through its Board of Directors, exercising reasonable business judgement.

12.5 Signs. Except for one religious, patriotic and “For Rent” or “For Sale” sign of not more than four (4) square feet, no sign of any kind may be placed anywhere on the exterior of or within a Hangar Unit. The Association reserves the right to further regulate the size and location of such signs. Otherwise, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Hangar Unit. The foregoing restrictions shall not apply to the commercial activities, signs, and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws, and Rules and Regulations, as the same may be amended from time to time. Nothing in this subparagraph 12.5 shall relieve the Hangar Unit Owner of any obligation imposed by the City through the Compliance Agreement.

12.6 Personal Items. No personal items shall be stored, placed, installed, or erected outside a Hangar Unit or anywhere in the Common Areas and Facilities without prior written approval by the Association.

12.7 Quiet Enjoyment. No noxious or offensive activity shall be carried out upon any part of the Leasehold Interest nor shall anything be done that is or may become an annoyance or nuisance or that shall interfere with the quiet enjoyment any of the Hangar Unit Owners.

12.8 Animals. Subject to the Master Lease and applicable Heber City ordinance, Hangar Unit Owners, tenants, and their respective invitees may be accompanied by a pet animal while inside the Owner’s Hangar Unit or on the Leasehold Interest outside the Unit, but only temporarily for purpose of loading into or unloading from an airplane housed in the Hangar Unit or the vehicle in which the animal traveled to or leaves the Hangar Unit and Airport. No animal of any description may reside, be housed, or be left alone for any amount of time in any Hangar Unit or anywhere on the Leasehold Interest. At all times, Hangar Unit Owners, their tenants and their respective guest must remain in the presence of their animal(s) when in the Hangar, on the Leasehold Interest, or in transport and they must properly and securely tether, keep in an appropriate cage, or have on leash any animal while within Hangar Unit when the Hangar Unit door is open, anywhere else on the Leasehold Interest, or on the Airport premises. The Hangar Unit Owner is responsible for cleaning up after the animal and properly and timely disposing of any animal waste off site.

12.9 Authorized Airplanes. Only an aircraft that is owned by or under the exclusive control of the Hangar Unit Owner, an Affiliated Entity, or the Hangar Unit Owner’s authorized tenant may be stored within the Hangar Unit. For the purposes of this subparagraph, an “Affiliated Entity” is a corporation, limited liability company, trust, or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Hangar Unit Owner.

12.10 Garbage Removal. Rubbish, trash, and garbage should be placed in proper containers. All rubbish, trash, and garbage shall be regularly removed from, and shall not be allowed to accumulate in, the Hangar Unit. No rubbish, trash, or garbage may be placed or stored in Common Areas and Facilities except for being properly placed in Hangar Unit dumpsters.

12.11 External Items. No Member shall cause or permit anything (including, but not limited to, additional lighting, external material, personal items, awnings, canopies, and signs) to hang, be displayed, or otherwise be affixed to or placed on the exterior walls or roof, or on the outside of windows or doors, without prior written consent of the Association.

12.12 Exterior Antennas & Satellite Dishes. No antenna or satellite dish shall be erected, constructed, or maintained within or upon the Leasehold Interest except for: (a) those erected, constructed, or maintained by the Association; (b) those expressly approved in writing by the Association; or (c) those, which by law, the Association cannot prohibit. The Association may remove any antenna or satellite dish violating this Section 13.12. Any amounts incurred by the Association due to a Hangar Unit Owner's violation may be assessed as an individual assessment.

12.13 Solar Energy. No system, or any component of a system, that is used to produce electric energy from sunlight may be installed or maintained within or upon the Hangar Unit or in the Common Areas and Facilities by any Hangar Unit Owner without the Association's prior written approval. The Association may remove any system or component violating this Section 13.13. Any amounts incurred by the Association due to a Hangar Unit Owner's violation may be assessed as an individual assessment.

12.14 Parking and Streets. Vehicle parking is allowed only in designated Common Area parking stalls. Vehicles owned by the Hangar Unit Owner, or his/her/its authorized tenant may be parked temporarily within a 10-foot-wide space that runs parallel and immediately adjacent to and along the width of the Hangar Unit's hangar door within the Limited Common Area of Hangar Owner's Unit. No commercial vehicles may be parked within or upon the Leasehold Interest. The Board of Directors may adopt, change, repeal, and enforce Association Rules governing vehicles and parking. These Rules may include, but are not limited to: (a) limitations on the use of the Limited Common Areas, Common Areas for parking; (b) towing at the vehicle owner's expense of vehicles parked within the Property in violation of any provision of the Airport Lease or the Association's Governing Documents; and (c) imposition of fines and other sanctions for violations of any provisions of the Governing Documents relating to vehicles and parking. Costs incurred by the Association relating to the towing and storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as an individual assessment against the Hangar Unit Owner responsible. Hangar Unit Owners are responsible for their tenants and invitees' compliance with the parking rules.

ARTICLE XIII

RENTAL RESTRICTIONS

13.1 Rental of Hangar Unit. A Hangar Unit Owner may rent all or a portion of the Hangar Unit for the purpose of housing an airplane. Housing airplanes is the primary purpose to all Hangar Unit rentals and the tenant shall use the space to store an airplane.

13.2 Requirements of Rental Agreement. Rental Agreements shall be in writing and provide that the Rental Agreement and the tenant are subject to the Governing Documents, the Airport Lease, and the Airport Lease Compliance Agreement and associated fee, which must be signed and paid in order for the tenant under any Rental Agreement to occupy the Hangar Unit. The tenant shall be required to sign the Compliance Agreement in the form provided by the City.

13.3 Notification of Rental Agreement. Immediately upon entering into a Rental Agreement, a Hangar Unit Owner shall furnish the Association with a copy of the Rental Agreement and the contact information of the renter. As soon as practicable after receiving notification that a Hangar Unit Owner has entered into a Rental Agreement, the Hangar Unit Owner shall, and the Association may, cause copies of the Governing Documents to be delivered to the renter. (The Governing Documents shall be binding on the renter whether or not the Hangar Unit Owner or the Association delivers the Governing Documents to the tenant of the Hangar Unit.)

13.4 Enforcement of Rental Restrictions. The Hangar Unit Owner and the Hangar Unit Owner's tenant are jointly and severally liable for any violation of the Governing Documents. Any tenant failing to comply with the terms of the Governing Documents shall be in default under the Rental Agreement. A Hangar Unit Owner shall also be responsible for ensuring compliance by the tenant with the Governing Documents and the Rental Agreement.

13.5 Penalty. Failure on the part of the Hangar Unit Owner or the tenant to comply with these Rental Restrictions will subject the Owner and tenant to fines and penalties as determined and noticed by the Board of Directors in accordance with § 57-8-37 of the Act. The Association shall provide the noncompliant Hangar Unit Owner and tenant with written notice giving the Hangar Unit Owner and tenant fourteen (14) days to remedy the noncompliance or for the Hangar Unit Owner to take action against the tenant to remedy the noncompliance, or both.

13.6 Notices. Notices required under this Article shall be deemed given three (3) days after placing the notice in the U.S. First Class Mail, postage pre-paid, to the last address of the Hangar Unit Owner known to the Association. It is a Hangar Unit Owner's obligation to notify the Association in writing of the Hangar Unit Owner's correct address and any change in address.

13.7 Power of Attorney. If a Hangar Unit Owner fails to enforce the terms of the Hangar Unit Owner's Rental Agreement, the Hangar Unit Owner hereby appoints the Association as its limited attorney-in-fact for the purposes of instituting unlawful detainer (eviction) proceedings against the Hangar Unit Owner's tenant.

13.8 Expenses Incurred by Association. The Hangar Unit Owner shall repay the Association for any amounts incurred by the Association in enforcing this Article, including attorney fees and costs. The Association may assess all such amounts as individual assessments.

13.9 Limits on Rental Information.

(a) The Association may not require a Hangar Unit Owner who rents the Hangar Unit

Owner's Hangar Unit to:

- (1) Obtain the Association's approval of a prospective tenant;
- (2) Give the Association a copy of a rental application, a copy of a tenant's or prospective tenant's credit information or credit report, a copy of a tenant's or prospective tenant's background check, or documentation to verify the tenant's age; or
- (3) Pay an additional assessment, fine, or fee merely because the Hangar Unit is a rental Hangar Unit.

(b) A Hangar Unit Owner who owns a rental Hangar Unit shall give the Association the documents described in Section 13.9(a) above if the Hangar Unit Owner is required to provide the documents by court order, subpoena, or lawful discovery request.

(c) To the extent this Declaration lawfully prohibits or restricts occupancy of the Hangar Units by a certain class of individuals, the Association may require a Hangar Unit Owner who owns a rental Hangar Unit to give the Association the information described in Section 13.9(a) above if: (i) the information helps the Association determine whether the tenant's occupancy of the Hangar Unit complies with this Declaration and (ii) the Association uses the information to determine whether the tenant's occupancy of the Hangar Unit complies with this Declaration.

(d) Nothing in this Section 13.9 shall relieve a Hangar Unit Owner of any obligation imposed by the City on the Hangar Unit Owner through the Compliance Agreement.

13.10 Use of Common Areas and Facilities. Any Hangar Unit Owner who rents the Hangar Unit Owner's Hangar Unit and does not continue to store an aircraft titled in the name of the Hangar Unit Owner within such Hangar Unit Leasehold Interest shall not use and enjoy any Common Areas and Facilities during the period the Hangar Unit is occupied by a tenant.

13.11 Association's Right to Rent. The Association shall have the right to rent any Association-owned Hangar Unit or any Hangar Unit that the Association possesses pursuant to any court order or foreclosure (judicial or non-judicial), and that rental shall not be subject to this Article.

ARTICLE XIV

EASEMENTS

14.1 Encroachments. If any portion of the Common Areas and Facilities now encroaches upon any Hangar Unit, or if any Hangar Unit encroaches upon any other Hangar Unit or upon any portion of the Common Areas and Facilities as a result of the construction of the Building (including the Hangar Units and all other Improvements), or if any such encroachment occurs after because of settling or shifting of the Building or from other movement of any portion of the Improvements, a valid easement for the encroachment and for the maintenance of the easement shall exist so long as the Building stand and so long as the physical boundaries of the Hangar Units are in substantial accord with the description in this Declaration. If the Building, the Hangar Unit, any adjoining Hangar Unit, or any adjoining Common Areas and Facilities are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachments shall be permitted of parts of the Common Areas and

Facilities upon any Hangar Unit or of any Hangar Unit upon any other Hangar Unit or upon any portion of the Common Areas and Facilities due to rebuilding, and valid easements for those encroachments and the maintenance of those easements shall exist so long as the Building shall stand and so long as the physical boundaries of the Hangar Units are in substantial accord with the description in the Declaration.

14.2 Utilities. In addition to the foregoing easements, there shall be, and Declarant hereby reserves and covenants for itself, the Association, and all future Hangar Unit Owners within the Leasehold Interest, easements for public and private utility purposes. Providers of public utilities have a blanket easement upon, across, over, and under all the Leasehold Interest. Under this easement, all public utility providers serving the Leasehold Interest may lay, construct, renew, operate, and maintain conduits, cables, pipes, mains, ducts, wires, and other necessary equipment on the Leasehold Interest, except that public utility providers may affix and maintain electrical and telephone wires, circuits, and conduits on, above, across, and under roofs and exterior walls. However, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Leasehold Interest in such a way as to unreasonably encroach upon or limit the use of the Common Areas and Facilities or any structure on the Common Areas and Facilities. A public utility provider shall make reasonable efforts to occupy and use the same physical location as its prior installations. If any public utility provider furnishing a service covered by the blanket easement in this Section 14.2 requests a specific easement by separate, recordable document, the Association has the right to grant that specific easement, subject to the City's approval of the easement.

14.3 Emergency Services. All police, fire protection, ambulance services, and all similar persons have an easement to enter the Common Areas and Facilities and Hangar Units in the performance of their duties.

14.4 Easement of Access. The Association, its agents, employees, and any maintenance company selected by the Association have an easement to enter into any Hangar Unit as may be necessary to maintain, repair, or replace any of the Common Areas and Facilities, to make emergency repairs, or to perform the duties and responsibilities of a Hangar Unit Owner under this Declaration if those duties are neglected.

14.5 Declarant Easement; Indemnification. For so long as (i) Declarant owns any Hangar Unit in the Leasehold Interest or (ii) Declarant has the right to annex all or any portion of an annexable property to the Leasehold Interest, Declarant hereby expressly reserves for its benefit, for the benefit of its agents, employees, and contractors, and for the benefit of its successors and assigns, a nonexclusive easement appurtenant to the annexable property, in, to, and over the Common Areas and Facilities for access, ingress, egress, use, and enjoyment, in order to show the Leasehold Interest or annexable property to its prospective purchasers, or to develop, market, sell, lease, or otherwise dispose of the Leasehold Interest (other than the Property) or the annexable property.

14.6 Cross-Use Easement. Declarant, with prior written approval of the City, reserves the right to grant a cross-use easement for ingress and egress permitting members of adjoining developments the right of ingress and egress over the private streets in the Hangar Project.

14.7 Association Easement. The Association shall have an easement to be exercised during daylight hours, except in the case of an emergency as determined in the sole discretion of the Board of Directors to enter the Hangar Units for the purpose of carrying out and performing the functions of the Association as set forth in this Declaration, the Bylaws, or any Rule or Regulation of the Association.

14.8 Other Easements. The easements identified in this Article shall not affect any other recorded easement.

ARTICLE XV

REINVESTMENT FEE

15.1 Reinvestment Fee. In addition to all other assessments, and upon the transfer or conveyance of a Hangar Unit, there shall be a reinvestment fee charged by the Association to the buyer or seller, as the buyer and seller may determine in any transaction where there is a transfer of ownership of the Hangar Unit from one party to another, except as set forth herein. The reinvestment fee is required to benefit the Leasehold Interest and shall be comprised of one or more of the following charges:

(a) Administrative fee incurred by the Association or its Manager upon the resale of the Hangar Unit, which fee will offset costs of transferring records, providing documents and information to title companies, and other matters related to the transfer of the Hangar Unit;

(b) A reinvestment fee to be placed in the Association's reserve fund to be applied toward the amenities, facilities, and infrastructure;

(c) A reinvestment fee to be placed in the operating account of the Association for common planning and programming of the Association; and

(d) Such other reinvestment fee as established by the Association, provided the resolution establishing the fee is recorded with the Wasatch County Recorder.

15.2 Limitations on Reinvestment Fee.

(a) No reinvestment fee shall exceed one-half of one percent (0.5%) of the fair market value of the Hangar Unit, including all Improvements thereto.

(b) When the seller is a financial institution, the reinvestment fee shall be limited to the costs directly related to the transfer of the Hangar Unit, not to exceed Two Hundred and Fifty Dollars (\$250.00).

(c) No reinvestment fee may be enforced upon: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of

consanguinity; or (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution.

15.3 No Additional Reinvestment Fee Covenants. The imposition of this reinvestment fee covenant precludes the imposition of additional reinvestment fee covenants on the Property. Notwithstanding the foregoing, the reinvestment fee is separate from any Government Assessment charged by the City or other government entity upon the sale or transfer of a Hangar Unit. If the Hangar Unit Owner does not pay such Government Assessment directly to the City or other government entity and such amount is then charged by the City or other government entity to the Association, then the Association may levy an individual assessment against the Hangar Unit and the Hangar Unit Owner for the amount charged by the government entity to the Association.

15.4 Transfer of Ownership. For purposes of this Article XVI, “transfer of Ownership” means the conveyance of a Hangar Unit from the existing Hangar Unit Owner (“seller”) to any other individual or entity (“buyer”), excepting therefrom conveyances to a buyer that is an entity, of whatever legal description, including corporations, limited liability companies, partnerships and limited partnerships where the seller has or retains a majority and controlling ownership interest in the entity; and conveyances made to a trust or similar estate planning entity wherein the seller is the grantor, trustee, and beneficiary.

ARTICLE XVI **GENERAL PROVISIONS**

16.1 Persons Subject. Hangar Unit Owners, tenants, guests, licensees, and any other Person who uses any of the Leasehold Interest in any manner are subject to the Act and the Governing Documents.

16.2 Enforcement. The Association or any Hangar Unit Owner has the right to enforce the provisions of the Governing Documents by any proceeding at law or in equity, including bringing an action against any Person violating or attempting to violate any provisions of the Governing Documents. Failure of the Association or of any Hangar Unit Owner to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Association or any Hangar Unit Owner to do so later. If action, with or without suit, is undertaken to enforce any provision of the Governing Documents, the party against whom enforcement is sought shall pay to the Association or enforcing Hangar Unit Owner all costs, expenses, and attorney fees incurred therein, whether incurred in dispute or settlement negotiations; formal or informal mediation or arbitration proceedings; before, during, or following formal litigation; collecting and enforcing any award, judgment or court order ensuing; because of a bankruptcy proceeding; or, because of or during any appeal.

16.3 Waiver. No provision in the Governing Documents shall be deemed to have been waived because of any failure to enforce it, irrespective of the number of violations that may occur.

16.4 Duration. The restrictions, conditions, covenants, and reservations in the Declaration shall perpetually run with and bind the land.

16.5 Severability. All the restrictions, conditions, covenants, and reservations in the Declaration shall be construed together, but if any one restriction, condition, covenant, or reservation, or any part thereof, shall at any time be held invalid or for any reason become unenforceable, no other restriction, condition, covenant, or reservation, or any part thereof, shall be affected or impaired. The Association and Hangar Unit Owners and their successors, heirs, and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause, and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause, or phrase.

16.6 Amendment. Provided the contemplated amendment is compliant and subject in all respects to the Airport Lease, any amendment to this Declaration shall require the affirmation of at least sixty-seven percent (67%) of the voting interests of the Association actually represented in person, by proxy, or by ballot that are entitled to be cast at a meeting duly called for such purpose and be approved by the City.

(a) Approval by Hangar Unit Owners. The Board of Directors shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of the voting interests of the Association shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board of Directors causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

(b) Declarant Authority to Amend. Notwithstanding anything herein contained to the contrary but subject to Section 16.6(c), until the expiration of the Period of Administrative Control, Declarant shall have, and it hereby vested with, the right to unilaterally amend this Declaration, without needing the approval of any other Hangar Unit Owners, as Declarant believes may be reasonably necessary or desirable. Notwithstanding anything herein contained to the contrary, until the expiration of the Period of Administrative Control, no amendment to this Declaration may be made by the Members without the written consent of the Declarant.

(c) City Approval of Amendment. The Declarant or Board of Directors shall provide the City with written notice of any proposed amendment to the Declaration. Notice to the City shall be made by certified or registered mail, or by other means if the City acknowledges receipt of the proposed amendment. If sixty (60) days have passed since the proposed amendment was sent to the City without the City responding and objecting to the proposed amendment, then the City's approval to the proposed amendment shall be deemed given.

(d) Recordation of Amendment. Any amendment authorized pursuant to this Section 16.6 shall be accomplished through the Recordation of an instrument executed by the Association, or the Declarant in the instance of the Declarant unilaterally amending this Declaration. In such instrument an officer of the Association or member of the Board of Directors shall certify that the vote (except for amendments unilaterally made by the Declarant) or approval required by this Section for amendment has occurred. Amendments may modify, change, add to, increase,

decrease, replace, repeal, or provide additional and new covenants, conditions, restrictions, and easements.

16.7 Limitation of Association Liability. The Association shall not be liable for: (a) any failure of water service or other utility service; (b) injury or damage caused by the elements or by a Hangar Unit Owner or Person within the Leasehold Interest; or (c) injury or damage resulting from electricity, water, rain, snow, or ice that may leak or flow from outside or from any part of any Building, including drains, pipes, conduits, appliances, equipment, or from any other place, unless caused by the gross negligence or willful misconduct of the Board of Directors or its members. No diminution or abatement of any assessment under this Declaration may be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining any of the Leasehold Interest or from any action taken to comply with the Governing Documents or laws, ordinances, regulations, rules, or orders of any governmental authority.

16.8 Manner of Giving Notice. Except as otherwise specified in this Declaration, the Association shall give notice in the manner specified in the Bylaws.

16.9 Grammar. The singular, wherever used, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions apply shall be assumed as though in each case fully expressed.

16.10 Days. Unless specified otherwise, any period stated in days shall mean calendar days, not business days.

16.11 Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration.

16.12 Assignment of Declarant's Powers. Any and all rights and powers of the Declarant herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Declarant rights, the Declarant shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Declarant(s) shall have all the rights and obligations of Declarant contained herein.

ARTICLE XVII **AGENT FOR SERVICE**

Richard M. Matheson of Jenkins Bagley Sperry, PLLC, whose address is 5295 S Commerce Dr., Ste. 120, Salt Lake City, UT 84107, is hereby appointed agent for service of process in those cases provided under Utah Code § 57-8-10 of the Act. This resident agent may be changed by the Association by filing the appropriate notice with the Utah Division of Corporations and Commercial Code.

IN WITNESS WHEREOF, Declarant executed this Declaration on the ____ day
_____, 20__.

Declarant:

Heber Hangar Owners Association, Inc.

By: _____

Its: _____

STATE OF UTAH)

:ss.

County of _____)

On this ____ day of _____, 20__, personally appeared before me
_____, who being personally known to me (or satisfactorily proved to me),
and who being by me duly sworn did say that he/she is Declarant's duly authorized agent for
purposes of signing this Declaration and that he/she executed the foregoing Declaration on behalf
said Declarant being authorized and empowered to do so by the Bylaws of said Company or
resolution of its directors, and he/she acknowledged before me that such Company executed the
same for the uses and purposes stated therein.

Notary Public

APPROVAL OF HEBER CITY

Heber City, through its undersigned Mayor, hereby approves of the foregoing Declaration.

HEBER CITY, a Municipal Corporation

Mayor

Date

Exhibit “A”
(Airport Lease with Exhibits)

Exhibit “B”

**BYLAWS OF
HEBER HANGAR OWNERS ASSOCIATION, INC.**

**ARTICLE I
OFFICES**

Section 1.01. Principal Offices. The principal office for the transaction of the business of Heber Hangar Owners Association, Inc., a Utah nonprofit corporation (the “Association”) shall be located in Salt Lake City, Salt Lake County, Utah. The Board of Directors is hereby granted full power and authority to change, from time to time, said principal office from one location to another.

Section 1.02 Other Offices. Branch or subordinate offices may at any time be established by the Directors at any place or places where the Association is qualified to do business.

**ARTICLE II
DEFINITIONS**

When used in these Bylaws the following terms shall have the meaning indicated:

Section 2.01 Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Heber Hangar Owners Association, Inc.

Section 2.02 Association shall mean and refer to Heber Hangar Owners Association, Inc., a Utah nonprofit corporation which is created by the filing of the Articles.

Section 2.03 Board shall mean the Board of Directors unless the context of the sentence in which the term is used clearly denotes another body.

Section 2.04 Common Areas and Facilities shall mean and refer to all portions of the Leasehold Interest owned by the Association for the common use and enjoyment of the Owners, all as described and defined in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Heber Hangar Owners Association (“Declaration”)

Section 2.05 Directors shall mean the Directors of the Association with rights and duties as defined in Articles of Incorporation, the Declaration and herein.

Section 2.06 Member shall mean and refer to every person who holds membership in the Association.

Section 2.07 Owner shall mean and refer to the person who is the owner of record in the office of the County Recorder of Wasatch County, Utah, whether one or more persons or entities, of a Hangar Unit, as that term is defined in the Declaration.

Section 2.08 Other Capitalized Terms used herein shall have the meaning attributed by the Articles of Incorporation, Declaration or as used in the context herein.

ARTICLE III STATUS OF ASSOCIATION

Section 3.01 Status and General Authority of Association. The Association has been incorporated under the laws of the State of Utah as a nonprofit corporation. The Association, is subject to the rights and duties of the Owners as set forth in the Declaration and these Bylaws, and shall be responsible for the exclusive management and control of the Common Areas and Facilities and all improvements thereon, and shall keep the same in a good, clear, attractive, safe, and sanitary condition, order, and repair. The Association shall be responsible for the maintenance and repair of the Common Areas and Facilities including, without limitation, utility lines, roads, common facilities, and all improvements and other items located within or used in connection with the Common Areas and Facilities. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expenses fund.

ARTICLE IV MEMBERSHIP

Section 4.01 Qualifications. Pursuant to the Articles of Incorporation and the Declaration, every person who is an Owner, shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to a Hangar Unit in which the Owner has the necessary interest, and shall not be separated from the Hangar Unit to which it appertains.

Section 4.02. Privileges of Members, All Members shall be equally privileged to attend all Board of Director's meetings, Committee and Membership meetings and take part in all Membership meetings, and shall be eligible to hold any office within the Association, so long as they comply with these Bylaws, including the payment of assessments to the Association.

Section 4.03. Membership Certificates. There shall be no certificates of membership in the Corporation.

Section 4.04. Voting Rights. The voting rights of Members shall be one vote for each Hangar Unit in the Association. In no event shall the owner of a Hangar Unit, even though there may be more than one owner of a Hangar Unit, be entitled to more than one vote for each Hangar Unit. That one vote may be cast by an individual owner or by a Member representing the group of members which shares ownership of a given Hangar Unit.

Section 4.05 Lists of Owners. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Hangar Unit which is owned by him/her/it. In the event of any Transfer of Ownership in a Hangar Unit, either the transferor or transferee shall furnish the Association with evidence establishing

that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Wasatch County, Utah. The Association may, for all purposes, act and rely upon the information concerning Owners, which is thus acquired by it, or at its option the Association may act and rely on current ownership information respecting any Hangar Unit which is obtained from the office of the Wasatch County Recorder or the office of the County Assessor of Wasatch County, Utah, and the name and address of the owner listed at the County Recorder or County Assessor's office shall be deemed to be the name and address of the owner of a Hangar Unit, unless the Association is otherwise advised in writing by the listed owner.

Section 4.06 Obstruction of Common Areas and Facilities. There shall be no obstructions of the Common Areas and Facilities by the Owners, their guests or invitees without the prior written consent of the Directors. The Board may by Rules and Regulations prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Hangar Units, or the Common Areas and Facilities. Nothing shall be kept or stored in or upon any part of the Common Areas and Facilities without the prior written consent of the Directors, except as specifically provided herein. No improvements temporary or permanent in nature shall be altered, constructed or removed from the Common Areas and Facilities except upon the prior written consent of the Directors and except as provided herein.

Section 4.07 Compliance with Rules and Regulations. No owner shall violate the rules and regulations regarding use of the Common Areas and Facilities as adopted from time to time by the Association. Owners are also responsible for the acts and violations of their guests and invitees.

ARTICLE V MEMBER ASSESSMENTS

Section 5.01. Agreement to Pay Assessments. Each Owner of a Hangar Unit, who has purchased a Hangar Unit by deed or who has entered into a sale and purchase contract, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the purpose provided in the Declaration and these Bylaws, and special assessments for capital improvements and other matters, as provided in the Declaration and these Bylaws. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 5.02 Apportionment of Annual and Special Assessments. Expenses attributable to the Common Areas and Facilities, shall be apportioned among and assessed in equal shares based on Hangar Unit ownership against all Owners as of January 1 of each year. Owners, who acquire a Hangar Unit from the Declarant during the year, shall pay a pro rated share of the assessments made against other Owners corresponding to the portion of the year such new Owner was an Owner.

Section 5.03 Notice of Annual Assessments and Time for Payment Thereof. Annual assessment shall be made on a calendar year basis, provided the first fiscal year shall

commence on the date these Bylaws are formally adopted by the Association and end the following December 31. In the event an installment payment is not made or is late, the entire unpaid balance of the annual assessment will be automatically accelerated and will be due and payable immediately.

Each assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable until paid. The Board of Directors shall have the power and authority to change this interest rate annually in accordance with the prevailing rates, though it shall not be obligated to do so. Moreover, the Association may impose a late payment service charge equal to or greater than twenty-five dollars (\$25.00) for each delinquent monthly assessment.

Section 5.04 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including non-payment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth below, except that the vote therein specified shall be unnecessary.

Section 5.05 Special and/or Reserve Analysis Assessments. In addition to the Annual Assessments authorized by this Article, the Association may, at any time and from time to time, upon affirmative vote of a majority of the Board, levy Special Assessments, and/or obtain a Reserve Analysis that may lead to a special Assessment to augment the Reserve Account, payables over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas and Facilities or any part thereof, or for any other expenses incurred or to be incurred as provided in the Declaration or these Bylaws (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be assessed equally to Owners. Notice in writing of the amount of such special assessments shall be given, which notice shall set forth the time for payment which shall be not less than thirty (30) days after such date.

ARTICLE VI MEETINGS OF MEMBERS

Section 6.01 Place of Meetings. All meetings of members shall be held either at the principal office of the Association in Salt Lake County or at any other place within Wasatch

County, or within the State of Utah, as may be designated by the Board of Directors, pursuant to authority hereinafter granted to said Directors.

Section 6.02 Annual Meetings. The annual meetings of Members shall be held on the 4th Monday of January each year at 6:00 p.m., except as otherwise may be annually determined by the Board of Directors, provided, however, that should said day fall upon a legal holiday, then any such annual meeting of Members shall be held at the same time and place on the next business day thereafter ensuing which is not a legal holiday. At such meetings the Board of Directors shall be elected, reports of the affairs of the Association shall be considered, and any other business may be transacted which is within the powers of the Members.

Written notice of each annual meeting shall be given to each Member entitled to vote, either personally or by mail or other means of written communication, with the charges prepaid, and addressed to each such Member at the Owner's address appearing on the books of the Association, or given by the Owner to the Association for the purpose of notice. If a Member gives no address, notice shall be deemed to have been given if sent by mail or other means of written communication, addressed to the place where the principal office of the Association is situated, or if published at least once in some newspaper of general circulation in the county in which said principal office and the Subdivision is located. All such notices shall be sent to each Member entitled thereto not less than ten (10) before each annual meeting, and shall specify the place, the day, and the hour of such meeting, and shall state other matters, if any, as may be expressly required by statute.

Section 6.03 Special Meetings. Special meetings of the Members, for any purpose or purposes whatsoever may be called at any time by the President, the Board of Directors, or, by one or more members holding thirty percent (30%) of the voting power of the Association. Except in special cases where other express provisions are made by statute. Notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify, in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 6.04 Adjourned Meetings and Notice Thereof. Any Members' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the Members represented at the meeting in person by proxy, but in the absence of a quorum no other business may be transacted at such meeting.

Section 6.05 Voting. The majority vote of Owners entitled to vote, in person or by proxy, on any Association matter presented for a vote at any meeting called for that purpose, shall be the act of the Association, unless a greater number of votes is otherwise required by the laws of the State of Utah, or the Articles of Incorporation or Declaration of this Association and provided a quorum is present at the meeting.

Section 6.06 Quorum. The presence in person, or by proxy, of a majority of the Owners entitled to vote at a meeting of Members shall constitute a quorum. The vote of at least a

majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners. If a Quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a Quorum shall be one-half of the Quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

Section 6.07 Consent of Absentees. The transactions of any meeting of Members, however called or noticed, or wherever held, either annual or special, shall be as valid as a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.08 Action Without Meeting. Any action which under any provision of the Utah Non-profit Corporation may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing (or writings) filed with the Secretary of the Association signed by a majority of the Owners who would be entitled to vote upon such action at a meeting.

Section 6.09 Proxies. Members may vote in person by proxy; provided, however, that no proxy shall be valid unless signed by the Owner or his, her or its duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to any meeting for which it is to be effective. A proxy is valid for eleven (11) months from its date of execution, unless a different time period is expressly provided in the proxy.

ARTICLE VII BOARD OF DIRECTORS

Section 7.01 Powers. Subject to limitations of the Articles of Incorporation, the Declaration, and the Utah Community Property Act and the Utah Revised Nonprofit Corporation Act as to actions which shall be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the affairs of the Association. The Association shall be managed by a governing body, which shall be called the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board of Directors shall have the following powers, to wit:

7.01.1 To select and remove all the other officers, agents and employees of the Association, and to prescribe such powers and duties for them as may not be inconsistent with law, or with the Articles of Incorporation, the Declaration, or the Bylaws, and to fix their compensation, if any, and require from them security for faithful service;

7.01.2 To conduct, manage and control the affairs of the Association, and to make such rules and regulations therefore not inconsistent with law, or with the Articles of Incorporation, the Declaration, or the Bylaws, as they may deem proper; and further to establish fines and penalties for the violation of any such rules and regulations.

7.01.3 To change, from time to time, the principal office for the transaction of the business of the Association from one location to another within the same county as provided in Section 1.01; to fix and locate, from time to time, one or more subsidiary offices of the Association within the State of Utah as provided in Section 1.02 hereof; and; to designate any place within Salt Lake and/or Wasatch County, State of Utah for the holding of any Members meeting or meetings;

7.01.4 To admit new Members or terminate the membership of existing Members;

7.01.5 Without the vote or consent of the Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements over, under; across, and through the Common Areas and Facilities;

7.01.6 To execute and record, on behalf of all the Owners, any amendment to the Declaration or plat map which has been approved by the vote or consent necessary to authorize such amendment.

7.01.7 To sue and be sued;

7.01.8 To enter into contracts which in any way concern the Association, its Common Areas and Facilities, and the Hangar Units, so long as any vote or consent of the Owners necessitated by the subject matter of the agreement has been obtained;

7.01.9 To convey or transfer any interest in real property authorized by the Owners having an interest therein;

7.01.10 To purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

7.01.11 To borrow money, provided that no indebtedness for borrowed funds shall exceed at any given time the sum of \$10,000.00 without the prior vote or approval of a majority of the Members of the Association at a meeting duly called and convened at which a quorum is present;

7.01.12 To promulgate such reasonable rules and regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Subdivision is maintained and used in a manner consistent with the interests of the Owner;

7.01.13 To perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions as agent of the Association; and

7.01.14 To hire, if the Board deems it necessary, a professional manager or management company to perform those duties and obligations of the Board of Directors that is

properly delegable under the Declaration, these Bylaws and under Utah law.

Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Directors' power and authority to accomplish thereby, shall conclusively establish said power and authority in favor of any person who in good faith, and for value, relies upon said instrument.

Section 7.02 Number and Qualification of Board of Directors Members The authorized number of Members of the Board of Directors of the Association shall be three (3) until changed by a Resolution amending this Section.

Section 7.03 Election and Term of Office. The Board of Directors Members shall be elected at each annual meeting of Members, but if any such annual meeting is not held, or the Board of Directors Members are not elected there, the Board of Directors may be elected at any special meeting of Members held for that purpose, as set forth in the Declaration. All Board of Directors Members shall hold office until their respective successors are elected.

Section 7.04 Vacancies. Vacancies in the Board of Directors may be filled by a majority of the remaining Board of Directors, though less than a quorum, or by a sole remaining Board of Directors Member, and each Board of Directors Member so elected shall hold office until his successor is elected at an annual or special meeting of the Members.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any Board of Directors Member, or if the authorized number of Board of Directors Members be increased, or if the Members fail, at any annual or special meeting of Members at which any Board of Directors Member, or Board of Directors Members are elected, to elect the full authorized number of Board of Directors Members to be voted for at that meeting.

A Member of the Board may be removed from the Board, either with or without cause, by a majority of Owners entitled to vote, at any regular or special meeting of the Board.

No reduction of the authorized number of Board of Directors Members shall have the effect of removing any Board of Directors Member prior to the expiration of Board Member's term of office.

Section 7.05 Place of Meeting. Meetings of the Board of Directors shall be held at any place within the State of Utah which has been designated from time to time by resolution of the Board of Directors, or by written consent of all Members of the Board of Directors. In the absence of such designation, meetings shall be held at the principal office of the Association.

Section 7.06 Organization Meetings. Immediately following each annual meeting of Members, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.07 Other Regular Meetings. Other regular meetings of the Board of Directors are hereby dispensed with and all business conducted by the Board of Directors shall be conducted

at special meetings.

Section 7.08 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President or, if he is absent or unable or refuses to act, by any two Board of Directors Members.

Written notice of the time and place of special meetings shall be delivered personally to each Board of Directors Member, or sent to each Board of Directors Member by mail or by other form of written documentation, with charges prepaid, and addressed to said Board Member at his address as it is shown upon the records of the Association, or if it is not so shown on such records or is not readily ascertainable at the place in which the meetings of Board of Directors Members are regularly held. In case such notice is mailed, it shall be deposited in the United States mail at least forty-eight (48) hours prior to the time of the holding of the meeting. In case such notice is delivered personally as above provided, it shall be so delivered at least twenty-four (24) hours prior to the time of the holding of the meeting. Such mailing or delivering as above provided shall be considered due, legal and personal notice to such Board of Directors Member.

Section 7.9 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Board of Directors Members not present signs a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the Association's records or made a part of the minutes of the meeting.

Section 7.10 Quorum. A majority of the authorized number of Board of Directors Members shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Board of Directors Members present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number be required by law or by the Articles of Incorporation.

Section 7.11 Adjournment. A quorum of the Board of Directors may adjourn any Board of Directors meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Board of Directors Members present at any Board of Directors meeting, either regular or special, may adjourn from time to time until the time fixed for the next meeting of the Board of Directors.

Section 7.12 Fees and Compensation. Board of Directors Members shall not receive any stated salary for their services as Board of Directors Members, but, by resolution of the board, a fixed fee, with or without expenses of attendance, may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Board of Directors Member from serving the Association in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation thereof.

Section 7.13 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors under any provision of the Utah Non-profit Association Act, the Declaration

and under these Bylaws may be taken without a meeting if all of the Board of Directors Members of the Association shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

ARTICLE VIII OFFICERS

Section 8.01 Offices. The officers of the Association shall be a President, a Secretary, and a Treasurer. The Association may also have, at the discretion of the Board of Directors, such other officers as may be appointed in accordance with the provisions of Section 8.03. One person may hold two or more offices, except those of President and Secretary.

Section 8.02 Election. The officers of the Association, except such officers as may be appointed in accordance with the provisions of Section 8.03 or section 8.05, shall be chosen annually by the Board of Directors, and each shall hold his office until he shall die, resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 8.03 Subordinate Officers. The Board of Directors may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors may from time to time determine.

Section 8.04 Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Board of Directors at any regular or special meeting of the Board, or, by an officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled by the remaining Directors or in the manner prescribed in the Bylaws for regular appointments to such office.

Section 8.06 President. The President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board of Directors. He shall be ex officio a member of all the standing Committees, and shall have the general powers and duties of Management usually vested in the office of the President of an Association, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

Section 8.07 Secretary. The Secretary shall, keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of the Board of Directors and Members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board of

Directors Members' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office a register, showing the names of the Members and their addresses,

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given (provided, however, that in the event of the absence or disability of the Secretary, such notice may be given by any other officer of the Association), and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

Section 8.08 Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, and shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board of Directors or, in the absence of such designation, as may be selected by the Treasurer. The Treasurer shall receive and keep account of all fees, monies and dues belonging to the Association, shall disburse the funds of the Association as may be ordered by the Board of Directors or the President, shall make, sign and endorse in the name of the Association all checks, drafts, notes, and other orders for the payment of money and payout and dispose of such under the direction of the Board of Directors and the President, shall render to the President and Board of Directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

ARTICLE IX MISCELLANEOUS

Section 9.01 Inspection of Corporate Records. The books of account, the Membership register and minutes of proceedings of the Members and the Board of Directors shall be open to inspection upon the written demand of any Member at any reasonable time, and for a purpose reasonably related to his interests as a Member. Such inspection may be made in person or by agent or attorney and shall include the right to make extracts. Demand of inspection shall be made in writing upon the President or Secretary.

Section 9.02 Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by the Treasurer and/or by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

Section 9.03 Execution of Contracts. The Board of Directors, except as otherwise provided in the Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of, and on behalf of the Association, and such authority may

be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit to render it liable for any purpose or to any amount.

Section 9.04 Inspection of Bylaws. The Association shall keep in its principal office for the transaction of business the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members at all reasonable times during office hours.

ARTICLE X AMENDMENTS

Section 10.01 Power of Members. New Bylaws may be adopted, or these Bylaws may be amended or repealed and replaced by the majority vote of the Board of Directors, or by a majority vote of the Members or by the written assent of such Members, except as otherwise provided by law or by the Articles of Incorporation.

Section 10.02 Power of Board of Directors Members. Notwithstanding the foregoing Section 10.01, an amendment to change the number of persons comprising the Board of Directors will require the vote of a majority of the Members.

ARTICLE XI DISSOLUTION

Section 11.01. Dissolution. The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE XII HIERARCHY OF AUTHORITY

Section 12.01. Airport Lease. These Bylaws, the Declaration, the Rules and Regulations promulgated from time to time by the Board of Directors and all other aspects of the Governing Documents and the existence of the Association are subordinate to and governed by the Airport Lease by and between the Association and Heber City, a copy of which is attached as Exhibit A to the Declaration.

Section 12.02. Hierarchy of Governing Documents. In the event of any inconsistency between the provisions of the Governing Documents of the Association, applicable federal and Utah State Law shall control and govern, then in descending order the Airport Lease, Articles of Incorporation, Declaration, Bylaws, and Rules and Regulations.

IN WITNESS WHEREOF, Declarant executed these Bylaws on the ____ day
_____, 20__.

Declarant:

Heber Hangar Owners Association, Inc.

By: _____
Its: _____

STATE OF UTAH)
 :ss.
County of _____)

On this ____ day of _____, 20__, personally appeared before me
_____, who being personally known to me (or satisfactorily proved to me),
and who being by me duly sworn did say that he/she is Declarant's duly authorized agent for
purposes of signing these Bylaws and that he/she executed the foregoing Bylaws on behalf said
Declarant being authorized and empowered to do so by resolution of the company's directors, and
he/she acknowledged before me that such company executed the same for the uses and purposes
stated therein.

Notary Public

Exhibit "C"
(Legal Description / Plat / Site Plan)



Project No: 290492
Date: November 30, 2023
Page 1 of 1

LEASE BOUNDARY DESCRIPTION

A Lease parcel, located in the S1/2 of Section 7, Township 4 South, Range 5 East, S.L. Baseline & Meridian, Heber City, Wasatch County, Utah, more particularly described as follows:

COMMENCING at the Southeast Section Corner of Section 7 of said Township 4 South, Range 5 East, from which the east One-Quarter Section Corner of said Section 7 bears N.00°05'59"W., 2669.34 feet; thence,

A. N.83°41'10"W., 684.65 feet, to the southeast corner of said parcel, being the POINT OF BEGINNING; thence,

1. S.49°43'56"W., 62.05 feet; thence, leaving said southeast corner,
2. N.40°16'04"W., 515.00 feet; thence,
3. N.19°43'56"E., 134.00 feet; thence,
4. S.40°16'04"E., 431.10 feet; thence,
5. S.00°20'55"W., 110.52 feet to the POINT OF BEGINNING.

The above-described Lease Parcel CONTAINS: 1.51 acres, more or less.





**HEBER CITY AIRPORT
T-HANGAR OCCUPANT COMPLIANCE AGREEMENT**

THIS T-HANGAR COMPLIANCE AGREEMENT (“Agreement”) is made effective as of the ____ day of _____, 20__ (the “Effective Date”), by and between the HEBER CITY CORPORATION, a political subdivision of the State of Utah (“Heber City”), and _____, _____, and _____ (“Occupant(s)”) and provides as follows:

WHEREAS, Heber City is the owner and operator of the Heber Valley Airport (“Airport”) and has the power to grant rights and privileges with respect thereto;

WHEREAS, Heber City has entered into a Non-Reversionary Ground Lease Agreement dated XXXXXXXXXX (“Master Lease Agreement”) with Heber Hangar Owners Association, Inc. (the “HOA”) for the purpose of constructing and maintaining a T-Hangar complex at the Airport;

WHEREAS, the HOA entered into the Master Lease Agreement with the intent to sell individual condominium hangar units within the T-Hangar complex to third parties;

WHEREAS, Occupant is the owner of a condominium interest in the T-Hangar complex or is a duly authorized tenant of such owner’s condominium interest, and the lawful occupant of Hangar Unit Number ___, as described on the Plat of the Heber Hangar Project recorded with the Declaration of Covenants, Conditions, and Restriction and Reservation of Easements for Heber Hangar Owners Association (the “Hangar Unit”);

WHEREAS the Master Lease Agreement provides that Occupant and all similarly situated third parties owning or occupying an individual condominium unit within the T-Hangar complex enter into a compliance agreement with Heber City; and

NOW THEREFORE, Heber City and Occupant, in consideration of the mutual covenants and obligations herein expressed, agree as follows:

1. TERM OF AGREEMENT. The Term of this Agreement shall commence on the date Occupant closes on the sale transaction for the Hangar Unit, or, in the case of a tenant, when the tenant’s sublease commences, and continue indefinitely until terminated as provided herein.

2. COMPLIANCE WITH AIRPORT REQUIREMENTS. During the Term of this Agreement, Occupant agrees to comply with the following:

A. Applicable Federal Aviation Administration (“FAA”) rules, regulations, policies, and guidance, as they may be amended from time to time;

B. The terms of the Master Lease Agreement, a copy of which is attached hereto as Exhibit ___, as it may be amended from time to time;

C. The Airport Minimum Standards, a copy of which is attached hereto as Exhibit ___, as they may be amended from time to time by Heber City;

D. The Airport Rules and Regulations, a copy of which is attached hereto as Exhibit ___, as they may be amended from time to time by Heber City.

3. ADDITIONAL REQUIREMENTS. In addition to any requirements imposed by the provisions of Paragraph 2, Occupant agrees to comply with the following:

A. Occupant shall not store fuel of any kind within the Hangar Unit unless specifically authorized to do so in writing by Heber City.

B. Occupant shall not conduct commercial aeronautical activities, as defined by the Airport Minimum Standards, as they may be amended from time to time by Heber City, from the Hangar Unit unless specifically authorized to do so in writing by Heber City.

C. Occupant shall not cause or allow the Hangar Unit to be used for non-aeronautical purposes that (i) interfere with aeronautical activity at the Airport, (ii) displace any aeronautical contents of the Hangar Unit, or (iii) are commercial or residential in nature. Motor vehicles may be parked in the Hangar Unit only while aircraft duly authorized to be stored in the Hangar Unit area in use. The determination of whether a particular activity or practice violates this Paragraph 3(C) is subject to Heber City's reasonable discretion.

D. Occupant shall keep the Hangar Unit in a clean and neat condition, free from all waste, garbage, and rubbish, and agrees not to deposit same, except temporarily in connection with collection for removal in designated locations.

E. Occupant shall exercise due and reasonable caution to prevent fire, accidents, hazards or nuisances in the Hangar Unit and upon the Airport. Should Occupant fail to remove or abate said hazard or nuisance after being notified to do so, Heber City may abate said hazard or nuisance and charge the cost thereof to the Occupant.

4. SALE. Occupant shall notify Heber City prior to the offering for sale of the Hangar Unit. Prior to or concurrent with the closure of any sale of the Hangar Unit (including a sale of only a portion of the Hangar Unit), the purchaser of the Hangar Unit shall enter into a compliance agreement with Heber City substantially similar to this Agreement.

5. SUBLEASE AND ASSIGNMENT. Occupant shall not be permitted to sublease or assign its interest or any part of its interest in the Hangar Unit without the written permission of Heber City, which shall not be unreasonably withheld. Any purported sublease or assignment of any interest in the Hangar Unit without the written consent of Heber City shall be void ab initio. Occupant shall cause any sublessee or assignee of any portion of the Hangar Unit to enter into a compliance agreement with Heber City substantially similar to this Agreement, and Occupant shall ensure that any sublessee or assignee complies with the terms of this Agreement. Occupant shall be jointly and severally liable under this Agreement for the acts and omissions of any sublessee or assignee of any portion of the Hangar Unit.

6. INDEMNIFICATION. Occupant covenants and agrees to indemnify, defend, save and hold harmless Heber City, its agents, officials, employees, attorneys, and insurers from any and all liabilities, losses, costs, charges, penalties, obligations, expenses, attorneys fees, litigations, judgments, damages, claims and demands of any kind whatsoever (collectively, the "Claims") in

connection with, arising out of, or by any reason related to Occupant's activities at the Airport and occupancy of the Hangar Unit. Occupant agrees to defend against any Claims, or at the option of Heber City, Occupant agrees to pay Heber City or reimburse Heber City for the actual costs incurred by Heber City in connection with any such Claims. The obligation of this Paragraph 6 shall not extend to any injury, loss or damage caused by the willful act or omission, or gross negligence of Heber City, its officials, employees, attorneys, or insurers. This Paragraph 6 shall survive the expiration or earlier termination of the Agreement.

7. INSURANCE.

A. During the Term of this Agreement, Occupant shall at all times maintain insurance in the following types and minimum amounts:

- i. General Liability Insurance, to include bodily injury, personal injury, and property damage for all premises, unlicensed vehicles, and contractual liability, of not less than Two Million Dollars (\$2,000,000.00) combined single limit and each occurrence; and
- ii. Vehicular Liability, to include bodily injury and property damage for all vehicles (owned, non-owned, or hired), of not less than Two Million Dollars (\$2,000,000.00) combined single limit and each occurrence.

B. The policies specified in Paragraph 7(A) shall name Heber City as an additional insured, and copies of the policies or a certificate shall be provided to Heber City as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. Occupant shall provide the policies or certificate contemporaneously with the execution of this Agreement. The policies or certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed without 30 (thirty) days' prior written notice to Heber City.

C. Heber City reserves the right to modify the types and limits of coverages required under this Agreement at any time. Such modifications will be effective after thirty (30) days' notice to Occupant. Once such modifications become effective, Occupant shall provide updated certificates and/or policies within seven (7) days.

D. The insurance amounts required herein shall not limit the liability of Occupant under this Agreement, and Heber City makes no representation about the adequacy of the insurance limits required in this Agreement to protect Occupant's interests.

8. CONFLICTS. In the event of a conflict between the requirements of this Agreement and any other applicable requirements (e.g., the Master Lease Agreement, the HOA's Covenants, Conditions, and Restrictions, or the Airport Rules and Regulations), Heber City shall determine the most restrictive requirement, which shall govern in all cases.

9. RIGHTS OF HEBER CITY. Occupant agrees that Heber City shall have the right to: (i) reasonable access to the Hangar Unit for the limited purposes of inspecting the same, preventing waste or loss, responding to emergencies or enforcing any of Heber City's rights

hereunder, (ii) develop and/or improve the Airport as Heber City deems appropriate without interference or hindrance by Occupant, and Heber City shall have no liability hereunder to Occupant by reason of any interruption to Occupant's use of or operations on the Airport or Hangar Unit occasioned by such development and/or improvement of the Airport, and (iii) amend its Airport Rules and Regulations, Minimum Standards, or issue Airport Manager's directives, in accordance with normal procedures, and Occupant shall be subject thereto.

10. VIOLATIONS AND PENALTIES.

A. The following events are to be considered Violations of this Agreement: (i) Occupant fails to perform or observe any covenant, agreement, or provision of this Agreement or the requirements in the authorities set forth in Paragraph 2, and such failure shall not be cured within 10 days of written notice thereof to Occupant; or (ii) Occupant creates, maintains or allows by omission a dangerous or hazardous condition on or emanating from the Hangar Unit.

B. In addition to any remedies available to Heber City in the Airport Minimum Standards, Airport Rules and Regulations, or otherwise at law or in equity, Heber City may take the following actions with respect to any Violation of this Agreement:

- iii. Take all actions necessary to remedy the Violation and charge the Occupant the actual cost of such remediation, plus a 15% administrative fee.
- iv. Assess the Occupant liquidated damages of up to \$500.00 per Violation per day so long as the Violation remains uncured.
- v. Seek judicial relief from a court of competent jurisdiction to enjoin the Occupant against continued Violations.

C. The remedies set forth in this Paragraph 10 are not mutually exclusive.

11. TERMINATION. This Agreement shall terminate if Occupant sells or otherwise conveys all interest in the Hangar Unit to another party or parties. This Agreement shall not terminate if Occupant retains any interest in the Hangar Unit, including in the case of sublease.

12. MISCELLANEOUS.

A. Attorney's Fees. In the event action is required by either party hereto to enforce this Agreement, including to remedy any Violations or collect associated penalties, and in taking such action, such party incurs attorneys' fees, the unsuccessful party to such enforcement action shall pay the successful party, in addition to all other amounts then due and owing, the successful party's reasonable attorney's fees.

B. Subordination. This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between Heber City and the United States of America, the State of Utah, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the grant or receipt of federal or State funds for the development of the Airport, and to any terms or

conditions imposed upon the Airport by any other Governmental Authority. In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates the terms of any such agreements, Heber City may unilaterally amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation without compromising or destroying any remaining portions of this Agreement, and such remaining provisions shall remain binding and in full effect upon the parties as if no such amendment or alteration had occurred.

C. Entire Agreement. This Agreement contains the entire agreement of the parties and there have been no promises, representations or agreements, either express or implied, except as expressly set forth herein and therein. Any and all prior agreements or understanding between the parties are expressly agreed to have merged herein and therein.

D. Counterparts and Facsimile. This Agreement may be executed in one instrument, signed by all parties, or in counterparts, in which case all such counterparts together shall constitute one and the same instrument and agreement, binding on all of the parties thereto. Facsimile signatures shall be treated as original signatures on this Agreement, and on other documents provided for herein.

E. Modification and Amendment. This Agreement may be modified, amended or supplemented only by an instrument in writing signed by the parties; provided, however, if at any time Heber City enters into a compliance agreement with any other owner or lessee of a hangar unit in the T-Hangar complex that is more favorable to such owner or lessee than in this Agreement, Heber City shall grant or provide such more favorable rights to Occupant.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Wasatch County, Utah.

G. Notice: All notices or other written correspondence desired or required to be sent pursuant to this Agreement shall be sent to the respective parties as follows:

If to Heber City:

Airport Manager
XXXX

If to Occupant:

XXXXXX

With a copy to:

XXXXXX

H. No Exclusive Right. Nothing herein contained shall be deemed to grant Occupant any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) for the conduct of any aeronautical activity at the Airport.

I. Limitation of Liability. None of Heber City's officials, employees, board members, attorneys, officers or agents thereof shall have any personal liability with respect to any of the provisions of this Agreement.

J. Master Lease Agreement. Occupant represents and acknowledges that it has reviewed a copy of the Master Lease Agreement and consents to its terms and its incorporation into this Agreement. Occupant acknowledges and agrees that Occupant is not a third-party beneficiary of the Master Lease Agreement and has no legal standing to initiate or participate in any lawsuit pertaining to the Master Lease Agreement, except with respect to Occupant's status, if any, as a member of the HOA, which is party to the Master Lease Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first set forth herein above:

“HEBERY CITY”

HEBER CITY CORPORATION

By: _____
XXXXXXXXXX

“OCCUPANT”

XXXXXXXXXX

By: _____

“OCCUPANT”

XXXXXXXXXX

By: _____

“OCCUPANT”

XXXXXXXXXX

By: _____

HEBER CITY AIRPORT

LESSOR: HEBER CITY CORPORATION

LESSEE: HEBER HANGAR OWNERS ASSOCIATION, INC.

a Utah Non-profit Corporation

DATED:

TABLE OF CONTENTS

	Page
I. PREMISES.....	1
II. TERM.....	1
III. LESSEE’S RIGHT TO REMOVE IMPROVEMENTS	4
IV. LEASE FEES AND CHARGES, RENTALS.....	4
V. USE OF PREMISES	6
VI. CONSTRUCTION – IMPROVEMENTS	6
VII. OBLIGATIONS OF LESSEE	7
VIII. INTENTIONALLY OMITTED	9
IX. INDEMNIFICATION AND HOLD HARMLESS.....	9
X. INSURANCE.....	10
XI. PERMITS, LICENSES AND CERTIFICATES.....	11
XII. FIRST RIGHT OF REFUSAL OF SALE OF HANGAR BUILDING	11
XIII. SUBLEASING.....	12
XIV. RIGHT OF ENTRY AND INSPECTION	13
XV. RULES AND REGULATIONS	13
XVI. THE CITY’S RIGHT OF CANCELLATION.....	13
XVII. DISPUTE RESOLUTION	14
XVIII. LESSEE’S RIGHT OF CANCELLATION.....	16
XIX. DESTRUCTION OF PREMISES.....	16
XX. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT	17
XXI. PARTIAL INVALIDITY	17
XXII. ABANDONMENT	17
XXIII. UNLAWFUL USE.....	18
XXIV. LEASE SUBORDINATE TO AGREEMENTS WITH U.S.A.	18

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

XXV.	AIRPORT FACILITIES	18
XXVI.	BANKRUPTCY.....	19
XXVII.	TAXES AND ASSESSMENTS	19
XXVIII.	MISCELLANEOUS PROVISIONS.....	19
XXIX.	SUCCESSORS IN INTEREST	30
XXX.	NONEXCLUSIVE RIGHTS	30
XXXI.	WAIVER OF RIGHTS	30
XXXII.	HOLDOVER.....	30
XXXIII.	TIME	31
XXXIV.	SECURITY DEPOSIT.....	31

NON-REVERSIONARY GROUND LEASE AGREEMENT

LEASE AGREEMENT (“Agreement”) made this__day of _____, 2023, between HEBER CITY CORPORATION (the “City”) and HEBER HANGAR OWNERS ASSOCIATION, INC., a Utah non-profit corporation (the “Lessee”), together with the City called “Parties” and each a “Party.”

RECITALS

A. The City owns and operates the HEBER VALLEY AIRPORT located in Wasatch County, State of Utah (the “Airport”).

B. Lessee desires to lease a parcel of land on the Airport for the purpose of constructing and maintaining a hangar complex for storing privately owned airplanes and ancillary aeronautical equipment and repairing and maintaining the same, with individual hangar units platted as part of a “Leasehold Condominium” as that term is defined in the Utah Condominium Ownership Act (the “Project”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained, herein, the Parties agree as follows:

I. PREMISES

The City hereby leases to Lessee that land at the Airport, more fully described on **Exhibit A** attached and made part hereof (the “Leased Premises”).

II. TERM

A. Subject to the most current airport rules and regulations, minimum standards, and any and all federal rules, regulations, directives, guidelines or other obligations with respect to the Airport, including but not limited to the “grant assurances” to the FAA, and all other provisions of this Agreement regarding termination reserved herein, the initial term of this Agreement shall be for forty (40) years from the date of issuance of a certificate of occupancy for the Project (the “Initial Term”).

HEBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

B. Subject to the conditions set forth herein, Lessee shall have the conditional option to extend the term of this Agreement for one (1) additional period of forty (40) years , hereinafter called the “Extended Term,” provided Lessee is not in default in the payment of any rent or in default in any other provisions of this Lease, is in good standing at the Airport, and submits a written report from a licensed structural engineer to the Airport Manager that the Project is structurally sound, at the time of its exercise of any such option. With the exception of rentals due, the terms and conditions applicable during the Initial Term of this Agreement shall remain applicable during any Extended Term. The rent escalation shall continue throughout the Initial Term and any Extended Term as provided. Lessee shall notify the City of the exercise of its option to extend the term in writing and delivered to the City not earlier than twenty-four (24) months and not later than twelve (12) months prior to the expiration of the Initial Term. Notice by Lessee of the exercise of the option to renew will trigger a one year “Pre-renewal Term” which commences one year prior to the end of the Initial Term. In order for the exercise of the option to renew to be effective, Lessee must meet the following conditions:

(i) Lessee must be in full compliance with all terms of this Agreement at the time the option is exercised (i.e., the date written notice is provided) and remain in full compliance throughout the duration of the Pre-renewal Term.

(ii) All improvements and physical elements of the Project must be in good repair and appearance as determined by the project documents and specifications originally approved by the City and in accordance with all applicable Airport and FAA standards and regulations as the same may be at the time of renewal; or brought into compliance by Lessee at Lessee’s sole expense during the one year Pre-renewal Term.

(iii) At the commencement of the Renewal Term, Lessee must pay a “Renewal Fee” equal to five percent (5%) of the combined total value of the Project improvements at renewal based on the appraised fair market value of the improvements with the additional anticipated 40-year leasehold interest. In order to determine such fair market value, after receipt of Lessee’s notice to extend the Term, the City will select and notify Lessee of the identity of an independent qualified real estate appraiser who shall be a member of a nationally or state recognized appraisal organization, who shall be certified by the State of Utah to conduct appraisals,

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

who shall have at least ten (10) years of commercial real estate appraisal experience, and who has performed at least one appraisal of airport property. If Lessee does not accept the City's selected appraiser, then Lessee may request the parties meet and attempt for a period of thirty (30) days to agree on an appraiser with the qualifications described in this paragraph to determine the fair market value. The appraiser shall determine the fair market value as set out below:

a. The appraiser, within ninety (90) days following his or her selection, shall conduct an appraisal to establish the current fair market value of the Project improvements with the additional anticipated 40-year leasehold interest and not subject to the leasehold condominium. The cost of the appraisal shall be borne by the City. A copy of the appraisal shall be delivered to the Lessee and to the City.

b. If Lessee disputes the determination of the fair market value as determined by appraisal, the Lessee may obtain at its expense, an appraisal on the same terms and conditions as set forth above, but at the expense of the Lessee. The Lessee shall notify the City of the identity of the appraiser. If the City does not accept the Lessee's selected appraiser, then the City may request the parties meet and attempt for a period of thirty (30) days to agree on an appraiser with the qualifications described in this section. If the appraised fair market value as determined by the second appraisal is within five percent (5%) of the first appraisal, the fair market value will be that as determined in the first appraisal. If the appraised fair market value in the second appraisal is more than five percent (5%) different from the first appraisal, then the first appraiser and second appraiser shall jointly select a third appraiser who shall determine the fair market value on the same terms and conditions as set forth above at the joint expense of the parties. The fair market value shall be the average of the two appraised fair market values which are closest.

(iv) Lessee is compliant with all of the most current airport rules and regulations, minimum standards, and any and all federal rules, regulations, directives, guidelines or other obligations with respect to the Airport, including but not limited to the "grant assurances" to the FAA.

(v) The foregoing notwithstanding, in its sole discretion, the City reserves the right not to extend the term of this Agreement if, at renewal, the Leased Premises is

required for an airport purpose other than the continuation of the contemplated Project. The City shall have no liability to Lessee for the exercise of such discretion.

III. LESSEE'S RIGHT TO REMOVE IMPROVEMENTS

At the end of the Initial Term, if Lessee has not exercised its right to extend the term of the Lease, or if the City has determined that the Leased Premises is required for an airport purpose other than the continuation of the contemplated Project, or at the end of the Extended Term, or upon the event of Lessee's failure to cure any default at any time during either the Initial Term or Extended Term, or if Lessee terminates this Agreement, or upon the end of any tenancy at will (Article XXXI), the City may require, in writing, that Lessee remove all improvements and restore the ground to its original condition at Lessee's sole expense. Any improvements remaining on the Leased Premises after ninety (90) days of such written request, including those improvements permanently attached to the ground, shall at the option of the City be deemed abandoned and owned by the City without any claim or right whatsoever by Lessee. Notwithstanding the foregoing, City may elect to remove all improvements remaining on the Leased Premises after ninety (90) days of its written request and restore the ground to its original condition, and charge the cost thereof to Lessee, which shall be liable for same.

IV. LEASE FEES AND CHARGES, RENTALS

Subject to change of lease rates as hereinafter provided, the Lessee agrees to pay the City for the use of the premises, facilities, rights, services and privileges granted herein, the following rental, payable to Heber City.

A. Base ground rent for the above-described parcel is 0.4193 cents per square foot for entire lease footprint, based upon the current fair market rate as listed in the Heber City Consolidated Fee Schedule

Parcel	Area	Rate
T-Hangar Condominiums	65,992 sq. feet	0.4193 ¢ per sq. foot

B. The rent of the above described land for each year of this Agreement shall be \$27,670.45, and is due and payable to Heber City Corporation annually, in advance, within thirty

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

(30) days of the City's invoice for each calendar year of the Agreement. The first year's rent shall be prorated and due on the Commencement Date of this Agreement.

C. Rents provided for herein are subject to an annual adjustment per the Mountain-Plains Division Consumer Price Index as published by the U.S. Bureau of Labor Statistics (or a successor index based upon comparable information that includes the State of Utah). Resulting increases, if any, in the annual rent will be made annually using data published in November each year. Rent shall not be decreased based on changes in such index.

D. The City has completed the installation of the wet and dry utilities to the Leased Premises necessary for the Project (the "Utility Work"). The cost to the City for the completion of the Utility Work is thirty-four thousand two hundred dollars (\$34,200) and Lessee shall reimburse the City in full for this Utility Work on or prior to the Commencement Date.

E. All payments due the City under this Agreement, including rent and reimbursement for the Utility Work, that are not paid on or before thirty (30) days from the due date shall incur a late fee of ten (10%) percent for each ninety (90) days or portions thereof that the amount remains delinquent.

F. All payments due the City under this Agreement shall be delivered to the Heber City Airport Manager c/o the Heber City Treasurer, 75 North Main Street, Heber City, Utah 84032 or as otherwise directed in writing by the City.

G. In addition to base ground rents, Lessee shall pay an amount equal to three percent (3%) of the sale price paid at the time of the sale of an individual hangar unit, including each unit sold initially by Lessee or subsequently by any leasehold condominium owner ("Transfer Fee").

H. Lessee shall pay the City the Transfer Fee, and the same falls due at the closing of the sale of any unit during the Initial Term and Extended Term, regardless of how often a particular unit is sold.

I. Lessee may collect the Transfer Fee and Renewal Fee, if applicable, from the unit owner(s) and employ any method allowed within its governing documents for doing so; however, Lessee shall be solely responsible for the payment of the Transfer Fee and the Renewal Fee, if

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

applicable, to the City and such Fees will remain due and owing to the City from Lessee, regardless of whether Lessee is able to collect the same from the unit owner(s).

V. USE OF PREMISES

The Leased Premises and any and all improvements located thereupon shall be used solely for conducting the following activities and shall not be used as overnight sleeping quarters:

A. Construction and occupancy of a Hangar Complex for housing privately owned airplanes and ancillary aeronautical equipment and repairing and maintaining the same, subject to the City's Airport Rules and Regulations and Minimum Standards, as they may from time to time be amended, with the intent to sell completed hangars as individual hangar units platted as part of a "Leasehold Condominium" as that term is defined in the Utah Condominium Ownership Act. Lessee intends to contract with Utah Home Building, Inc., to develop and construct the Project pursuant to the engineering plans approved by the City and recorded plat. Lessee intends to sell the individual hangar units but will otherwise remain liable for performance of the terms and provision of this Agreement and obligated to fully comply with the terms and provisions of this Agreement throughout its term, including extensions thereof, if any.

B. Non-aviation storage as an incidental use on the condition the space is principally used for aviation purposes.

C. Lessee acknowledges that the Leased Premises and any individual hangar unit may not be used for commercial purposes, including as a SASO or as a fixed base operator, without specific written authorization by the City that such operation in such location satisfies all Airport Minimum Standards as may exist at that time for such operation. Further, Lessee agrees to maintain the storage in this area in neat condition.

VI. CONSTRUCTION – IMPROVEMENTS

Lessee may make improvements on the Leased Premises, subject to the Airport Standards, local, state or federal rules or standards, or applicable building codes, and all design specifications, engineering and construction plans and appearance are subject to approval by the City prior to construction. Lessee, at Lessee's own expense, shall construct and maintain a paved aircraft ramp area on the Leased Premises (the "Ramp"). The Ramp must be designed and built to specifications,

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

and for a minimum weight bearing capacity, established by the City, built to the full width of the Leased Premises, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order that a continuous and safe pavement section results. If access to the Leased Premises is not available on existing taxiways and/or roadways, then Lessee may also be required to construct the same. It is the responsibility of Lessee to maintain the entire Ramp area on the Leased Premises, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. Notwithstanding the foregoing, the City shall be responsible for snow removal on the aircraft Ramp areas, excluding any parking and side lots, and excluding any area within six (6) feet of any hangar; provided, however, that priority of snow removal shall be in accordance with the City's Snow Removal Plan as it now exists or as it may be amended in the City's sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises from time to time for passage of aircraft on and near the adjacent taxiway. The construction time and default provisions of this Agreement shall be applicable to the Ramp described in this section.

VII. OBLIGATIONS OF LESSEE

A. Lessee agrees to notify the airport manager, in writing, within ten (10) days of its basing, of the registration number of the aircraft and the person(s) responsible for it, including off-hours emergency phone numbers, for all aircraft stored on the Leased Premises.

B. Lessee shall be solely responsible for all costs or charges for utility services required by the Lessee during the term of this Lease.

C. Lessee agrees to maintain (and ensure individual Hangar unit owners maintain) the Leased Premises including the interior of the hangar in a neat, orderly and safe condition, and free from waste, rubbish, snow or other hazards and nuisances throughout the term of this Lease. Lessee shall not store or let stand any equipment or property belonging to the Lessee or under the Lessee's custody, outside the boundaries of the leased areas without prior consent of the City, except when such equipment or property is in the process of being loaded or unloaded. Should the Lessee fail to repair and maintain the leased premises in proper condition, the City shall so notify the Lessee in writing. If the Lessee then fails to make such repair or maintenance within

thirty (30) days after the notice has been sent, the City may cause such repair or maintenance service to be made. Any required determinations or approvals involving the airport shall be made by the Airport Manager. Lessee agrees to pay all City's costs incurred thereby and reimburse the City therefore on demand. If said costs and expenses are not paid within thirty (30) days after demand, this Agreement shall be deemed to be in default and the City shall be entitled to all legal remedies provided hereunder, including termination of this Lease. Payments will be made to the Heber City Treasurer.

D. Lessee shall exercise due and reasonable caution to prevent fire, accidents, hazards or nuisances on the premises. Should the Lessee fail to remove or abate said hazard or nuisance after being notified to do so, the City may abate said hazard or nuisance and charge the cost thereof to the Lessee as provided in Section C above.

E. Lessee agrees at its own expense to cause the premises and improvements and appurtenances thereto to be maintained in a presentable, condition consistent with good maintenance practices. This shall include, although not be limited to, the obligations of the Lessee to maintain the premises in a clean, neat and orderly condition at all times, and to perform the necessary mowing, weed control and snow removal on the premises during the appropriate periods of the year. The Airport will assist in snow removal when capability and priority permit.

F. Lessee shall not erect, install, or cause to permit to be erected, installed or operated upon the premises herein any sign or advertising device without first having obtained the City's written consent thereto. If the City consents it may set forth the size, construction, location and general appearance of any such permitted sign or device.

G. Lessee shall not have the right to sell or distribute any parts, fuels, oils, or similar products upon leased premises or upon Airport pursuant to this Agreement without an applicable Commercial Operator Agreement.

H. Lessee agrees to keep the Leased Premises free of any mechanic's or materialmen's liens or other lien of any kind or nature for any work done, labor performed or material furnished thereon at instance or occasion of the Lessee and the Lessee further agrees to indemnify and hold

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

the City harmless from and against any and all claims, demands, costs and expenses of any nature whatsoever from any such work done, labor performed or materials furnished.

I. Lessee shall obey all applicable rules, regulations, ordinances and laws that may be from time to time promulgated by the City, State and Federal Government or agency thereof.

J. Lessee agrees to cause to be removed from the premises at its own expense all waste, garbage and rubbish and agrees not to deposit same, except temporarily in connection with collection for removal in Airport designated locations, on any part of the premises or other property of the City constituting the Airport.

K. Lessee's governing documents (including, without limitation, Lessee's Declaration of Covenants, Conditions, and Restriction and Reservation of Easements) will conform to all applicable Utah laws governing leasehold condominium associations, and will include the establishment and maintenance of capital reserve, ongoing maintenance and repair, taxes, insurance and utilities; and must also contain provisions required by the City to include, without limitation, a provision obligating Lessee to comply with and enforce, and its individual unit owners to comply with, the Airport rules and regulations for use of its airport facilities. Lessee's initial governing documents are attached hereto as Exhibit B. Lessee shall submit any duly ratified amendment of its governing documents to the City for the City's review and approval, which approval shall not be unreasonably withheld, provided the amendment is consistent with this Agreement, the Airport Rules and Regulations, and the City's Grant Assurance obligations to the FAA. Lessee shall ensure that no amendment to the governing documents becomes effective until the earlier of (i) the City's written approval of the amendment or (ii) thirty (30) days after the presentation of the amendment to the City for approval. In the event the City does not approve an amendment, Lessee shall either revise the amendment to resolve the City's objection or may elect to terminate this Agreement.

L. Lessee will itself comply and ensure that each condominium owner complies with the Airport Minimum Standards and Rules and Regulations, as each may be from time to time amended by the City, and the requirements of this Agreement.

M. Each condominium owner or authorized tenant thereof will also be required to sign a compliance agreement with the Airport, in the form attached hereto as **Exhibit C** (a “Compliance Agreement”), pledging compliance with the same, and which permits the City to take appropriate enforcement action against such condominium owner or authorized tenant in the event of non-compliance, after a reasonable opportunity to cure, to the extent that Lessee fails to resolve any instance of non-compliance. Notwithstanding anything herein to the contrary, the City shall have no obligation to directly enforce any provision of this Agreement or the Compliance Agreement against an condominium owner or authorized tenant thereof, and may hold Lessee responsible for failure to discharge any of its obligations under this Agreement, or, where so specified in this Agreement, for failure to ensure each condominium owner or authorized tenant thereof complies with the Airport Minimum Standards and Rules and Regulations, or other applicable provisions of this Agreement.

VIII. INTENTIONALLY OMITTED

IX. INDEMNIFICATION AND HOLD HARMLESS

Lessee expressly agrees to defend, protect, indemnify and hold harmless the City, its officers, agents and employees free and harmless from and against any and all claims, demands, damages, expenses, losses or liability of any kind or nature whatsoever which the City, its officers, agents or employees may sustain or incur or which may be imposed upon them for injury to or death of persons or damages to property arising out of or resulting from the negligent acts or negligent omissions of the Lessee, its officers, agents, employees or guests and the owners of each hangar leasehold condominium unit, and their employees and guests in their use or misuse of and portion of the Leased Premises and improvements constructed thereon. Lessee agrees to defend at its own cost, expense and risk all claims or legal actions that may be instituted against either the Lessee or the City, which arise out of the negligent acts or omissions of the Lessee or any of the aforementioned persons. Lessee agrees to pay any settlement entered into and satisfy any judgment that may be rendered against either the Lessee or the City as a result of any negligent injuries or damages which have resulted from or are connected with this Agreement or the occupancy or use of the demised premises by the Lessee, or its officers, agents, employees or licensees, and the owners of each hangar leasehold condominium unit, and their employees and guests, including reasonable attorney fees.

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

X. INSURANCE

A. Concurrent with the execution of this Agreement and as partial performance of the obligations assumed under Article IX, (INDEMNIFICATION AND HOLD HARMLESS) hereof, the Lessee shall have from a reliable insurance company or companies authorized to do business in the State of Utah, liability insurance in such minimum amount as may be required by the City pursuant to reasonable exercise of its municipal powers.

B. The above insurance policy or policies shall contain an endorsement which provides that the Lessee is named insured as it pertains to said leasehold. Lessee shall provide the Airport Manager a copy of the policy endorsement naming Heber City as an additional insured under the policy each time the policy renews, and included with annual lease payment, or upon the City's request.

C. All insurance policies secured by the Lessee providing the coverages which affect the leasehold premises required under this Agreement shall require each insurer to notify the City by registered or certified mail of any modification, termination or cancellation of any policy of insurance that affects the leasehold premises no less than thirty (30) days prior to the effective date of such modification, termination or cancellation. Notice by the insurer shall be effective upon the receipt of said notice by the City. In addition to any other requirements of this Agreement, the Lessee shall notify the City of any modification which affects the leasehold premises, termination or cancellation of any policy of insurance secured by the Lessee pursuant to this paragraph as soon as the Lessee learns of any such modification, termination or cancellation.

D. Each of said policies shall stipulate that the policy providing coverage is not subordinate to nor contributing with any other insurance coverage held or maintained by the City. The procuring of such policy or policies of insurance shall not be construed to be a limitation upon the Lessee's liability or a waiver of performance on the Lessee's part of the indemnification and hold harmless provisions of this Agreement; and the Lessee understands and agrees that notwithstanding any policy or policies of insurance, it remains the Lessee's obligation to protect, indemnify and hold harmless the City hereunder for the full and total amount of any damage, injuries, loss, expense, costs or liabilities caused by or in any manner connected with or attributed to the negligent acts or omissions of the Lessee, its officers, agents, employees, licensees or the

operations conducted by the Lessee, or the Lessee's use, misuse or neglect of the premises described herein.

XI. PERMITS, LICENSES AND CERTIFICATES

Lessee shall obtain any and all permits, licenses and certificates which may be required in connection with the improvement and use of the demised premises and aircraft operations. Lessee shall comply with all applicable federal, state and local laws and regulations and the Lessee shall keep in effect any and all required licenses, permits, notices and certificates.

XII. FIRST RIGHT OF REFUSAL OF SALE OF HANGAR BUILDING

A. First Right of Refusal for Sale of Hangar Building – If at any time, Lessee desires to sell or otherwise transfer its interest under this Agreement, including the completed Project existing on the Leased Premises, to a Buyer, and has obtained a bona fide offer for such sale, Lessee must first offer to sell or otherwise transfer such interest to the City, at the price and on the same terms as such bona fide offer, and the City shall have the right to purchase Lessee's interest under such terms. Such offer must be in writing and provide a copy of the sales agreement showing all terms and conditions of the proposed sale. The City shall have the right for a period of twenty-one (21) days after receipt of the offer from Lessee to elect to purchase Lessee's interest (such twenty-one (21) day period referred to as the "Election Period"). If the City does not desire to purchase Lessee's interest, Lessee may then sell or otherwise transfer its interest in this Agreement to the person making the said offer, at the price and terms set forth in the offer, subject to the requirements of Article XIII. If Lessee fails to close such sale within one hundred twenty (120) days after the expiration of the Election Period, any proposed sale or other transfer thereafter shall again be subject to this Section. This right of the City shall be continuing and shall survive any sale or other transfer of Lessee's interest under this Agreement. The intent of this Section is to require all of Lessee's interests in this Agreement be sold or otherwise transferred intact, without fractionalization.

B. In the event that the entire Project is sold prior to the end of the term of this Lease:

1. Lessee shall not assign this Lease without prior written approval of the City, which approval may be granted or denied by the City in its sole discretion given the unique nature of the Project. As a condition to any approval thereof, the City shall require, at a minimum:

a. Lessee/Seller is not in default in the payment of any rent or in any other provisions of this Agreement, is in good standing at the Airport, and submits a current certificate from a Certified Building Inspector to the Airport Manager that the Project is structurally sound and is projected to be sound for the duration of the lease.

b. The lease is consistent with the Airport's master plan then in effect and all federal rules, regulations, directives, and guidelines or other obligations with respect to the Airport, including but not limited to the "grant assurances" to the FAA.

c. A 3% transaction fee shall be paid to the City based upon the sales price or the current assessor's valuation, whichever is higher, at the time of the sale of the Project prior to the assignment of this Agreement or a new lease being issued.

C. The provisions of this Article XII do not apply to the sale of individual leasehold condominium units.

XIII. SUBLEASING

Owners of individual hangar Leasehold Condominiums may sublease one or more Leasehold Condominiums with the prior written consent of City as to each sublease and provided each sublessee signs and delivers a Compliance Agreement to City. The failure of any Leasehold Condominium Owner or sublessee to have provided a signed Compliance Agreement to City shall be a default under this Agreement. Lessee may not sublease common areas of the Project, but may sublease individual hangar units that have not been sold with the prior written consent of City as to each sublease and provided each sublessee signs and delivers a Compliance Agreement to City.

XIV. RIGHT OF ENTRY AND INSPECTION

The City hereby reserves the right to enter into and upon the Leased Premises and any improvements thereon at all reasonable times and for all reasonable purposes without prior notice.

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

The City or the airport manager or its or his designated representative shall have the right to exercise this right of inspection as specified in the Airport Rules and Regulations.

XV. RULES AND REGULATIONS

The City shall have the right to adopt and enforce reasonable rules and regulations with respect to the use of the airport and appurtenances, provided that such rules and regulations shall not be inconsistent with safety and with rules and regulations of the Federal Aviation Administration with respect to aircraft operations at the airport.

XVI. THE CITY'S RIGHT OF CANCELLATION

In addition to all other remedies reserved by the City, this Agreement, shall be subject to cancellation by the City should one or more of the following events occur:

A. If the Lessee fails to pay when due the whole or any part of the amounts agreed upon for rents and charges and such default continues for sixty (60) days after the City has demanded payment in writing.

B. If the Lessee fails to perform or keep and observe any of the covenants and conditions contained in this Agreement to be performed, kept and observed by Lessee, and Lessee fails to correct any breach hereof after completion of the dispute resolution procedures set forth in section D. below, the City shall have the right to declare this Agreement terminated on thirty (30) days written notice. If the default constitutes a risk to the health or safety of others, then and in such event the City shall have the right to ameliorate the risk immediately. In the event of any default to any term of this Agreement by Lessee, Lessee hereby consents and agrees that any improvements, including but not limited to the Hanger Building itself, remaining on the Leased Premises after the sixty (60) day removal period, described and referenced in Sections XVIII and XXI of this Agreement, shall at the option of the City be deemed abandoned and owned by the City without any claim or right whatsoever by Lessee.

C. In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain, all lease fees and taxes payable hereunder with respect to that portion of the Leased Premises taken shall no longer be payable, and the Lessee

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

shall be entitled to compensation for the fair market value of the leasehold interest and improvements according to the eminent domain appraisal process. If a portion of the Leased Premises is so taken, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article VI. hereof; then this Agreement shall terminate at Lessee's election; Lessee's obligation to pay lease fees and taxes and perform the other conditions of the lease shall be deemed to have ceased as of the date of such taking, and the Lessee shall be entitled to compensation for the fair market value of the leasehold interest, and improvements according to the eminent domain appraisal process. For the avoidance of doubt, nothing in this paragraph shall obligate the City to compensate Lessee for the Project, any other improvements, or leasehold interest in the event that the City declines to extend the term of this Agreement under Section II.B(v) hereof.

XVII. DISPUTE RESOLUTION

1. Scope. Any dispute arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved as set forth in this Article XVII. The arbitral panel provided for in Paragraph 4 below shall have the power to rule upon any challenge to its jurisdiction.

2. Informal Dispute Resolution. The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Agreement. Upon receipt of written notice of a dispute from a Party, the Parties agree to refer the dispute to the City Manager, for the City, and the President, for Lessee (collectively, "Designated Persons"). The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the dispute. All communications between the Designated Persons during the dispute resolution procedures set forth in this Paragraph shall be deemed confidential and treated as compromise and settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

3. Mediation. Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Persons, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely

or (ii) 15 days after the date of the notice referring the dispute to the Designated Persons. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation before resorting to voluntary arbitration. The place of mediation shall be in Heber City, Utah, unless the parties agree otherwise.

4. Arbitration. If the procedures described above do not resolve the dispute within 30 days following appointment of a mediator, both Parties may elect that dispute shall be exclusively and finally settled by arbitration administered by the AAA in accordance with the Commercial Arbitration Rules of the AAA then in effect (“AAA RULES”). If both Parties do not agree to submit the dispute to arbitration, then upon 10 days prior written notice, either party shall have access to the courts of jurisdiction to litigate the dispute. Both Parties may initiate the arbitration, as provided in the AAA RULES. The place of arbitration shall be Heber City, Utah, unless the Parties agree otherwise. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the State of Utah and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The arbitral panel shall be composed of three arbitrators, one to be selected by the City, one to be selected by the Lessee and the third (who shall act as chairman of the panel) to be selected by the two previously selected arbitrators. If the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, the Chief Judge of the United States Court of Appeals for the judicial circuit in which Heber City is located shall select the third arbitrator. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any ex parte communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses and costs. The award shall include interest at 6 percentage points above the prime rate of interest from the date of any breach or violation of this Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties. Judgment on the award may be entered by any court with competent jurisdiction. The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern this Article and any arbitration conducted pursuant to this Article.

5. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement.

6. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this section, any cure period that applies to a non-monetary default shall be tolled for the time period between such application and the issuance of a final award.

XVIII. LESSEE'S RIGHT OF CANCELLATION

Lessee has the right to cancel this Agreement without cause with a thirty (30) day written notice to the Airport Manager.

XIX. DESTRUCTION OF PREMISES

Should the improvements to the demised premises be damaged or destroyed in whole or in part, by fire, earthquake, acts of God, or any other casualty at any time during the term of this Agreement so that the same cannot be repaired within ninety (90) days:

A. Lessee will notify the City in writing within ninety (90) days of the casualty whether Lessee will:

1. Restore and reconstruct the improvements within one (1) year from the date of the casualty to substantially the same condition the improvements were in immediately prior to the happening of such casualty, or

2. Terminate this Agreement after restoring leasehold ground to substantially the same condition it was in prior to constructing the improvements, to be completed no later than ninety (90) days after notifying the City.

B. In no event shall the City be liable to the Lessee for any damages resulting to the Lessee from the happening of such fire or other casualty or from the repair or construction of the demised premises or from the termination of this Agreement as herein provided, nor shall the Lessee be released thereby from any of its obligations hereunder except as expressly stated in this clause.

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

XX. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT

In addition to other remedies available by local, state or federal laws, rules or regulations, in the event either the City or the Lessee commences legal action against the other claiming a breach or default of this Lease, after complying with the requirements of Article XVII above, the prevailing party in such litigation shall be entitled to recovery against the other all reasonable attorney's fees and costs of suit incurred, including, but not limited to, attorney's fees and costs incurred in mediation or in regard to any appeal, bankruptcy proceeding or post judgment collection effort.

XXI. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

XXII. ABANDONMENT

If the Lessee shall abandon or be dispossessed by process of law or otherwise, any hangar, or other improvement or personal property belonging to the Lessee or the owners of the leasehold condominium units and left on the premises after such abandonment or dispossession shall at the option of the City be deemed to have been transferred to the City; and the City shall have the right to remove and to dispose of the same without liability to account therefore to the Lessee, or the owners of the leasehold condominium units, or to any person claiming under the any of them.

XXIII. UNLAWFUL USE

Lessee agrees that no improvement shall be erected, placed upon, operated or maintained on the demised premises, nor shall business be conducted or carried on therein in violation of the terms of this Agreement or any applicable law, statute, ordinance, regulation, rule or order of any governmental agency having jurisdiction hereover.

XXIV. LEASE SUBORDINATE TO AGREEMENTS WITH U.S.A.

This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States of America, relative to the operation and maintenance of the

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport ("Grant Assurances"). In the event that this Agreement , either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, the City, after at least 90 days written notice to Lessee, which notice also affords Lessee the opportunity to participate in and advise the City in determining the least mutually restrictive or onerous and most mutually advantageous compliance action and method, may amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation and such remaining provisions shall remain binding and in full effect upon the Parties as if no such amendment or alteration had occurred.

XXV. AIRPORT FACILITIES

Lessee is hereby granted the nonexclusive right, in common with all present and future users, to the use of such of the City's Heber City Airport public facilities as are designated by the Airport Manager from time to time. As an incident to all the other uses provided for in this Lease, the Lessee, its employees, authorized representatives, invitees, permittees, licensees, customers and patrons shall have the right to use all public waiting rooms and public lavatories provided such use shall be in common with others and may be suspended during any period when maintenance, repairs or improvements are being made thereto.

XXVI. BANKRUPTCY

Should the Lessee make an assignment for the benefit of creditors or should a voluntary or involuntary petition of bankruptcy or for reorganization or any arrangement be filed by or against the Lessee, or if the Lessee should become bankrupt or insolvent or if a receiver be appointed at the request of the Lessee's creditors (except as a receiver appointed at the request of the City) such action shall constitute a breach of this Agreement for which the City at its option, may terminate all rights of the Lessee or Lessee's successors in interest under this Lease.

XXVII. TAXES AND ASSESSMENTS

Lessee shall pay before delinquency, all taxes, license fees, assessments and other charges which are levied and assessed against and upon the premises, fixtures, equipment or other property caused or suffered by the Lessee to be installed, located or placed upon the leased premises. The Lessee shall provide the Airport Manager with satisfactory evidence of these payments within

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

fifteen (15) days from the Airport Manager's request. Lessee acknowledges that this Agreement may create a possessory interest subject to property taxation and that the Lessee may be subject to the payment of property taxes levied on such interest. Lessee agrees to assume and pay any such assessment.

XXVIII. MISCELLANEOUS PROVISIONS.

A. Waiver of Exemption. Any constitutional or statutory exemption of Lessee of any property usually kept on the Leased Premises, from distress or forced sale, is waived.

B. Addresses. All fees payable and notice given under this Agreement to City shall be paid to the Heber City Airport Manager, c/o the Heber City Treasurer, 75 North Main Street, Heber City, Utah 84032, or such other place as City shall specify in writing. All notices given under this Agreement to Lessee shall be sent to:

Name: _____

Address: _____

City, State, Zip: _____

For emergency purposes, the Lessee is also to provide the following contact information:

Primary Cell Phone Number: _____

Secondary Telephone Number: _____

Primary Email Address: _____

Secondary Email Address: _____

C. No Waiver. The waiver by City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payments hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular fee so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such payment.

D. Lessee's Subordination. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures or other security interest of City or City's successor in interest. Lessee shall execute and deliver any documents required to evidence and perfect such subordination.

E. Additional Charges. Any charges against Lessee by City for services or for work done on the Leased Premises by order of Lessee or otherwise accruing under this Agreement shall be considered as rent paid to the Airport Manager c/o the Heber City Treasurer within thirty (30) days after such charges are accrued.

F. Non-Interference with Operation of the Airport. Lessee expressly agrees for itself, the owners of leasehold condominium units, and their successors and assigns that no one will conduct operations in or on the Leased Premises in a manner that in the reasonable judgment of City, (i) interferes or might interfere with the reasonable use by others of common facilities at the Airport, (ii) hinders or might hinder police, fire fighting or other emergency personnel in the discharge of their duties, (iii) would or would be likely to constitute a hazardous condition at the Airport, (iv) would or would be likely to increase the premiums for insurance policies maintained by City unless such operations are not otherwise prohibited hereunder and Lessee pays the increase in insurance premiums occasioned by such operations, (v) is contrary to any applicable federal Grant Assurance; (vi) is in contradiction to any rule, regulation, directive or similar restriction issued by agencies having jurisdiction over the Airport including FAA, Homeland Security, Transportation Security Administration and Customs and Border Patrol, or (vii) would involve any illegal purposes. In the event this covenant is breached, City reserves the right, after prior written notice to Lessee, to enter upon the Leased Premises and cause the abatement of such interference at the expense of Lessee. In the event of a breach in Airport security caused by Lessee, resulting in fine or penalty to City of which Lessee has received prior written notice, such fine or penalty will be charged to Lessee.

G. Emergency Closures. During time of war or national emergency, City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this Agreement,

insofar as they are inconsistent with provisions of the agreement with the Government, will be suspended.

H. Interpretation.

1. References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

2. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder” and any similar terms used in this Agreement refer to this Agreement. The term “including” shall not be construed in a limiting nature, but shall be construed to mean “including, without limitation.”

3. Words importing persons shall include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

4. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

5. Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

6. “Days” is interpreted as calendar days.

I. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Lessee from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Lessee in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event (other than payment of rent or any other amounts required to be paid under this Lease), such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the Party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen

or unforeseen, that prevents a Party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such Party, and that such Party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law. Lessee on behalf of itself and all the owners of hangar leasehold condominium units hereby releases City from any and all liability, whether in contract or tort (including strict liability and negligence) for any loss, damage or injury of any nature whatsoever sustained by Lessee, the owners of hangar leasehold condominium units, and their employees, agents or invitees during the term of this Lease, including, but not limited to, loss, damage or injury to the aircraft or other personal property of Lessee or the owners of hangar leasehold condominium units that may be located or stored in the Leased Premises due to a force majeure event.

J. Governing Law and Venue. This Agreement has been made in and will be construed in accordance with the laws of the State of Utah. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Wasatch County, Utah.

K. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Lessee unless reduced to writing and signed by both Parties.

L. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any Party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

M. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the Parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied on any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in this Agreement.

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

N. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the Parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

O. Further Assurances. Each Party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

P. Required Federal Clauses. Lessee acknowledges that the City is required by the FAA under the terms of its Grant Assurances to include in this Agreement certain required contract provisions, as set forth in this Section XVIII.P (the “Federal Clauses”). Lessee agrees to comply with the Federal Clauses and, where applicable, include the Federal Clauses in each of its subcontracts without limitation or alteration. To the extent that the FAA or other agency with jurisdiction determines that Lessee has failed to comply with one or more Federal Clauses and Lessee fails to take or diligently commence corrective action within the notice and cure provisions provided herein, Lessee acknowledges that a failure to comply with the Federal Clauses may be considered an event of default.

1. During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as the “Lessee”) agrees as follows:

a. Compliance with Regulations: The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

b. Non-discrimination: The Lessee, with regard to the work performed by it or use of the Leased Premises during the term of this Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

c. Solicitations for Contracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a contract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by the Lessee of the Lessee's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

d. Information and Reports: The Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of Lessee's noncompliance with the Non-discrimination provisions of this contract, City will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Lease, in whole or in part.

f. Incorporation of Provisions: The Lessee will include the provisions of paragraphs a. through f. of this Article XXVIII Section Q.1. in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will take action with respect to any contract or procurement as City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the Lessee may request City to enter into any litigation to protect the interests of City. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

2. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, creed, color, or national origin, sex, age or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

3. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

4. During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

b. 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub recipients and contractors, whether such programs or activities are Federally funded or not);

h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

i. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination

against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

5. Lessee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates the Lessee or its sub lessee for the period during which federal assistance is extended to the Airport through the Airport Improvement Program. In cases where federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the Party or any transferee for the longer of the following periods: (i) the period during which the property is used by the airport sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

6. In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

7. This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Lessee has full responsibility to monitor compliance to the referenced statute or regulation. The Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

8. This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Lessee retains full responsibility to monitor its compliance and any sub lessee's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

9. Lessee agrees that it shall insert the above eight provisions (Sections XXVII.P.1 through XXVII.P.) in any agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Premises herein leased or owned.

10. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by the Grant Assurances, and City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Grant Assurance 23)

11. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance. (FAA Order 5190.6B)

12. City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B)

HERBER HANGERS OWNERS ASSOCIATION GROUND LEASE: CITY _____ LESSEE _____

13. This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreement between City and the United States, relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6B)

14. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises. (FAA Order 5190.6B)

15. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. (Grant Assurance 22(f))

Q. Heber City Ordinances. Lessee hereby acknowledges the applicability of the Heber City Municipal Ordinances to this Agreement. Lessee hereby acknowledges notice of the terms, conditions and requirements presently contained therein and agrees, so far as said ordinance applies to persons such as Lessee herein, to comply with such ordinances as now in effect or as it may be amended during the term of this Agreement or any renewal. Specifically, the terms and conditions of Title 15 as currently existing or as may be amended are incorporated herein by reference and made part hereof as though written herein.

R. No Third Party Beneficiaries. It is the intent of the Parties that there are no third party beneficiaries of this Agreement. The leasehold condominium unit owners are not third party beneficiaries of the Agreement.

XXIX. SUCCESSORS IN INTEREST

The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto; and all of the Parties shall be jointly and severally liable hereunder.

XXX. NONEXCLUSIVE RIGHTS

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 40103(e), of the United States Code.

XXXI. WAIVER OF RIGHTS

The failure of the City to insist upon strict enforcement of any of the terms, conditions and covenants herein shall not be deemed a waiver of any rights or remedies that the City may have and shall not be deemed a waiver of any subsequent breach or default by Lessee of the terms, conditions and covenants herein contained.

XXXII. HOLDOVER

If Lessee retains all or any portion of the Leased Premises after the termination of the Initial Term and any Extended Term as provided by lapse of time or otherwise, such holding over shall constitute the creation of a tenancy at will with respect to such retained portion at a rental rate of one and one-half (1.5) times the price per square foot paid under this Agreement. The City may terminate the tenancy at will at any time by providing thirty (30) days prior written notice to Lessee. All provisions of this Agreement shall remain in full force and effect during such holdover period.

XXXIII. TIME

Time is of the essence of this Lease.

XXXIV. SECURITY DEPOSIT

A. Prior to the Commencement Date of this Agreement, Lessee shall deposit with the City a security deposit in the amount of one-sixth (1/6) of the annual base ground rent due hereunder. The security deposit may be cash, or a letter of credit or bond in a form and from an issuer acceptable to the City. The City may use the security deposit to cure any Lessee defaults hereunder (after the expiration of any cure period). In the event the City uses all or part of the security deposit, Lessee shall restore the security deposit to the original amount.

B. City will require Lessee's contractor to post a performance bond for the cost of the site improvements of the Project and pay for plan review fees and building permits, the same as City requires to secure site improvements and to review and issue permits for similar construction projects.

LEASE SIGNATURE PAGE FOLLOWS

Signature Page to Lease Agreement

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed, with all the formalities required by law on the respective dates set forth opposite their signatures to be effective the day and year first above written.

HEBER CITY, a Municipal Corporation

APPROVED:

LESSEE:

Mayor

By:_____

Date

Date

ATTEST:

City Recorder

Date

APPROVED AS TO FORM:

Airport Manager

Date

EXHIBIT A
LEASED PREMISES

[to be inserted]



Heber City Council Staff Report

MEETING DATE: 1/2/2024
SUBJECT: ITN for Sale of Parcel in the Commerce Park (Industrial Lot)
RESPONSIBLE: J. Mark Smedley
DEPARTMENT: Administrative
STRATEGIC RELEVANCE:

SUMMARY

On or about October 23, 2023 the City released an *Invitation to Negotiate* (ITN) for Purchase Bids/ Responsive Proposals, for a City-owned commercial parcel, located in the Industrial Park, more specifically described as that certain 1.5 acre City-owned property, located in the industrial zone, at 2295 South 390 West, Heber City. Utah 84032;

Parcel Specifics:
Serial: OPU-0004-0-007-045
Parcel I.D.: 00-0021-1743
Acreage: 1.5 ac

The closing date and time to receive bids were Wednesday, November 29th, 2023, at 5:00 p.m.

The City's ITN proposed that beginning bids for purchase be between \$585,000.00 and \$600,000.00, (a median of \$592,500.00).

Two responses were received, to be submitted to the City Council for review and evaluation, **Utah Peaks, LLC (Michael Pavicic, ((Mark Haroldsen)), and Stewart and Company, a Sub-S Corporation.**

Stewart and Company proposes a beginning bid to purchase at approximately **\$562,577.00, cash closing**. No Earnest Money was mentioned. They propose a 60-day due diligence period, during which they would seek a Phase 1 environmental study to be performed on the property, in part to ascertain such factors as utility capacity and geotechnical suitability for development. They estimate generating 210 jobs relative to the property.

Purchaser has 37 years of experience in the commercial real estate sector, in Wasatch County. They

have developed commercial real estate for Walgreens, negotiating leases for Walgreens. Additionally, they have experience in revitalizing a 385-unit storage project, from a deficit of \$40,000.00 in annual operations, to a turnaround of approximately 90% occupancy, with \$3,000.00 in profit.

Utah Peaks, LLC. The proposed starting bid is **\$700,000.00**, with a cash closing within 15 calendar days of a fully executed city-approved real estate contract, and requires a non-refundable deposit of \$50,000.

3.0 million would be invested to construct a similar building comparable to the building to the north of this subject Property. Utah Peaks anticipates the construction of a 20,000-square-foot building, with 4 individual suites. It is believed that the building's flexible design would attract a wide array of business types. Utah Peaks has attracted current businesses in Heber: AVI Sport Kilts, and Field Craft Survival.

They estimate generating 210 jobs relative to the development of the property.

Utah Peaks has over 25 years of construction experience, and currently operates out of its site in Power Industrial Park, as AVI Rocky Mountain. They have built the 20,000-square-foot building directly north of the property of this ITN. They were instrumental in finding current Heber business tenants like AVI Sports Kilts, and Fieldcraft Survival. They anticipate being able to attract a wide array of business types in Heber City to utilize the space for their commercial project.

RECOMMENDATION

In its review and consideration of whether to allow any bids the opportunity to negotiate with the City, it is requested that the Council consider the specifics of the responses to the ITN as they relate to Staff's initial setting of a proposed sale price, the criteria, and the *City Goals* and requested *Proposal Details* outlined in the City's ITN; and authorize negotiations, request amendment of the proposal(s), or reject the same.

BACKGROUND

The Commercial Parcel at issue is the sole remaining parcel in the Industrial Park and is a unique piece of property for commercial development. The lot is located in a good location for such a development.

The purpose of the ITN was to direct potential responses to negotiate a purchase of the identified Parcel with specific city goals in mind and encourage potential proposals to show specific intent and ability to meet and exceed said goals and desires of the City.

DISCUSSION

Which proposal(s) meet the directives and specifics of the ITN?
Is it a good time and environment to negotiate this sale?
What are any other considerations would the Council recommend considering in such a negotiation?

FISCAL IMPACT

No direct negative impact, liability, or risk to Heber City.

CONCLUSION

In the event, that the responses are determined to meet the desires and purposes of the ITN and the City's goals, with direction from the Council of which proposal(s) to accept, Staff will initiate the aforementioned negotiations.

ALTERNATIVES

1. Approve as proposed
2. Approve as amended
3. Continue
4. Deny

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to authorize staff to continue to negotiate with one or both of the ITN response proposals with the following considerations or directives.

Alternative 2 - Approve as Amended

I move to reject one or both of the ITN response proposals and direct staff to issue a new ITN.

Alternative 3 - Continue

I move to **continue** the item to another meeting on , with direction to Staff on information and/or changes needed to render a decision, as follows.

Alternative 4 - Denial

I move to **deny** the item with the following findings.

ACCOUNTABILITY

Department: Administrative
Staff member: J. Mark Smedley, Asst. City Manager

EXHIBITS

1. Stephen Stuart - Stuart and Co.
2. Michael Pavicic - Utah Peaks, LLC
3. ITN Parcel for Sale Commerce Park (002) October 2023 Clean
4. ITN Spreadsheet on Proposals Commercial Lot 2023

**Invitation to Negotiate (ITN) Proposal
Covering
A 1.5 Acre Vacant Site**

Located at
**2295 South 390 West
Heber City, Utah**

Prepared For
Heber City Municipal Corporation

Submitted By
Stephen D. Stuart (Purchaser)

Date of Proposal
November 28, 2023

STUART & COMPANY
COMMERCIAL REAL ESTATE ADVISORY SERVICES

November 28, 2023

Trina Cooke
Heber City Recorder
Heber City
75 North Main
Heber City, Utah 83032

Re: Invitation to Negotiate (ITN) proposal, relative to the property at 2295 South 390 West, Heber City, Utah.

Dear Trina:

In response to the Invitation to Negotiate (ITN) released on October 30, 2023, please find my proposal relative to Heber City owned property situated at 2295 South 390 West, Heber City, Utah.

As per Heber City requirements, the attached proposal includes information on purchaser details, proposal details, project funding and experience.

I look forward to working with Heber City on this important project.

Sincerely,



Stephen D. Stuart, MAI

SDS/njm

1. Purchaser Details

The purchaser and manager/owner will be Stephen D. Stuart, who will execute a legally binding contract with Heber City to acquire the site at 2295 South 390 West, Heber City, Utah. Contact information for the purchaser is as follows:

Direct phone: 801-656-7577

Email: stephen@stuartcompany.com

Mailing address: 4190 South Highland Drive, Suite 222, Salt Lake City, UT 84124.

2. Proposal Details

Purchase Price. The purchase price for the property shall be \$562,577. The land will be purchased with cash, with a 60 day due diligence period. During the due diligence period, a Phase 1 environmental study will be performed on the property, in addition to ascertaining such factors as utility capacity and geotechnical suitability for development.

The purchase price was determined after researching sales data in the market. The most relevant transaction for comparison purposes is the 2.0 acre vacant land parcel situated at 2363 South 390 West, which is contiguous to the Heber City owned parcel. The parcel due south was purchased by MVC Construction from Boerboom Construction in March 2021, for \$750,000. This translates into \$8.61 per square foot ($\$750,000 \div 87,120 \text{ square feet} = \$8.61 \text{ per square foot}$). In applying the \$8.61 figure to the Heber City owned parcel, a total price of \$562,577 was established ($65,340 \text{ square feet} \times \$8.61 = \$562,577$).

It should be noted, that the MVC purchase occurred within the context of a more favorable economy, with substantially lower interest rates than at present. It could reasonably be argued that the current square foot indicator for the acquisition of the land should be lower, given less favorable current development conditions.

Capital Investment. The total capital investment which would be made relative to the project was estimated at \$4,325,000 (including land acquisition), to create a premium image, light industrial development comprising 35,910 square feet. This would include a footprint of approximately 27,000 square feet, in addition to 8,910 square feet of second story office space. The capital would constitute a combination of equity and financial institution funding. The time-line for construction of the project would be seven months, subsequent to all final approvals being obtained from Heber City.

Sustainable and Living Wage Jobs. After completion of the capital investment, an estimated forecast of 210 jobs was determined relative to the property. This is based upon the average number of employees per square foot for the varied types of space projected for the project.

Wages were determined based upon the most recent data (First Quarter 2023) compiled by the Utah Department of Workforce Services for employees utilizing light industrial space. The types of jobs would be associated with the anticipated industry sectors of Information, Professional/Scientific & Technical Services, Wholesale Trade and Construction. The jobs in the industry sectors outlined are mainly solidly sustainable. The *average* wage based upon the industrial sectors outlined would be \$86,028 annually per employee.

Taxes. The primary types of taxes which would be generated from the proposed capital investment, and which would benefit Heber City, would be both property taxes associated with the development, in addition to sales and use taxes in certain instances.

3. Project Funding and Financial Stability

The purchaser has approximately \$3,620,000 in equity capital available for allocation as a major source of timely funding for the 2295 South 390 West project. This source would be associated with site acquisition, in addition to being available for funding a significant portion of construction improvements associated with the proposed development.

In addition to the equity capital, financial institution participation is anticipated as an additional tranche of funding for construction of the development.

The purchaser has never declared bankruptcy, with no liens, stop notices, judgements, lawsuits or foreclosures.

4. Experience

The buyer has 37 years of experience in the commercial real estate sector, with a wealth of expertise in a wide array of disciplines within the industry.

The purchaser is the foremost expert on industrial real estate in the State of Utah, providing consulting, analytical and valuation advisory services on 100's of industrial properties throughout the State of Utah over the past 37 years, including the Wasatch County market.

The purchaser owns 19 separate commercial properties in the Park City market, successfully operating such properties as an investor/lessor, with no vacancy since June 2016.

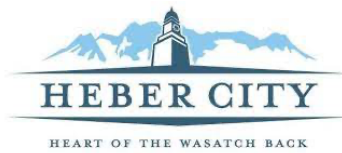
The buyer has also developed commercial real estate for Walgreens, a publicly traded company with approximately \$139 billion in annual sales. Walgreens is a trusted, global innovator in the healthcare industry, with more than 12,500 locations across the U.S., Europe and Latin America. The purchaser performed the functions of locating and acquiring sites which were approved by the Walgreen's national real estate committee, negotiating 25 year corporate leases and delivering completed developments in accordance with Walgreen's very exacting design and building standards.

The purchaser also has experience in revitalizing distressed commercial real estate. This involved a 385 unit storage project, with a deficit of approximately \$40,000 in annual operations at the outset of the purchaser's involvement. The purchaser hired new off-site and on-site management, renovated the on-site office, re-landscaped the entryway, re-configured units to meet the demands of the market and replacing roofs on six of the buildings. These turn around efforts resulted in the property reaching approximately 90% occupancy, with a disposition of the asset yielding approximately \$3,000,000 in profit.

5. Innovation

The development which will be constructed by the purchaser at 2295 South 390 West, will reflect highly appealing, cutting-edge building materials and design elements. The latest energy conserving building technologies will be incorporated to ensure efficiency in the use of natural gas and electricity.

The yard area will be attractively landscaped to enhance the overall image of the project. The combination of the proposed structure, along with the associated yard improvements will result in a showpiece development in the industrial district in which the site is located. This will enhance the overall value of one of the City's major industrial hubs.



LETTER OF INTENT – Purchase from ITN dated October 30, 2023

Prepared by:
Michael Pavicic
&
Utah Peaks, LLC
2237 S 390 W
Heber, UT 84032

Preface: Michael Pavicic and Utah Peaks, LLC are proposing the purchase of Parcel I.D. 00-0021-1743, a 1.5-acre City owned property, located in the industrial zone, at 2295 S. 390 W.

Purchaser Details:

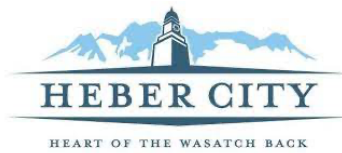
Michael Pavicic:

Michael: Owner
Phone: 435-671-9683
Email: MPavicic@avirockymountain.com

Utah Peaks, LLC:

Daniel Monzello: Project Manager
Phone: 435-565-1255
Email: daniel@nelsongroup13.com

Steve Nelson: Owner
Phone: 626-641-8600
Email: snelsonx@yahoo.com



Proposal Details:

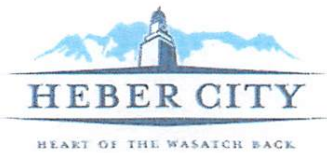
Purchase Price: \$700,000.00. The site will be purchased in all cash upon selection by Heber City. Willing to close (15) calendar days from receipt of a fully executed city approved real estate contract. Purchaser will pay \$50,000.00 in earnest money to become immediately non-refundable upon a mutually acceptable real estate purchase/sales agreement.

Capital Investment: Approximately \$3.0 million would be invested to construct a similar industrial building located directly to the North with a property address of 2237 South 390 West, Heber, UT 84032. Some of the property's features will include 24-foot clear height ceilings, 14'x16' ground level overhead doors and a larger per area size that allows a tenant a mix of both warehouse space and office space depending upon tenants needs. Subject to its contractors schedule the estimated time to construct the building is estimated at 12 months from the time of city approvals.

Sustainable and Livable Wage Jobs: Based on our experience with our 20,000 square foot building at 2237 South 390 West we estimate that up to 4 individual suites could be constructed and likewise attracting up to 4 different industrial related companies to occupy the premises. Approximately +/- 40 parking stalls could add up to an additional 40 new employees. Both the skilled and unskilled workers could be solicited for such industrial jobs from light manufacturing, fulfillment, and some shipping and receiving businesses as permitted in the industrial park. Such employers of the different business as we understand who could occupy the premises would be seeking local talent within the community as a preference based on the proximity to the site saving drive time and adding convenience as a result. Allowing new businesses to obtain business licenses to occupy the proposed building would indeed attract and benefit the local labor force seeking employment. Wages would be based and determined by the industrial type of businesses that could obtain business licenses to occupy the premises. Our understanding is the wages would be significantly higher than most jobs currently available in the market based on the type of light manufacturing, shipping and fulfillment and other approved industrial businesses.

Taxes: Property taxes generated from the value of the building would benefit Heber City as well as the different uses created by each business occupying the property.

Project Funding and Financial Stability: Please find a bank statement attached that demonstrates our financial resources and capability to purchase and invest additional capital dollars into the property.



Experience:

Michael Pavicic: With over 25 years of construction experience since his first project in 1996, Michael Pavicic has ample experience in both the real estate development industry as well as extensive knowledge of the Heber City market as a resident for the last fourteen years. Michael Pavicic owns and operates AVI Rocky Mountain LLC, a company he founded that currently operates out of our site in Power Industrial Park. AVI Rocky Mountain works to sell and help install a multitude of different products and solutions for different industries including oil and gas, water, and wastewater, municipal and much more.

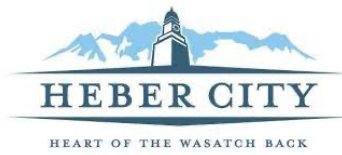
Utah Peaks, LLC: Steve Nelson has over 40 years of business and real estate experience in the western United States. Working with some of the best contractors in Utah they built the 20,000 square foot building directly north of the lot for consideration. They have added value to the Heber Valley by finding and working with great tenants like AVI, Sport Kilts, and Fieldcraft Survival. They have a track record of getting done what they say they will do and maintain their properties after they are complete.

Reference: We contracted with Tom Stuart Construction to finish our building at 2237 S 390 W. They have finished over 50 million square feet and 2000+ projects and are one of the best contractors in the state. Mike Haslam (lead sales manager) can speak to our experience with them and our commitment to pay all contractors in a very timely manner. He can be reached at 801-694-8966.

Innovation: Below are initial site plans as well as 3D renderings of the proposed development inspired by and designed from the current warehouse building located at 2237 S 390 W in Power Industrial Park. 2237 S 390 W has had much success and has proven to be both a financially feasible project as well as an attractive building for Heber City businesses. By implementing an already well received design and product, this site aims to minimize risk by creating a project with a track record at Power Park of proven success that is familiar, understood and less likely to cause problems for the developers, investors, city, or businesses of Heber City. Because of the building's innovative and flexible design, the space will be able to attract a wide array of business types in Heber City that could utilize the space for their contrasting and unique needs.

Sincerely,

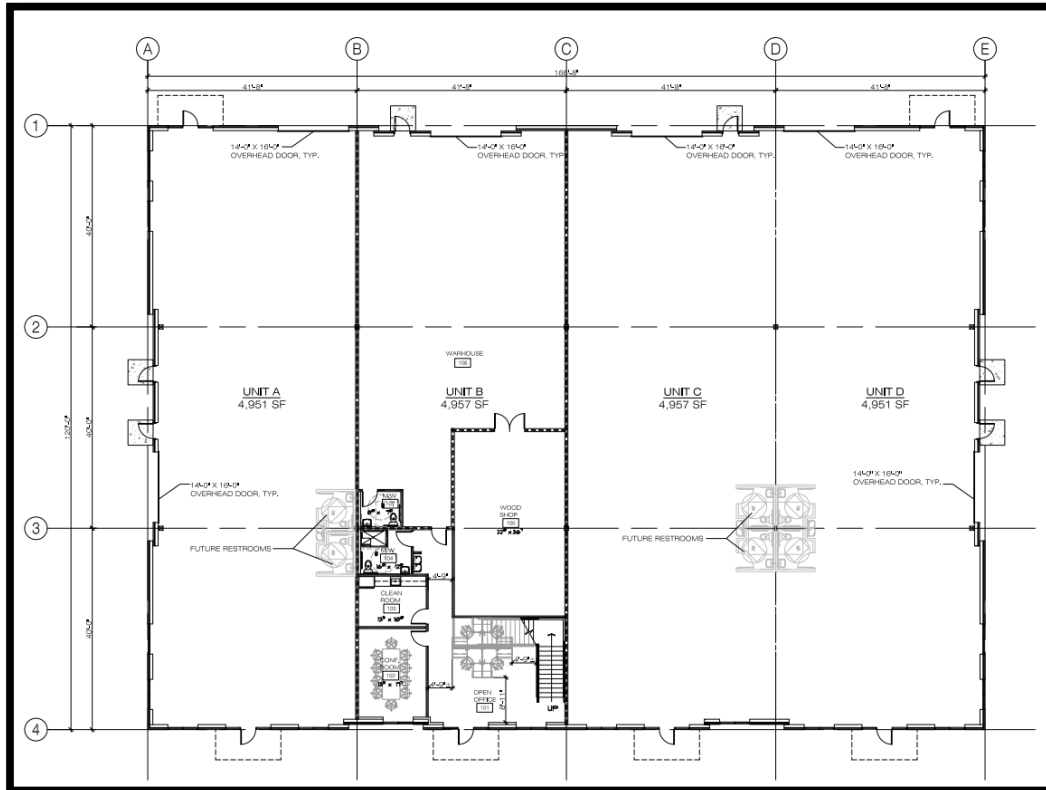
Michael Pavicic & Utah Peaks, LLC



3D Rendering:



Site Plan:



Primary Account: [REDACTED]

TURNBUCKLE WYOMING, LLC
PLEDGED TO ML LENDER
949 N CATARACT AVE STE K
SAN DIMAS CA 91773-1464

If you have questions on your statement,
call 24-Hour Assistance:
(866) 4MLBUSINESS
(866) 465-2874

Investment Advice and Guidance:
Call Your Private Wealth Advisor

Your Private Wealth Advisor:
JUNGMIN YU
2049 CENTURY PARK E STE 1200
CENTURY CITY CA 90067
tiffany.yu@ml.com
1-310-407-4840

Up-to-date account information can be viewed
at: www.mymerrill.com, where your statements
are archived for three or more years.

Questions about MyMerrill? Click the "help" tab
at the top of the screen once you log in.

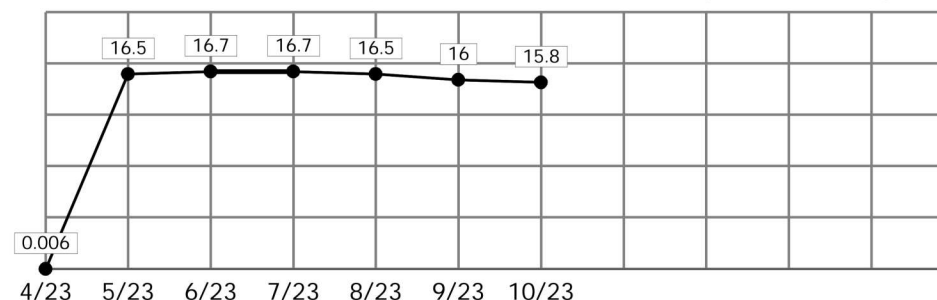
PRIVATE WEALTH MANAGEMENT

September 30, 2023 - October 31, 2023

PORTFOLIO SUMMARY

	October 31	September 29	Month Change
Net Portfolio Value	\$15,766,817.82	\$16,040,234.75	(\$273,416.93) ▼
Your assets	\$15,766,817.82	\$16,040,234.75	(\$273,416.93) ▼
Your liabilities	-	-	
Your Net Cash Flow (Inflows/Outflows)	\$6,909.41	\$4,046.00	
Securities You Transferred In/Out	-	-	
Subtotal Net Contributions	\$6,909.41	\$4,046.00	
Your Dividends/Interest Income	\$47,465.31	\$39,956.55	
Your Market Gains/(Losses)	(\$327,791.65)	(\$541,735.25)	
Subtotal Investment Earnings	(\$280,326.34)	(\$501,778.70)	

Total Value (Net Portfolio Value plus Assets Not Held/Valued By MLPF&S, if any) in millions, 2023-2023

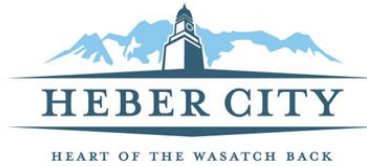


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Invitation to Negotiate (ITN)
Purchase Bids for City Owned Property in the Industrial Park, Heber City, Utah

2295 S. 390 W. Heber City, Utah 84032

Serial: OPU-0004-0-007-045

Parcel I.D.: 00-0021-1743

Acreage: 1.5 ac

Release Date: 10/30/2023

Sealed proposals will be accepted from interested parties until 5:00 p.m. Wednesday, November 29th, 2023 and will be reviewed and evaluated as received.

I. Preface: Heber City Municipal Corporation, (“The City”, “Heber”, or “Heber City”) a political subdivision of the State of Utah, desires to solicit potential purchasers for a 1.5 acre City owned property, located in the industrial zone, at 2295 S. 390 W, more particularly described in ***Exhibit A***.

II. Purpose of ITN: This ITN establishes the parameters for interested parties to submit proposals for consideration to purchase 1.5 acres described in the Preface. After solicitation and review of proposals from purchasers, the City may award the purchase contract to that individual or entity whose proposal best meets the City’s goals for the property. The City will not consider proposals that are deemed non-responsive or un-reasonable.

III. City Goals: The City will consider all proposals. The City will give more attention, however, to those proposals that best support the City's goals. The City’s goals are multifaceted and include maximizing, to the greatest extent possible, each of the following criteria:

- 1) Sale/purchase price – City seeks proposals that are equal to or greater than current market values. The City is hoping to receive between \$585,000.00 and \$600,000.00 per acre. This is a unique, one of a kind parcel, given its zoning, location, and varied development potential.
- 2) Capital investment – City prefers potential purchasers who intend to make sizeable capital investments into the parcel, as a condition of purchasing the property. City’s goal is to maximize capital investment dollars that are invested into the property. Products of the capital investment might include, new building, warehouse facility, etc.
- 3) Creation of sustainable, livable wage jobs—City prefers a potential purchaser who is likely to generate new, livable wage jobs, by virtue of the capital investment into the parcel.

- 4) Future property and sales taxes to City – City is seeking a potential purchaser whose proposed use of the property, in conjunction with the capital investment, would yield the greatest return of property taxes, real and personal, and/or sales taxes to the City.

IV. Content of Submittals. Proposals must include those information items, both written and graphic, in so far as to accurately convey the intent of the project, and the following:

- 1) **Purchaser Details:** Provide contact info for purchaser and any proposing developing entity or individual and identify the project manager/owner. Proposals shall be signed by an authorized representative(s) with authority to submit such proposal and execute a legally binding purchase/sales agreement.
- 2) **Proposal Details:** Experience section shall be a maximum of 3 pages.
 - a. **Purchase Price:** Submit purchase price for purchase of 1.5 acre parcel. Include details pertaining to how purchase will be transacted, e.g. cash, loan, etc., and date of expected closing. Include any proposed contingencies.
 - b. **Capital Investment:** Provide summary of capital investment that would be made as a condition of purchase. Details shall include amount of capital dollars, type of investment, and physical asset that would be generate/created. Timeline for completing capital investment should be included.
 - c. **Sustainable and Livable Wage Jobs:** Detail number of new jobs that would be created after completion of capital investment. Information regarding the types of jobs, purpose of jobs, sustainability of jobs, and wages for new jobs, is required. Additional information should be included that details how the jobs could benefit Heber residents.
 - d. **Taxes:** Provide information on the type of taxes that would be generated from the proposed capital investment and anticipated uses that would benefit Heber City.
- 3) **Project Funding and Financial Stability:** The City wants to ensure that the successful Purchaser has the necessary financial resources to purchase the property and invest additional capital dollars into the property in a timely manner. Please furnish a statement of financial resources demonstrating that the potential purchaser has the ability to purchase the property and make the proposed capital investment. Additionally, list and explain any pending bankruptcies, liens, stop notices, judgments, lawsuits and foreclosures, or any such actions filed or resolved in the past seven (7) years. Financial Stability section shall be a maximum of two (2) pages.
- 4) **Experience:** Itemize experience in similar projects (show examples, provide references). Experience section shall be a maximum of 1 page.
- 5) **Innovation:** Identify ideas, new concepts, and arrangements other than those listed in this ITN. City will favor innovative proposals. Innovation shall be a maximum of 1 page.

V. Evaluation Process.

Step 1: City reviews proposals submitted in response to ITN and eliminates unresponsive proposals.

Step 2: City ranks responsive proposals on an overall scale of 1 to 100, awarding 25% of the scale to each of the four criteria found in section IV (2).

Step 3: City invites top proposers that are deemed to be most responsive and responsible (based on ranking) to negotiate terms of a possible agreement. Negotiations will focus and develop details of the project.

Step 4: Term sheets are presented to Heber City Council for consideration. City Council selects top proposal to negotiate a possible agreement.

Step 5: Agreement negotiated with staff and approved by City Council. Should successful negotiation result, a binding legal purchase/sales agreement and possible development agreement will be required. This invitation to negotiate does not provide a complete understanding of the project, nor does it contain all matters upon which an agreement must be reached. The City reserves the right to negotiate necessary and reasonable legal terms and conditions. Should negotiations prove unsuccessful with top purchaser, firm, entity or individual, City will commence negotiations with runner-up proposal.

VI. Development Agreement. When one purchaser is chosen, prior to the closing date, purchaser and City shall agree upon the form of a Development Agreement relating to purchaser's development of the property, including but not limited to, and subject to the criteria, contained in this Invitation to Negotiate. Said Development Agreement shall be executed on or before the closing date. If the form of the Development Agreement is not agreed upon prior to the closing date, the purchase shall not consummate, and any initially accepted proposal shall automatically be vacated and any further relationship between the City and a potential purchaser shall terminate. The Development Agreement will contain such terms as are necessary for the orderly development of the property in accordance with this ITN proposal and, in any event, shall address the matters described herein.

VII. Proposal Deadline. Proposals must be received in the Heber City Recorder's Office no later than Wednesday, November 29th, 2023, by 5 p.m. Requested information shall be delivered electronically by email to Heber City Recorder at tcooke@heberut.gov. Please include in subject line of email the following: **Purchase Bids for City Owned Property in the Industrial Park**, and proposing Purchaser's name. Proposals may also be delivered via other electronic means, such as thumb drive, etc. The package containing the other electronic means must clearly note the name of this ITN and name of proposer on the front of the package and be addressed to Heber City Recorder at 75 N. Main, Heber City, Utah 84032.

VIII. Proprietary Information. If any proposers believe that any portion of its proposal is subject to a legal exception to public disclosure, that individual or entity shall: (1) clearly mark the relevant portions of its proposal as "Confidential" and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act. The City Attorney's Office will determine if the information is confidential, based on state and federal law. Note that under Utah law, a price proposal to a public agency is not a trade secret. Any proposers shall defend, indemnify, and hold harmless, the City regarding any claim by any third party for the public disclosure of the "confidential" portion of the proposal.

City shall consider each proposal subject to the public disclosure requirements of the Utah Records Act, unless there is a legal exception to public disclosure.

IX. Administrative Guidance. The information provided herein is intended and designed to provide those interested in responding sufficient basic information regarding minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data therefrom. Proposers are at liberty and are encouraged to conduct their own due diligence on the property. The City will not be liable for any costs proposers may incur in conducting due diligence or in the preparation or presentation of this

proposal. The City reserves the right to reject any and all proposals or to waive any irregularities or informalities in any proposal or in the ITN procedures. Upon City Council approval, a contract may be awarded.

Questions: Questions may be forwarded to Heber City Manager Matt Brower: mbrower@Heberut.gov through Wednesday, November 15, 2023.

EXHIBIT A

Parcel Address: 2295 S. 390 W. Heber City, Utah 84032

Serial: OPU-0004-0-007-045

Parcel I.D.: 00-0021-1743

Acreage: 1.5 ac

	Utah Peaks	Stewart and Company
Proposed Purchase Price	\$700,000.00.	\$562,577.00.
Earnest Money	\$50,000 non refundable earnest money; Anticipated closing within 15 calendar days from receipt of a fully executed city approved real estate contract.	No Earnest Money mentioned. 60 day due diligence period. During the due diligence period, a Phase 1 environmental study would be performed on the property, in addition to ascertaining such factors as utility capacity and geotechnical suitability for development.
Financed or Cash	Cash	Cash
Capital Improvements	3.0 million dollars would be invested to construct a similar building comparable to the existing building to the north of this subject Property. It is estimated that this new building would be a 20,000 square foot building, with 4 individual suites. It is anticipated that the building's design would attract a wide array of business types. Utah Peaks has attracted current businesses in Heber: AVI Sport Kilts, and Fieldcraft Survival.	Total capital investment estimated at \$4,325,000.00 (including land acquisition), to create a premium image, light industrial development comprising of 35,910 square feet. This will likely consist of 927,000 square feet first floor and 8,910 square feet of a second story office space.
Employees	Anticipated 40 employees.	Estimated generating 210 jobs relative to the property.
Experience	Utah Peaks has over 25 years of construction experience, and currently operates out of its site in Power Industrial Park, as AVI Rocky Mountain. As indicated above, they have built the 20,000 square foot building directly north of the property of this ITN Property. They were instrumental in finding current Hebe business tenants like AVI Sports Kilts, and Fieldcraft Survival. They anticipate being able to attract a wide array of business types in Heber City to utilize the space for their proposed commercial project.	Stuart and Company; Purchaser has 37 years of experience in the commercial real estate sector, in Wasatch County. Has developed commercial real estate for Walgreens, negotiating leases for Walgreens. Additionally, experience in revitalizing a 385 unit storage project, with a deficit of \$40,000.00 in annual operations, to a turnaround of approximately 90% occupancy, with \$3,000.00 in profit.



Heber City Council Staff Report

MEETING DATE: 1/2/2024
SUBJECT: Jordanelle Ridge Bond Agreement
RESPONSIBLE: Jeremy Cook
DEPARTMENT: Administrative
STRATEGIC RELEVANCE:

SUMMARY

In accordance with Utah law, prior to recording a subdivision plat, a developer must either complete all public infrastructure improvements that are necessary to service the properties within the plat or provide improvement completion assurance (i.e. a cash escrow or bond) to assure completion of the infrastructure improvements. The Jordanelle Ridge DA covers a large area within the City and has several specific provisions relating to bonding for public improvements. To streamline the bonding process for both the Developer and the City, the parties have drafted a Master Security Agreement for the project.

RECOMMENDATION

Staff recommends approval of the Master Security Agreement

BACKGROUND

DISCUSSION

FISCAL IMPACT

None

CONCLUSION

The Master Security Agreement benefits both the Developer and the City. The Agreement allows the Developer to post blanket security that can be applied to multiple phases which reduces the time the City is required to expand on partial releases.

ALTERNATIVES

1. Approve as proposed
 2. Approve as amended
 3. Continue
 4. Deny
-

POTENTIAL MOTIONS

Alternative 1 - Approval - Staff Recommended Option

I move to **approve** the item as presented, with the findings and conditions as presented in the conclusion above.

Alternative 2 - Approve as Amended

I move to **approve** the item as amended, as follows.

Alternative 3 - Continue

I move to **continue** the item to another meeting on , with direction to the applicant and/or Staff on information and / or changes needed to render a decision, as follows:

Alternative 4 - Denial

I move to **deny** the item with the following findings.

ACCOUNTABILITY

Department: Administrative
Staff member:

EXHIBITS

1. Jordanelle Ridge - Master Security Agreement Final for Packet - 4887-2107-1769 - 1

**MASTER SECURITY AGREEMENT
FOR THE
UPPER JORDANELLE MASTER PLANNED COMMUNITY**

THIS MASTER SECURITY AGREEMENT FOR THE UPPER JORDANELLE MASTER PLANNED COMMUNITY (this “**Agreement**”) is made and entered into as of the ____ day of _____, 2023, by and between Heber City, a political subdivision of the State of Utah (the “**City**”), and Jordanelle REF Acquisition LLC, a Delaware limited liability company (the “**Developer**”). Each of the City and the Developer are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. Capitalized terms used in these Recitals are defined in Section 1.2 below.
- B. On June 24, 2020, the City and RE Holdings entered into the Development Agreement with respect to the Property.
- C. On October 30, 2020, RE Holdings assigned the Development Agreement to Developer pursuant to the Assignment of Development Agreement.
- D. As addressed in the Development Agreement, provision of infrastructure to the Property is vital to its development in accordance with the Master Plan, Development Agreement and Infrastructure Plan.
- E. In accordance with Utah Code § 10-9a-604.5 and Applicable Law, prior to recording any subdivision that contains public landscaping improvements or public infrastructure improvements that have not been completed and accepted by City, or which are still within the warranty period, Developer is required to provide improvement completion assurance and warranty bond to City.
- F. The Parties now desire to enter into this Agreement to establish and set forth the rights and responsibilities of Developer, and its successors and assigns, and the rights and responsibilities of the City, with respect to the provision of Security in connection with development of the Property.
- G. The City Council has reviewed this Agreement and determined that it is consistent with the Act and the Heber City General Plan, and that it provides for and promotes the health, safety, welfare, convenience, aesthetics and general good of the community. This Agreement does not contradict, specifically complies with and is governed by Utah Code Ann Section 10-9a-604.5.
- H. The Developer and the City have cooperated in the preparation of this 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 to the following:

TERMS

1. Incorporation of Recitals and Exhibits/Definitions.

1.1 **Incorporation.** The foregoing Recitals and Exhibits A through H are hereby incorporated into this Agreement.

1.2 **Definitions.** Any capitalized term or phrase used in this Agreement has the meaning given to it below or in the section where the definition of such term is given.

1.2.1 **Act** means the Utah Municipal Land Use, Development, and Management Act.

1.2.2 **Agreement** has the meaning set forth in the preamble and includes all exhibits attached hereto.

1.2.3 **Applicable Law** means the Act and all other laws, rules, regulations, ordinances, policies, standards, procedures and processing fee schedules applicable to the Project as determined in accordance with terms of the Development Agreement.

1.2.4 **Assignment of Development Agreement** means that certain Assignment of Development Agreement for the Upper Jordanelle Master Planned Community, entered into as of October 30, 2020, between RE Holdings and Developer.

1.2.5 **City** has the meaning set forth in the preamble.

1.2.6 **Default** shall have the meaning provided in Section 15.

1.2.7 **Developer** has the meaning set forth in the preamble.

1.2.8 **Development Agreement** means that certain Development Agreement for the Upper Jordanelle Master Planned Community, made and entered into as of June 24, 2020, by and between the City and RE Holdings, and subsequently assigned to Developer pursuant to the Assignment of Development Agreement.

1.2.9 **Development Security** means Security provided to the City to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to recording a subdivision plat in accordance with Utah Code § 10-9a-604.5 and Applicable Law. Development Security shall not be utilized, retained or reserved to serve as Warranty Security or to otherwise cover any warranty obligation of Developer under this Agreement.

1.2.10 **Improvement** means any public landscaping, public infrastructure improvements, or private improvements necessary for public health and safety,

that are required by Applicable Law to be installed by Developer to service any subdivision.

- 1.2.11 **Improvement Defect** means a defect in workmanship or materials as reasonably determined by the City in accordance with the City's Standard Specifications and Standard Drawings as determined in accordance with the Development Agreement.
- 1.2.12 **Improvement Project** means the undertaking by the Developer to complete one or more Improvements covered by a single Project Notice that has been executed by the Developer and provided to the City.
- 1.2.13 **Incidental Costs** means engineering, engineering inspection and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or material men's liens, or any other cost and interest thereon incurred by one Party due to the other Party's Default hereunder.
- 1.2.14 **Inspection Fees** means inspection fees to be paid to the City by the Developer in connection with any Improvement as determined in accordance with the City Code and the City's Standard Specifications and Standard Drawings, both as determined in accordance with the Development Agreement.
- 1.2.15 **Master Tracking Schedule** means a tracking schedule in the general form attached hereto as Exhibit A.
- 1.2.16 **Project** shall have the meaning set forth in the Development Agreement.
- 1.2.17 **Project Notice** means a notice in the general form attached hereto as Exhibit B provided by Developer to the City covering an Improvement Project. Each Project Notice shall be executed by Developer and shall include either an engineer's cost estimate or licensed contractor's bid evidencing the estimated cost of all Improvements making up the Improvement Project.
- 1.2.18 **Property** shall have the meaning set forth in the Development Agreement.
- 1.2.19 **RE Holdings** means RE Investment Holdings, L.L.C., a Utah limited liability company.
- 1.2.20 **Rejection Notice** means a notice from the City to Developer listing all Improvements not accepted by the City and detailing the specific reasons for such rejections.
- 1.2.21 **Security** means improvement completion assurance in the form of a surety bond, cash deposit, or letter of credit, or such other form as approved the City. Security provided in the form of a surety bond or letter of credit shall be issued

on City approved forms, subject to review and approval of the City as to both form and financial stability and credit worthiness of the issuer which shall be determined in the sole discretion of the City. Any surety bond or letter of credit must not expire less than three (3) years from the date of approval of any Project Notice covered by the surety bond or letter of credit. The City may, in the City's discretion, not allow more than twenty million dollars of Security to be issued by any single surety or financial institution.

1.2.22 **Security Release Request** means a request for a release of Security in the general form attached hereto as Exhibit C. Prior to submission to the City, the Security Release Request shall be executed by Developer and approved by Developer's engineer.

1.2.23 **Warranty Period** means the "Improvement warranty period" as defined in Utah Code § 10-9a-103, which generally provides for a period not to exceed one (1) year following the City's acceptance into warranty of an Improvement Project. If the City determines that the Act allows for a Warranty Period exceeding such one (1) year period for a specific Improvement Project, the City shall notify Developer in writing of such determination within ten (10) business days following the City's receipt of the Project Notice covering such Improvement Project. The City's determination that a Warranty Period greater than one (1) year applies to a specific Improvement Project shall not be dispositive and Developer shall retain all legal rights to challenge or dispute such determination.

1.2.24 **Warranty Security** means Security provided to the City to cover warranty obligations of Developer and as otherwise specified herein.

2. **Development Security.** Developer shall provide Development Security to the City as required in accordance with the terms of the Development Agreement and this Agreement. At its election, Developer may provide Development Security with the intention that such Development Security cover multiple Improvements and Improvement Projects throughout the Project with a total estimated cost of completion up to the full available amount of such Development Security. As Improvements and Improvement Projects are completed and the corresponding Development Security is released to Developer as set forth herein, such Development Security shall be available, at the discretion of Developer, to cover additional Improvements and Improvement Projects. As set forth in the Development Agreement, Security shall not be required to the extent of available public financing through a Public Infrastructure District (PID) or for any privately-owned infrastructure or improvements, not necessary for public health and safety, including, without limitation, landscaping for any private open space areas, private recreational facilities or similar amenities.

3. **Warranty Security.** Developer shall provide and maintain Warranty Security covering Developer's warranty obligations under this Agreement consisting of (i) Security in the amount of One Million Dollars (\$1,000,000) in any form authorized pursuant to this Agreement, and (ii) Security in the amount of One Hundred Fifty Thousand Dollars (\$150,000) in the form of a cash

deposit (the “**Warranty Cash**”). Developer agrees that all Improvements that are constructed using PID funds must be included in the Warranty Security. If all or any portion of the Warranty Security is utilized in accordance with the terms of this Agreement, Developer shall replenish such Warranty Security within thirty (30) days following written notice from the City detailing the Warranty Security utilized and the specific uses of such Warranty Security.

4. **Inspection Fees.** Developer shall provide a cash deposit covering all Inspection Fees reasonably estimated to be incurred in connection with each Improvement Project. If such deposit is inadequate to cover previously incurred or reasonably estimated future Inspection Fees related to such Improvement Project, Developer shall provide an additional deposit or deposits to cover such amounts. Upon final acceptance of each Improvement Project, the actual Inspection Fees incurred by the City and all deposits or other payments of Inspection Fees made by Developer in connection with such Improvement Project shall be promptly reconciled and any amounts owed by Developer shall be paid within thirty (30) days, and any excess amounts shall be reimbursed by the City to Developer within thirty (30) days.

5. **Project Notice.** In connection with any Improvement Project, Developer shall provide to the City a Project Notice covering the Improvement Project. The City shall review the Project Notice to determine if the Project Notice includes all Improvements required in conjunction with the recording of the subdivision plat. The City shall either approve or reject the Project Notice within ten (10) business days of submittal. If the City rejects any portion of the Project Notice, City shall provide a written response to the Project Notice detailing the basis for the rejection. Developer may either accept the City’s modifications to the Project Notice or request that the City meet and confer to resolve any dispute with respect to the Project Notice.

6. **Master Tracking Schedule.** In conjunction with the approval of each Project Notice, the Developer shall submit to the City an updated Master Tracking Schedule signed by Developer detailing the status of the Security covering each Improvement Project. A Master Tracking Schedule executed by the Developer and the City shall be conclusive and definitive evidence of the bonding status of each Improvement Project and outstanding Security as of such date and may be relied upon by the Parties hereto.

7. **Release of Security.** Once all the Improvements covered by any Project Notice are completed by Developer and inspected by and accepted into warranty by the City, the Development Security covering such Improvements shall be released to Developer upon Developer’s submission to City and City’s approval of a Security Release Request covering the completed Improvements. The amount of Development Security released shall be equal to one hundred percent (100%) of the Development Security covering the completed Improvements as specified in the Project Notice covering such Improvements. A Security Release Request executed by Developer and City shall be conclusive and definitive evidence of the release of the Development Security as specified in such Security Release Request and may be relied upon by the Parties hereto. In the event of a dispute between City and Developer regarding the completion of any Improvements that are less than 5% of the value of the Improvements covered by any Project Notice or \$15,000, whichever is less, Developer may, at Developer’s option, obtain a release of the Development Security and include the disputed Improvements as warranty items covered under the Warranty Security.

8. **Final Acceptance.** As Improvement Projects are completed by the Developer and inspected by City and accepted into warranty by the City, the portion of the Development Security covering such Improvement Project shall be released to Developer upon Developer's submission to City of a Security Release Request covering the completed Improvement Project. The amount of Development Security released shall be equal to one hundred percent (100%) of the Development Security covering the completed Improvement Project as specified in the Project Notice covering such Improvement Project. Final acceptance of any Improvements does not waive Developer's obligation to complete such Improvements in accordance with requirements of the Development Agreement if Improvement Defects are discovered prior to the expiration of the applicable Warranty Period.

9. **Completion Date.** Developer shall complete all of the Improvements contained within any Project Notice within 24 months of approval of the Project Notice covering such Improvements. If requested by Developer, the City may, in City's sole discretion, extend the completion date of the Improvement if City determines that the Security will not expire prior to the extend completion date.

10. **Warranty.** Following inspection and acceptance of any Improvement Project into warranty, Developer warrants that the Improvements constituting such Improvement Project shall remain free of Improvement Defects during the Warranty Period. At the end of the Warranty Period, Developer shall request a final inspection of the Improvements, which inspection shall be made by City within ten (10) business days unless the City is unable to complete the final inspection due to snow, weather or other conditions, in which case the inspection shall be completed as soon as the City is reasonably able to complete the inspection based on weather and the City's scheduling demands. Developer shall repair or replace, at its discretion and at no cost to the City, all Improvements impacted by Improvement Defects of which the City provides notice to Developer prior to the final inspection and acceptance of the Improvements out of warranty. The City's notice to Developer of an Improvement Defect shall not be dispositive and Developer shall retain all legal rights to challenge or dispute the existence of such Improvement Defect.

11. **Warranty Repairs.** Within ten (10) days of the final inspection, City shall notify Developer in writing of any Improvement Defect discovered, providing all relevant details of such Improvement Defect. Developer shall have thirty (30) days from the receipt of notice from the City in which to commence repair of the Improvement Defect, and a reasonable amount of time to complete repair of such Improvement Defect, taking into account existing conditions, unless the defect does or may result in a safety concern, in which case, repairs shall be completed as soon as possible. Following repair of the Improvement Defect, Developer shall submit to the City a Security Release Request covering the Improvement Defect which the City shall approve in accordance with the terms of this Agreement.

12. **Extension of Time Periods.** If Developer has not completed Improvements or the repair of Improvement Defects within the time periods established for such completion pursuant to this Agreement, the time periods established for completion of such Improvements or repairs shall be automatically extended for so long as Developer uses commercially reasonable efforts to diligently pursue such completion and any Security remains valid through the date of completion.

13. **Substitution of Security.** Upon thirty (30) days prior written notice to the City, Developer shall have the right to substitute any Security provided in accordance with this Agreement with replacement Security in any combination of forms and amounts determined by Developer in its sole discretion, so long as (i) the total amount of all replacement Development Security is equal to or greater than the total Development Security required in connection with all incomplete Improvements covered by a Project Notice, and (ii) the total amount of all replacement Warranty Security is equal to or greater than the total amount of Warranty Security being replaced; provided, however, that in no event shall the Warranty Cash be replaced with Warranty Security in any other form or amount. In addition, Developer may substitute Security provided under this Agreement with public infrastructure district funds to the extent such funds are available and have been allocated in the public infrastructure district budget to fund the Improvements covered by such Security.

14. **Default.** Any failure by either Party to perform any term or provision of this Agreement, including without limitation the failure by Developer to complete any Improvement Project or to repair any Improvement Defects within the time period required hereunder (including any extension of such time period or temporary excuse of performance as set forth herein), which failure continues uncured for a period of sixty (60) days following the receipt of written notice of such failure (a “**Default Notice**”) from the other Party (unless such period is extended by mutual written consent, and subject to Sections 15.2 and 15.3), shall constitute a “**Default**” under this Agreement.

14.1 **Notice.** A Default Notice shall (i) specify details of the alleged Default, (ii) identify with particularity the provisions of any Applicable Law or provision of this Agreement comprising the basis of such alleged Default, (iii) identify why the alleged Default is claimed to be material, and (iv) specify the manner in which the alleged Default may be satisfactorily cured.

14.2 **Cure.** Following receipt of a Default Notice, the Party alleged to have defaulted hereunder shall have sixty (60) days in which to cure the claimed Default (as such time period may be extended hereunder, the “**Cure Period**”). If more than sixty (60) days is required for such cure, the Party alleged to have defaulted shall have such additional time as is reasonably necessary under the circumstances to cure such alleged Default so long as such party commences such cure within the Cure Period and pursues such cure with reasonable diligence. Any cure hereunder shall include the payment of Incidental Costs reasonably incurred by the Party alleging a Default due to such Default.

14.3 **Remedies.** In the event that the Party alleged to have defaulted hereunder fails to cure the alleged Default within the Cure Period or contests that a Default has occurred, the Parties shall have the following rights and remedies, which rights and remedies shall be cumulative:

14.3.1 **Legal Remedies.** Legal remedies available to both Parties shall include all rights and remedies available at law or in equity, including but not limited to

injunctive relief, specific performance and/or damages, including damages resulting from an improper allegation of a Default hereunder or the failure to properly acknowledge that a Default has been cured within the applicable Cure Period. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to obtain a ruling that no Default occurred or is continuing, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to enjoin the City from drawing on or utilizing Security. Nothing in this section is intended to, or does it, limit either Party's right to such legal and equitable remedies as permitted by law. It is specifically acknowledged by both Parties that neither Party waives any such rights for legal and equitable remedies.

14.3.2 Utilization of Security. The City may, in accordance with the provisions of Section 16 and subject to any legal ruling enjoining such action, draw on and utilize the Security covering the specific Improvement completion obligation or Improvement Defect repair obligation that is the subject matter of the Default by Developer.

15. **Enforcement of Security.** If the City exercises its right to draw on and utilize any Security pursuant to Section 15.3.2, the following provisions shall apply.

- 15.1 **Notice to Developer.** Except for the cash Warranty amount, at least thirty (30) days prior to drawing on any Security, the City shall provide notice to Developer specifying the timing and amount of such intended draw.
- 15.2 **Utilization of Warranty Cash.** The City shall have the right to draw on and utilize the Warranty Cash to pay reasonable costs and expenses incurred by the City (i) in enforcing its rights in connection with a Default by Developer hereunder, (ii) in drawing on Security following a Default by Developer, and (ii) to complete repair of any Improvement Defect following a Default by Developer in its obligation to complete repair of such Improvement Defect as required by the terms of this Agreement.
- 15.3 **Utilization of Security.** The City shall have the right to draw on and utilize Security other than Warranty Cash to pay reasonable costs and expenses incurred by the City (i) to complete Improvements specifically covered by such Security following a Default by Developer in its obligation to complete such Improvements as required by the terms of this Agreement, and (ii) to complete repair of any Improvement Defect specifically covered by such Security following a Default by Developer in its obligation to complete repair of such Improvement Defect as required by the terms of this Agreement.
- 15.4 **Standards for Utilization of Security.** If the City utilizes Security, including Warranty Cash, to complete any Improvements or the repair of any Improvement Defect in accordance with the terms of this Agreement, the City shall use reasonable efforts to complete all such Improvements or warranty repairs (i) in

accordance with the standards for materials and workmanship established in the applicable approved design, and (ii) without incurring excessive costs and expenses.

16. Unrelated Obligations of Developer. The benefits and protection provided by this Agreement shall inure solely to the City and Developer, and not to third parties, including but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers or others. The City shall not be liable to claimants or others for obligations of Developer under this Agreement. The City shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement and shall have no obligation under this Agreement to make payments to, give notices on behalf of Developer to, or otherwise have obligations to, any alleged claimant under this Agreement other than Developer.

17. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours; (b) upon receipt when sent by email; (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either FedEx, United Parcel Service or another nationally or regionally recognized overnight courier service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

To Developer:

Jordanelle REF Acquisition LLC
c/o Raintree Investment Corporation
10421 S. Jordan Gateway, Suite 200
Attn: Cody Winterton
Telephone: 801-884-3599
E-mail: cwinterton@raintree.us.com

With a copy to:

Holley Driggs Ltd.
300 S. 4th Street, Suite 1600
South Jordan, Utah 84095
Attn: Doug Driggs
Telephone: 702-791-0308
E-Mail: ddriggs@nevadafirm.com

To City:

City of Heber
25 North Main Street
Heber, Utah 84032
Attn: Russ Funk
Telephone: 435-654-0757
E-mail: rfunk@heberut.gov

With a copy to:

Cohne Kinghorn
111 E. Broadway, 11th Floor
Salt Lake City, Utah 84111
Attn: Jeremy Cook
Telephone: 801-363-4300
E-mail: jcook@ck.law

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section, and that any person to be given notice receives such notice. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given above, or designate additional addressees, for purposes of this section by delivering to the other party written notice in the manner set forth above.

18. **Attorney's Fees and Costs.** In the event of a Default by either Party hereunder, the defaulting Party shall pay any and all costs and expenses, including reasonable attorney's fees, investigating such actions, taking depositions and discovery, and all other necessary costs incurred in, arising out of or resulting from such Default (including any incurred in connection with any appeal or in bankruptcy court) incurred by the injured Party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

19. **Amendment.** Except as otherwise authorized herein, this Agreement may be amended or modified only by an instrument of equal formality signed by both Parties.

20. **Assignment.** This Agreement may be assigned by Developer to an assignee of all of Developer's interests, privileges and other rights under the Development Agreement.

21. **Termination.** This Agreement may be terminated by the written agreement of both Parties and shall terminate upon termination of the Development Agreement.

22. **Waivers.** Failure of either 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.

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

24. **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, acts of nature, inclement weather, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires, pandemics 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 time period equal to the duration of that prevention delay or stoppage.

25. **Time is of the Essence.** Time is of the essence in this Agreement and every right or responsibility shall be performed within the times specified.

26. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between the Parties.

27. **Construction/Exhibits.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated herein by this reference.

28. **Governing Law.** This Agreement is entered into in the City 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 and in accordance with other Applicable Law.

29. **Days of Week.** A "business day," as used herein, shall mean any day other than a Saturday, Sunday, federal holiday or other day on which commercial banks in Utah are authorized or required by law or executive order to close. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

30. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

31. **Further Action and Instruments.** The Parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of this Agreement. The Parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement by and through their respective, duly authorized representatives as of the date and year first written above.

DEVELOPER:

JORDANELLE REF ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

CITY:

HEBER CITY,
a political subdivision of the State of Utah

By: _____
Name: _____
Title: _____

Attest:

City Recorder

By: _____

EXHIBIT A

FORM OF MASTER TRACKING SCHEDULE

[See Attached]

EXHIBIT B

FORM OF PROJECT NOTICE

[See Attached]

EXHIBIT C

FORM OF SECURITY RELEASE REQUEST

[See Attached]