



CENTERVILLE CITY PLANNING COMMISSION AGENDA

NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY PLANNING COMMISSION WILL HOLD ITS REGULAR PUBLIC MEETING AT 7:00 PM ON JANUARY 12, 2022 AT CENTERVILLE CITY HALL, 250 NORTH MAIN STREET. THE AGENDA IS SHOWN BELOW.

Meetings of the Planning Commission of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Jacob Smith, Administrative Services Director, at 801-295-3477, giving at least 24 hours notice prior to the meeting.

The full packet of backups can be found at <http://centerville.novusagenda.com/agendapublic>.

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. PRAYER OR THOUGHT

D. COMMISSION BUSINESS

1. PUBLIC HEARING - LEGISLATIVE RECOMMENDATION - Schmucker Zone Map Amendment, 553 SOUTH 850 EAST
Recently, Centerville City has agreed to allow the Schmuckers to purchase a small portion of land the City owns and add it to their property/lot.
2. ADMINISTRATIVE DECISION - Final Subdivision Plat - The Lane, 644 WEST 400 SOUTH
The proposal consists of 12 single-family units on a parcel along Porter Lane. The project has already received a Final Site Plan Approval to finalize the layout and design for the related "planned unit development." Subdivision.
3. PUBLIC HEARING -ADMINISTRATIVE DECISION - Conceptual Site Plan - Chipotle, 370 WEST 400 NORTH
The property owner desires to remodel the existing building, which will be utilized for another restaurant use known as Chipotle Mexican Grill. As part of the remodel, the owner has plans for an building exterior redesign.
4. Community Development Director's Report

Next Planning Commission Meeting - January 26, 2022:

Tentative Items:

- *Work Session - Parking Study Updates*
- *Regular Session: Young Power Sports Amendment & Food Truck Ordinance*

City Council Report:

- *Approved Schmucker Plat Amendment w/ Conditions*

Commission Goals Update:

- *Parking Update Study - work session 1/26*
- *Subdivision Ordinance - underway with City Attorney, early 2022*
- *Food Truck Ordinance - Consider Amendment 1/26*
- *Single-family on un-platted lots - not yet underway*
- *General Plan/Economic Study - to begin in March 2022*

5. Elect Chair and Vice Chair

Per CZC 12.21.050 the Commission shall elect a chair and vice chair

E. MINUTES REVIEW AND ACCEPTANCE

December 8, 2021

F. ADJOURNMENT

Mackenzie Wood
Centerville Assistant Planner

CENTERVILLE

Staff Backup Report

1/12/2022

Item No. 1.

Short Title: PUBLIC HEARING - LEGISLATIVE RECOMMENDATION - Schmucker Zone Map Amendment, 553 SOUTH 850 EAST

Initiated By: Andrew Schmucker, Applicant

Staff Representative: Planning Staff - Cory Snyder

SUBJECT

Recently, Centerville City has agreed to allow the Schmuckers to purchase a small portion of land the City owns and add it to their property/lot.

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- ▣ 01-12-2022 PC Staff Report Schmucker Rezone
- ▣ City-Schmucker Subdivision Plat Amendment Map
- ▣ Aerial of Zoning Districts
- ▣ Quit Claim Parcel Description
- ▣ Plat Amendment - City Council Decision Letter

**CENTERVILLE CITY
COMMUNITY DEVELOPMENT DEPARTMENT
655 North 1250 West, Centerville, Utah 84014
(801) 292-8232**

**STAFF REPORT
AGENDA: ITEM 1**

AGENT: **ANDREW SCHMUCKER
553 SOUTH 850 EAST
CENTERVILLE, UT 84014**

PROPERTY OWNER: **CENTERVILLE CITY
250 NORTH MAIN STREET
CENTERVILLE, UTAH 84014**

PROPERTY LOCATION: **APPROXIMATELY 553 SOUTH 850 EAST** *(ISLAND
VIEW DRIVE (I.E., PORTION OF CITY PROPERTY BEING SOLD TO
SCHMUCKER FAMILY))*

PARCEL SIZE: **APPROXIMATELY 3,000 SQUARE FEET.**

APPLICATION: **ZONING MAP AMENDMENT – REQUEST TO
REZONE A TRACT OF LAND FROM PF-L (PUBLIC
FACILITIES LOW) TO R-L (RESIDENTIAL LOW)**

STAFF RECOMMENDATION: **CONSIDER RECOMMENDING APPROVAL OF
THE REZONE TO THE CITY COUNCIL**

BACKGROUND

Recently, Centerville City has agreed to allow the Schmuckers to purchase a small portion of land the City owns and add it to their property/lot. The purpose of this review is to rezone the tract to be purchased to the same zone of the lot owned by the Petitioner. The Commission should also be aware that the applicant has applied for a proposed plat amendment that was reviewed and approved by the City Council on January 04, 2022 (*see attachments*).

REVIEW AND ANALYSIS OF THE ZONE MAP AMENDMENT REQUEST

- A. Zone Map Amendments - Pursuant to the City's Zoning Ordinance, the decision to amend the...zoning map is a matter within the legislative discretion of the City Council as described in CZC - 12.21.060.a.

B. Process and Public Comment and Decision - The Planning Commission is to review and hold a public hearing regarding the application and shall thereafter submit its recommendation for approval, approval with modifications, or denial thereof to the City Council. Following receipt of a recommendation from the Planning Commission, the City Council is to hold another public hearing on the application. After due consideration, the City Council may approve, approve with modifications, or deny the proposed rezone amendment request.

C. Staff Review of the Rezone Standards of Approval - Section 12.21.080.e of the City Zoning Ordinance sets forth the following factors for considering a general rezone request:

1. Is the proposed amendment consistent with the goals, objectives and policies of the City's General Plan?

General Plan, Section 12-480-2.1, Residential Polices:

Southeast Residential Area - *The greatest portion of southeast Centerville has been developed primarily in typical residential suburban style, with single family homes on medium and large lots. These residences are located primarily to the east and south of the Deuel Creek Historic District. Not much vacant land exists in this area. Much of what does remain is on the hillside, where care must be taken in development to avoid erosion and other hillside problems.*

1. *The southeast residential area shall be developed and maintained in low density single-family residential development. Those areas on hillsides shall be carefully developed with strict adherence to City hillside development regulations.*

1. **Staff Response:** The neighborhood plan anticipates the development of low-density residential lots. The request for R-L appears to be consistent with the stated policy. Additionally, all development needs to be cognizant of the hillside slopes and erosion. The area being transferred has been utilized by the petitioner for a period of time, mostly due to its relatively flatt slope adjacent to their lot. **Is the proposed amendment harmonious with the overall character of existing development in the vicinity of the subject property?**

Staff Response: This neighborhood area consists of existing suburban development along Island View Drive. It is staff's position that the request, if approved, would remain consistent with the residential character for this area.

2. What is the extent to which the proposed amendment may adversely affect adjacent property?

Staff's Response: A major Dominion Gas Line is located just north of the subject property being sold. The northern boundary of the tract to be added was to remain a specific distance from the existing gas pipe line, which staff understands needs to be

25-feet. Staff anticipates that this will be verified by the City Engineer's reviews of the related amended subdivision plat.

3. What is the adequacy of facilities and services intended to serve the subject property?

Staff Response: Due to existing residential development in the immediate area, all service utilities are generally available for the area.

PLANNING STAFF RECOMMENDATION

PROPOSED ACTION: "I hereby make a motion for the Planning Commission to **RECOMMEND APPROVAL** of the Zone Map Amendment for approximately 3,000 square feet of land, as agreed to by the City and the Petitioner from Public Facility Low (PF-L) to Residential Low (R-L), subject to the following requirements:

1. "Any rezone of the tract of land cannot become effective until the subject property is legally combined and recorded with Davis County, thereby absorbing it into the petitioner's lot.
2. The City Engineer shall review and determine that the needed distance from the northern boundary is at least 25 feet from the centerline of the gas pipeline farther north prior to the recordation of the amended subdivision plat.

Suggested Reasons for the Action (Findings):

- a) The Planning Commission finds that there has been a sufficient review and consideration of the criteria outlined in CZC 12.21.080.e of the Zoning Ordinance for considering a rezone.
- b) The Planning Commission finds that the rezone is substantially consistent with the goals of the General Plan and the rezone approval criteria, as described in the staff report.
- c) Therefore, the Planning Commission finds that the request for R-L Zoning designation, subject to the conditions imposed, is appropriate to allow the absorption of the tract of land into the Petitioner's original lot.



November 18, 2021

QUIT-CLAIM PARCEL

A part of the Northeast Quarter of Section 17, Township 2 North, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, Centerville City, Davis County, Utah

Beginning at the Northeast corner of Lot 53, Island View Plat "G", as recorded with the Davis County Recorder; being 854.59 feet due South; and 413.79 feet due West from the North Quarter corner of said Section 17, running thence North 70°00'00" West 87.77 feet along the Northerly line of said Lot 53 to the Easterly right-of-way line of Island View Drive and a point of curvature; thence 37.10 feet Northerly along said Easterly line and the arc of a 384.79 feet Radius curve to the left through a Delta Angle of 5°31'26", and Long Chord of North 17°14'17" East 37.08 feet (Center bears North 70°00'00" West); thence South 75°31'26" East 60.90 feet; thence South 14°00'00" East 51.75 feet to the point of beginning.

Contains: 3,000 sq.ft



CENTERVILLE CITY

COMMUNITY DEVELOPMENT DEPARTMENT

655 North 1250 West • Centerville, Utah 84014 • (801) 292-8232 • Fax: (801) 292-8251

ANDREW SCHMUCKER
553 SOUTH 850 EAST
CENTERVILLE, UT 84014
(aschmucker@att.net)

Re: City Council Decision

January 05, 2022

Dear Mr. Schmucker,

On January 04, 2022, the Centerville City Council voted to **"APPROVE"** the Subdivision Plat Amendment for Lot 53 of Island View Plat G, subject to the conditions stated at the meeting:

- 1) *The City tract of land to be added to Lot 62 [aka lot 53] shall be rezoned to Residential Low prior to the recording of the amended subdivision plat.*
- 2) *The City Engineer shall review and determine that the needed distance from the northern boundary is at least 25 feet from the centerline of the gas pipeline farther north prior to the recordation of the amended subdivision plat.*
- 3) *The City Engineer shall review for compliance with the City plat process and specifications [as noted by the Community Development Director].*
- 4) *Subject to approval of the Quit Claim [as noted by the City Attorney].*

This concludes the plat amendment application process that you have submitted regarding this matter. Please work with the City Engineer, City Attorney, and City Recorder to prepare any needed correction to the Plat or for completing the conditions of the approval. If you have questions, please contact the Community Development Department at 801-292-3232 and we will be happy to assist you.
Respectfully,

Corvin M. Snyder, AICP
Community Development Director

CENTERVILLE

Staff Backup Report

1/12/2022

Item No. 2.

Short Title: ADMINISTRATIVE DECISION - Final Subdivision Plat - The Lane, 644 WEST 400 SOUTH

Initiated By: Zach Swensen, CW Land, Applicant

Staff Representative: Planning Staff - Cory Snyder

SUBJECT

The proposal consists of 12 single-family units on a parcel along Porter Lane. The project has already received a Final Site Plan Approval to finalize the layout and design for the related "planned unit development." Subdivision.

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- ▢ 01-12-2022 PC Staff Report The Lane Final Subdivision
- ▢ The Lane Final Subdivision Plat Submittal
- ▢ Drainage Easement Agreement
- ▢ Lot Consolidation Document
- ▢ CC&R's Submitted After Report Written
- ▢ County Permit Status

**CENTERVILLE CITY
COMMUNITY DEVELOPMENT DEPARTMENT
655 North 1250 West, Centerville, Utah 84014
(801)292-8232**

**STAFF REPORT
AGENDA: ITEM 2**

PROPERTY OWNER: CW THE LANE, LLC

APPLICANT: ZACH SWENSEN
1222 LEGACY CROSSING BLVD, 6
CENTERVILLE, UT 84014
(zach at builtbycw dot com)

PROPERTY LOCATION: 644 WEST 400 SOUTH

PARCELS: 03-001-0178 & 03-001-0179

PARCEL SIZE: 2.04 ACRES

ZONING DISTRICT: RESIDENTIAL-MEDIUM

APPLICATION: FINAL SUBDIVISION PLAT AND PLANS

RECOMMENDATION: CONSIDER RECOMENDING APPROVAL TO THE
CITY COUNCIL

BACKGROUND

The proposal consists of 12 single-family units on a parcel along Porter Lane. The project has already received a Final Site Plan Approval to finalize the layout and design for the related planned unit development (PUD) subdivision. The project has also received both conceptual and preliminary subdivision approvals from the City. This report addresses the final development step consisting of Final Subdivision Plat and Plan review in preparation to record the subdivision plat with the Davis County Recorder's Office.

CONFORMITY REVIEW WITH PREVIOUS PRELIMINARY SUBDIVISION APPROVAL

On 10/13/2021 the Centerville Planning Commission voted to **APPROVE** the Preliminary Subdivision Plat for The Lane at 644 West 400 South, subject to the following conditions:

- 1. Receive approval of drainage plan from City Engineer and City Drainage Specialist.*

- [Completed]*
2. Obtain and submit a Davis County Development and Construction permit and provide any required stream channel easements or restricted build areas. *[In progress]*
 3. The applicant shall combine the two parcels prior to or concurrent with recording the final plat or prior to issuance of any development or building permit within the project, whichever occurs first. *[Completed]*
 4. A Final Subdivision Application and Plat shall be submitted in accordance with CMC 15.04 of the Subdivision Ordinance, with Licensed Architect's signature and seal. *[Completed]*
 5. The Final Subdivision Submittal shall also provide the applicable subdivision infrastructure construction plans for the subdivision in accordance with CMC 15.04.104. *[Completed]*
 6. In accordance with the City's addressing system, the final plat shall depict the address of each dwelling and be deemed acceptable by the City's Public Works Director. *[Not Complete]*
 7. Sidewalks shall extend to the driveways of Lots 5 and 8. *[Completed]*
 8. A long-term detention and storm water maintenance agreement shall be put in place. *[In Progress]*
 9. Drainage easement shall extend out to Frontage Road. *[Completed]*

FINAL SUBDIVISION PLAT REVIEW AND RECOMMENDATION BY THE PLANNING COMMISSION- CMC 15.4.050

The Planning Commission is to review the final plat to determine whether the final plat conforms with the preliminary plat, with all changes requested, and with all requirements imposed as conditions of acceptance. As part of the Planning Commission's review, the Zoning Administrator shall check the final plat for completeness and compliance with the requirements of this Title. If the submitted final plat is not acceptable, the Planning Commission shall notify the subdivider and specify the respects in which it is deficient. If the Planning Commission determines that the final plat is in conformity with all requirements and the ordinances of the City, it shall recommend approval of the final plat to the City Council

CMC 15.06.010 Planned Unit Development

1. *Design Standards.* The design of the preliminary and final plats of the project in relation to streets, blocks, lots, common open spaces, and other design factors shall be in harmony with the intent of the General Plan and design standards recommended by the Planning Commission and approved by the City Council. Streets shall be so designed as to take advantage of open space vistas and create drives with a rural or open space character.

Staff Comment: For PUD development, it requires the approval of a Final Site Plan. In this case, on October, 13, 2021, the City has approved the Final Site Plan related to this subdivision application. The submitted subdivision plat and plans are consistent with the approved site plan.

2. Provisions for Common Open Space. The subdivider of a cluster subdivision or PUD shall submit plans of landscaping and improvements for the common open space.
3. Guarantee of Common Open Space Improvements. As assurance of completion of common open space improvements.
4. Continuation of Common Open Space. An assurance of continuation of common open space used in accordance with the plans approved by the Planning Commission.
5. Maintenance of the Common Open Space. In order to ensure maintenance of the common open space and other improvements where so required.

Staff Comment: For PUD development, there is a common space element in the layout design. In this case since it consists of single-family lots rather than the allowable multi-family housing, the common space is relatively simple in scope. The proposed layout depicts three (3) types of common space. 1) Retention/detention; 2) A private road; 3) An entry feature at Porter Lane. The applicant **has NOT submitted the needed Covenants, Conditions, and Restrictions (CC&Rs)** to complete the above listed provisions, continuation, and maintenance of these areas. It is staff's position that these documents can be prepared and submitted as part of the review and approval by the City Council.

PLANNING STAFF RECOMMENDATION

[RECOMMENDED MOTION] – “I hereby make a motion for the Planning Commission to **RECOMMEND APPROVAL** of the Final Subdivision Plat and Plan for The Lane Subdivision, located at 644 West 400 South, to the City Council, as submitted by the applicant to the Commission, subject to the following conditions:

1. In accordance with the City's addressing system, the final plat shall depict the address of each dwelling and be deemed acceptable by the City's Public Works Director.
2. As per CMC 15.06.010, the developer shall prepare the related Covenants, Conditions, and Restrictions (CC&Rs) meeting the provisions, continuation, and maintenance of the common areas, which shall be reviewed and deemed acceptable by the City Attorney, as part of the City Councils' review and approval.
3. The Property Title Report submitted with the previously approved Final Site Plan, shall be updated (no less than 30 days old) and submitted to the City in preparation of the plat recording.
4. The related Infrastructure Bond and Fees, that have been prepared by the City Engineer, shall be provided, and funded in preparation of the plat recording.

[STAFF SUGGESTED REASONS FOR APPROVAL ACTION]

- a) The Planning Commission finds that the design of the final PUD plat of that the project in relation to streets, blocks, lots, common open spaces, and other design factors shall be in harmony with the intent of the General Plan and design standards approved by the City.
- b) The Planning Commission finds that on October 13, 2021, the City approved a Final Site Plan for The Lane Subdivision and determined that the proposed development meets the intent of the General Plan and the conditions imposed by that approval from the City.

- c) *Therefore, in accordance with CMC 15.04.050, the Planning Commission finds that the if the Planning Commission determines that the final plat is in conformity with all requirements and the ordinances of the City, the Commission shall recommend approval of the final plat to the City Council."*

Project Narratives/Revision

1. 6/10/21 TH – PRELIMINARY SUBMITTAL FOR FIRST REVIEW
2. 8/12/21 TH – FIRST SUBMITTAL FOR CITY REVIEW
3. 9/9/21 TH – UPDATE LAYOUT TO SLAB ON GRADE
4. 10/1/21 TH – UPDATE PER CITY COMMENTS
5. 10/8/21 TH – UPDATE PER CITY COMMENTS
6. 10/21/21 TH – UPDATE PER CITY COMMENTS

AGENCY CONTACTS:

PLANNING:

Centerville City Planning Department
2510 North Main Street
Centerville, UT 84014
Contact: Cory Snyder
Phone: (801) 295-5477

SEWER DISTRICT:

South Davis Sewer District
1800 West 1200 North
West Bountiful, UT 84087
Phone: (801) 295-5469

POWER COMPANY:

Rocky Mountain Power
Customer Service Line
Phone: (801) 546-1235

TELEPHONE COMPANY:

Century Link
Customer Service Line
Phone: (801) 665-6000

FIRE DEPARTMENT:

South Davis Metro Fire Department
343 South Main Street
Centerville, UT 84014
Phone: (801) 677-2400

GAS SERVICE:

Domination Energy
1140 West 200 South
Salt Lake City, UT 84104
Contact: Don Newman
Phone: (801) 323-5517

The Lane

Civil Construction Set

LOCATED IN THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 2 NORTH,
RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN
CENTERVILLE CITY, DAVIS COUNTY, UTAH
AUGUST, 2021



BENCHMARK:
THE BASIS OF BEARING FOR THIS SURVEY WAS
THE CORNER OF THE NORTHWEST CORNER OF THE
WITNESS CORNER TO THE NORTHWEST CORNER AND THE
NORTH RANGER CASHERS SALT LAKE BASE AND MERIDIAN AS
SHOWN ON THIS SUBDIVISION PLAT.

Vicinity Map
SCALE: 1" = 500'



THIS PROJECT IS LOCATED IN THE TUMA FLOOD ZONE X.

DEVELOPER:
C.W.

URBAN

Zach Swenson
1222 Legacy Crossing Blvd #6
Centerville Utah 84014
PH: (801) 744-5489

ENGINEERING:

HE HUNT
ENGINEERING, LLC

Hunt Engineering
Thomas Hunt, PE
6619 Willow Creek Rd
Moorpark Green, UT 80450
PH: (801) 664-4724

SURVEYOR:

Utah Land Surveying
Mike Wangemann, PLS
1470 South 600 West
Woods Cross, UT 84010
PLS: (801) 296-2256

Cover Sheet

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PROJECT INFO	
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Drawn:	1 - Main
Start Date:	6/10/2021
Sheet:	The Lane

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HUNT
ENGINEERING, LLC
HUNT ENGINEERING, LLC
6619 Willow Creek Rd.
Moorpark Green, UT 80450
C. 801.664.4724
thomas.hunt@hunt-engineering.com

LEGEND

6.0 GRADING & SOILS

- 6.0. GRADING & SOILS
- 6.1. THE CONTRACTOR SHALL PREPARE A PROGRAMME WITH THESE PLANNING SPECIFICATIONS AND THE RECOMMENDATIONS SET FORTH IN THIS SOILS REPORT, WHICH, BY REFERENCE ARE PART OF THE REQUIRED CONSTRUCTION DOCUMENTS AND IN CASE OF CONFLICT SHALL TAKE PRECEDENCE OVER ANY OTHER DOCUMENTS. THE CONTRACTOR SHALL OBTAIN THE SIGNATURE OF THE ENGINEER OF ANY SPECIFICATIONS. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF RECORD OF ANY CHANGES TO THE RECOMMENDATIONS SET FORTH IN THIS SOILS REPORT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING AND REPLACING ALL SOFT, YIELDING OR UNSUITABLE MATERIALS AND REPLACING WITH SUITABLE MATERIALS AS SPECIFIED IN THIS SOILS REPORT.
- 6.2. ALL EXCAVATED OR FILLED AREAS SHALL BE COMPACTED TO 95% OF MODIFIED PROCTOR MAXIMUM DENSITY. ALL EXCAVATED AREAS SHALL BE BACKFILLED WITH THE SAME MATERIAL AS EXCAVATED. 100% MINIMUM DENSITY. MOISTURE CONTENT AT TIME OF PLACEMENT SHALL NOT EXCEED 18% MIN. OF MAXIMUM DENSITY.
- 6.3. ABOVE OR BELOW OPTIMIZATION REPORT PREPARED BY A QUALIFIED REGISTERED SOILS ENGINEER, VERIFYING THAT ALL FILLED AREAS AND SUBGRADE AREAS WITH THE BILLING PLAN SPECIFICATIONS AND THE RECOMMENDATIONS SET FORTH IN THE SOILS REPORT.
- 6.4. SITE CLEARING SHALL INCLUDE THE LOCATING AND REMOVAL OF ALL UNDERGROUND TANKS, PIPES, ETC. ALL EXISTING VALVES, MANHOLES, ETC. SHALL BE RAISED OR LOWERED TO GRADE AS REQUIRED.
- 6.5. 7.0 UTILITIES

2% ABOVE NDR 3% B

- 6.4. 2% ABOVE AND 2% BELOW OPTIMUM. THE REPORT PREPARED BY A QUALIFIED REGISTERED SOILS ENGINEER, VERIFYING THAT ALL FILLED AREAS AND SURROUNDING AREAS WITH THE BUILDING PLAN AREA AND AREAS TO BE PAVED, HAVE BEEN COMPACTED IN ACCORDANCE WITH THESE PLANS AND SPECIFICATIONS AND THE RECOMMENDATIONS SET FORTH IN THE SOILS REPORT.
- 6.5. SITE CLEARING SHALL INCLUDE THE LOADING AND REMOVAL OF ALL UNDERGROUND TANKS, PIPES, WELDS, ETC.
- 6.6. ALL EXISTING VALVES, MANHOLES, ETC. SHALL BE RAISED OR LOWERED TO GRADE AS REQUIRED.
- 7.0. UTILITIES

SURVEYS AND LOCAL

- 7.2 SURVEYS AND LOCAL UTILITY COMPANY RECORDS. IT SHALL BE THE CONTRACTOR'S RISK TO DETERMINE THE LOCATION OF ALL UTILITIES TO AFFECT OR THROUGH BLUE STAINING TO LOCATE THEIR FACILITIES PRIOR TO STARTING CONSTRUCTION. THE CONTRACTOR TO VERIFY BY ROUTING BOTH THE VERTICAL AND HORIZONTAL LOCATION OF ALL UTILITIES TO BE AFFECTED OR THROUGH BLUE STAINING. THE CONTRACTOR SHALL BE PAID TO THE CONTRACTOR FOR DAMAGE AND REPAIR TO THESE FACILITIES CAUSED BY HIS WORK. FORCE.
- 7.3 WORK FORCE. WORK SHALL START AT LOW END OF SITE DRAINAGE FOR COORDINATION AND TO CHECK SURVEY. CONTRACTOR MUST BE PROVIDED CIVIL SITE DRAWINGS FOR COORDINATION AND TO CHECK THE EXISTING MANHOLE, EXISTING CONDUIT, BUILDING TO THE FOLLOWING CONNECTIONS. WORK SHALL BE DONE IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:
- 7.4 MANHOLES TO BE REDUCED DUE TO FAILURE TO COMPLY WITH THESE REQUIREMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES IN THE FIELD BY ROUTING A MINIMUM OF 300 FEET AHEAD. PRELINE CONSTRUCTION TO PROTECTS WITH DESIGNING PRELINE GRADE AND ALIGNMENT. EXISTING UTILITY INFORMATION SHOWN ON THE PLANS SHALL BE USED TO LOCATE ALL UTILITIES. MANHOLES OR BLUE STAINED MUST BE ASSUMED AS APPROXIMATE. REQUIRING FIELD VERIFICATION.
- 7.5 CULINARY WATER AND FIRE SERVICE LINES TO BE CONSTRUCTED IN ACCORDANCE WITH LOCAL GOVERNING MUNICIPALITY. SLOPE DISTRICT STANDARDS AND SPECIFICATIONS.
- 7.6 SANITARY SEWER MAINS AND LATERALS TO BE CONSTRUCTED IN ACCORDANCE WITH LOCAL GOVERNING MUNICIPALITY. SLOPE DISTRICT STANDARDS AND SPECIFICATIONS.
- 7.7 CULINARY WATER AND FIRE SERVICE LINES TO BE CONSTRUCTED IN ACCORDANCE WITH LOCAL GOVERNING MUNICIPALITY. SLOPE DISTRICT STANDARDS AND SPECIFICATIONS.

7.6 SANITARY SEWER MAIN

- 7.6 SANITARY SEWER MAINS AND LATERALS TO BE CONSTRUCTED IN ACCORDANCE WITH LOCAL GOVERNMENT STANDARDS.
- 7.7 STORM SEWER TO BE CONSTRUCTED IN ACCORDANCE WITH THE GOVERNING MUNICIPALITY STANDARDS AND SPECIFICATIONS.
- 7.8 CONNECTIONS TO EXISTING DRAIN AND IRRIGATION CONDUITS SHALL BE INSTALLED WITH WATER TIGHT JOINTS AND CONNECTIONS.
- 7.9 ALL STORM DRAIN PIPE PENETRATIONS INTO BOXES SHALL BE CONSTRUCTED WITH WATER TIGHT JOINTS AND CONNECTIONS. THE JOINTS SHALL BE MADE WITH AN ADHESIVE JOINT COMPOUND ON THE INSIDE.
- 7.10 CONDUITS SHALL BE CUT OFF FLUSH WITH THE INSIDE OF THE BOX.
- 7.11 NO CHANGE IN THE DESIGN OF UTILITIES AS SHOWN WILL BE MADE BY THE CONTRACTOR WITHOUT THE WRITTEN APPROVAL OF THE GOVERNING MUNICIPALITY, OR AUTHORITY HAVING JURISDICTION OVER THAT UTILITY.
- 7.12 ALL STORM DRAIN CONDUITS AND BOXES SHALL BE CLEAN AND FREE OF ROCKS, DEBRIS, AND OTHER OBSTRUCTIONS PRIOR TO FINAL INSPECTION.
- 8.0 SURVEY CONTROL
- 8.1 THE CONTRACTOR SHALL OBTAIN A REGISTERED LAND SURVEY OR PERSONS UNDER THE SUPERVISION OF A REGISTERED LAND SURVEYOR TO SET STAKES FOR THE ALIGNMENT AND GRADE OF EACH MAIN AND/OR FACILITY AS SHOWN ON THE PLANS. THE STAKES SHALL BE MARKED WITH THE HORIZONTAL LOCATION, ELEVATION AND AN INSTRUMENT LOCATION (GRADE) WITH CHAINS OR TAPES TO THE POINTS OF INTEREST.
- 8.2 THE CONTRACTOR SHALL PROTECT ALL STAKES AND MARKERS FOR VERIFICATION PURPOSES.
- 8.3 THE CONTRACTOR WILL BE RESPONSIBLE FOR THE PROTECTION OF ALL STAKES AND MARKERS.
- 8.4 THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL STAKES AND MARKERS.

8.1 CONTRACTOR MUST PREPARE

- [illegible]

10.4 THE CONTRACTOR SHALL

- 10.5 THE CONTRACTOR SHALL ADVISE EROSION CONTROL MEASURES TO ACCOMMODATE PROJECT PLANNING.
- 10.6 ALL ACCESS TO PROPERTY WILL BE FROM PUBLIC RIGHT-OF-WAYS. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE STATE AND FEDERAL REGULATIONS TO PREPARE A STORM WATER POLLUTION PREVENTION PLAN.
- 11.0 MAINTENANCE
 - 11.1 ALL BEST MANAGEMENT PRACTICES (BMP'S) SHOWN ON THIS PLAN MUST BE MAINTAINED AT ALL TIMES UNTIL PROJECT CLOSE-OUT. THIS SHALL INCLUDE MAINTAINING RUNWAYS, CHECKS ON ALL EROSION CONTROL MEASURES TO DETERMINE IF REPAIR OR SEDIMENT REMOVAL IS NECESSARY. CHECKS SHALL BE DOCUMENTED AND COPIES OF THE INSPECTIONS KEPT ON SITE.
 - 11.2 THE CONTRACTOR SHALL MAINTAIN THE EROSION CONTROL MEASURES UNTIL THE EROSION CONTROL MEASURES ARE NO LONGER REQUIRED. THE CONTRACTOR SHALL MAINTAIN THE EROSION CONTROL MEASURES UNTIL THE EROSION CONTROL MEASURES ARE NO LONGER REQUIRED.
 - 11.3 THE LEVEL OF DEPOSITION REACHES APPROXIMATELY ONE-HALF THE HEIGHT OF BARRIER.
 - 11.4 SEDIMENT TRAPPED OUTSIDE PAVED ZONES MUST BE CLEANED UP AS SOON AS PRACTICAL, BUT IN NO CASE SHALL THE DEPOSITION BE ALLOWED TO EXCEED THE HEIGHT OF THE BARRIER.
 - 11.5 SWEEPING OF THE TRACKED MATERIAL, PICKING IT UP, AND DEPOSITING IT TO A CONTAINED AREA, STABILIZED BY ONE OR MORE OF THE FOLLOWING METHODS:
 - SPRAYING DISTURBED AREAS WITH A TACKIFIER WAH HYDROSEED
 - PLACING A LIGHT-WEIGHT, TEMPORARY EROSION CONTROL BLANKET
 -

-

LEGEND

- | | | |
|-------------------------------------|--|--|
| <p>Notes & Legend
Sheet</p> | <p>The Lane
700 West Porter Lane
Centerville, UT</p> |  <p>HUNT ENGINEERING, INC.
6619 Wilson Creek Rd.
Mountain Green, UT
C. 801.664.4724
thomas.junt@hunt-engr.com</p> |
|-------------------------------------|--|--|

Revisions
SDSD Comments



PROJECT INFO:	
Copy to:	T. Skoff
From:	T. Skoff
Start Date:	6/10/2011
Name:	The Lowe

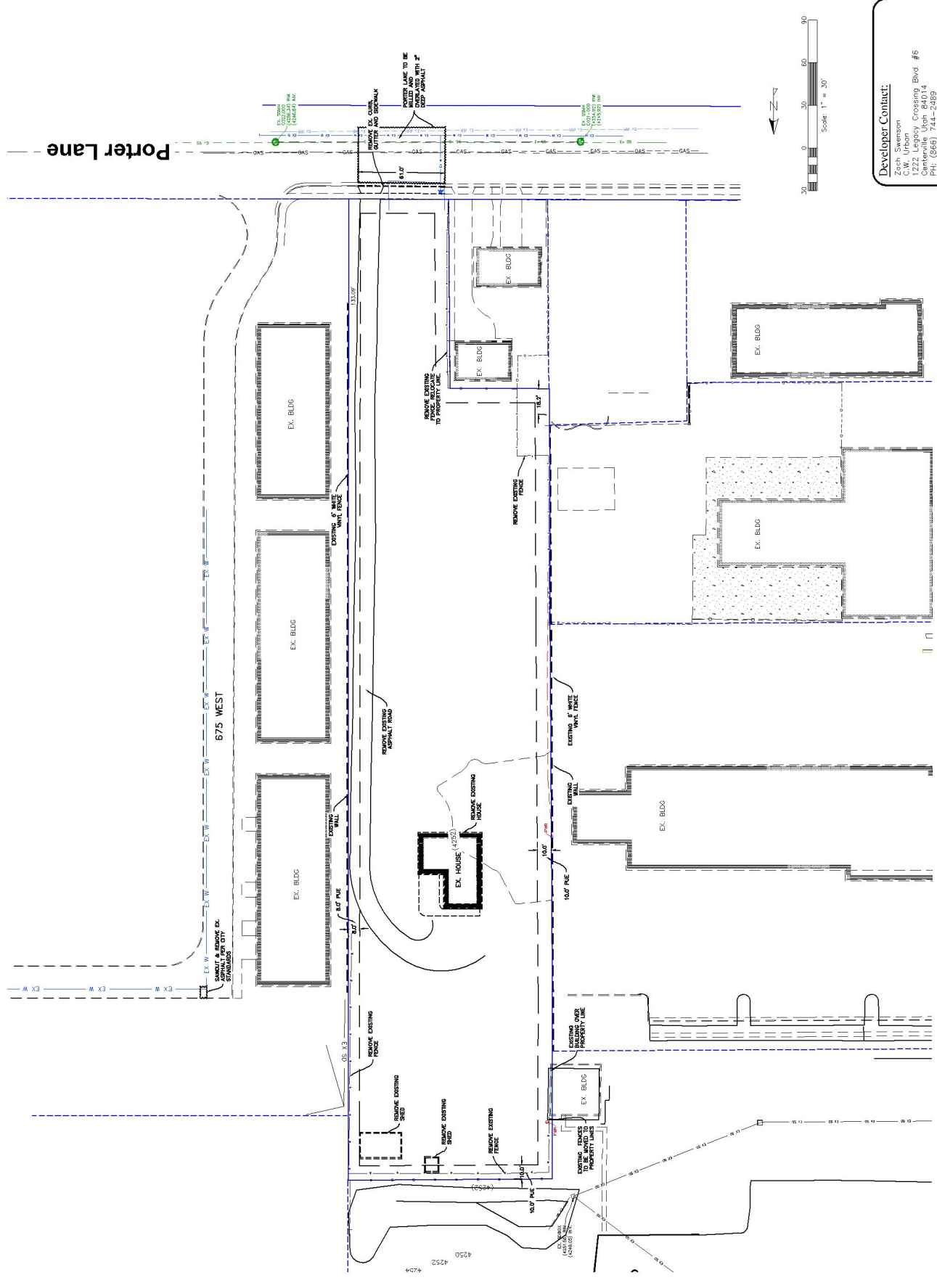
SHEET 2

		Date
	SDSD Comments	10/21
	Revisions	

Demolition Plan

The Lane
700 West Porter Lane
Centerville, UT

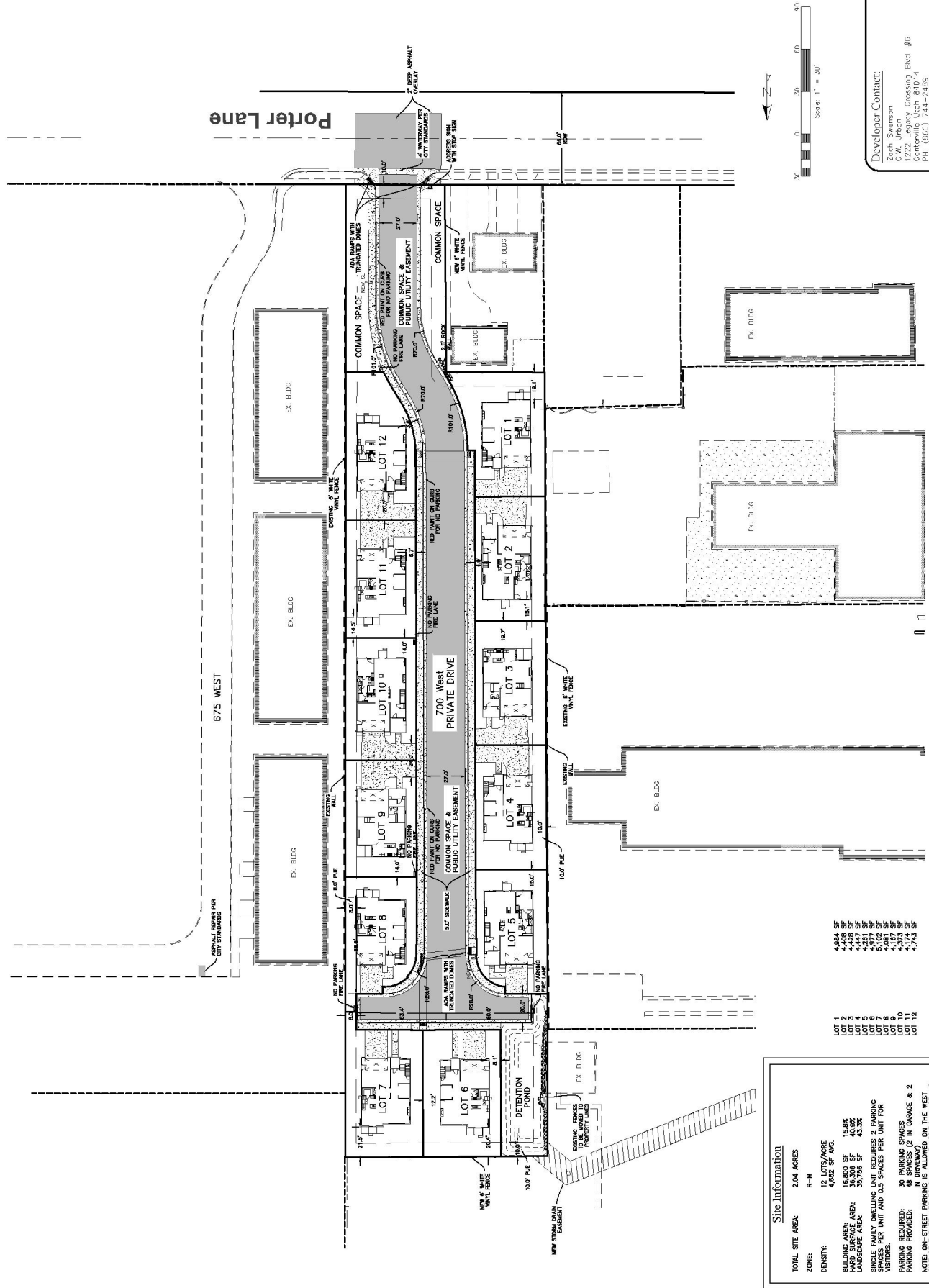
HUNT ENGINEERING, LLC
6619 Willow Creek Rd.
Mountain Green, UT 84050
C. 801.664.4724
thomas.bunt@hunt-engineering.com



Developer Contact:

Zach Swenson
C.W. Urban
1222 Legacy Crossing Blvd. #6
Centerville Utah 84014
PH: (866) 744-2489

THIS PROJECT IS LOCATED IN THE FEMA FLOOD ZONE X.

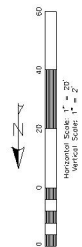
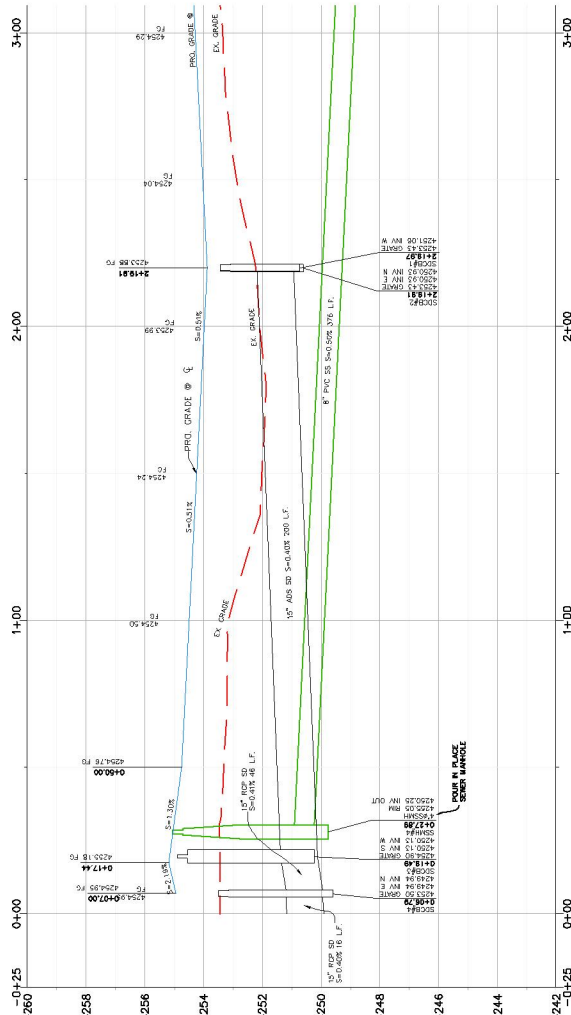


Site Information	
TOTAL SITE AREA:	2.04 ACRES
ZONE:	R-4
DENSITY:	12 UNITS/ACRE
BUILDING AREA:	16,660 SF 15.8%
HARD SURFACE AREA:	30,300 SF 40.3%
LANDSCAPE AREA:	38,756 SF 43.3%
SINGLE FAMILY DWELLING UNIT REQUIRES 2 PARKING SPACES PER UNIT AND 0.5 PARKING SPACES PER UNIT FOR VISITORS.	
PARKING REQUIRED:	20 PARKING SPACES
PARKING PROVIDED:	IN DEVELOPMENT
NOTE: ON-STREET PARKING ON THE WEST SIDE OF THE PRIVATE ROADWAY = 15 ADDITIONAL STALLS.	

Frontage Rd

SHEET	6	12	SHEETS
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Developer Contact:



Developer Contact:

Zach Swenson
C.W. Urban
1222 Legacy Crossing Blvd. #5
Centerville Utah 84014
PH: (866) 744-2489

PROJECT INFO.

Employee	T. 10/2021
Value	T. 10/2021
Month Date	6/10/2021
Name	The Lion



Revisions	Date
-----------	------

SDSD Comments	10/21
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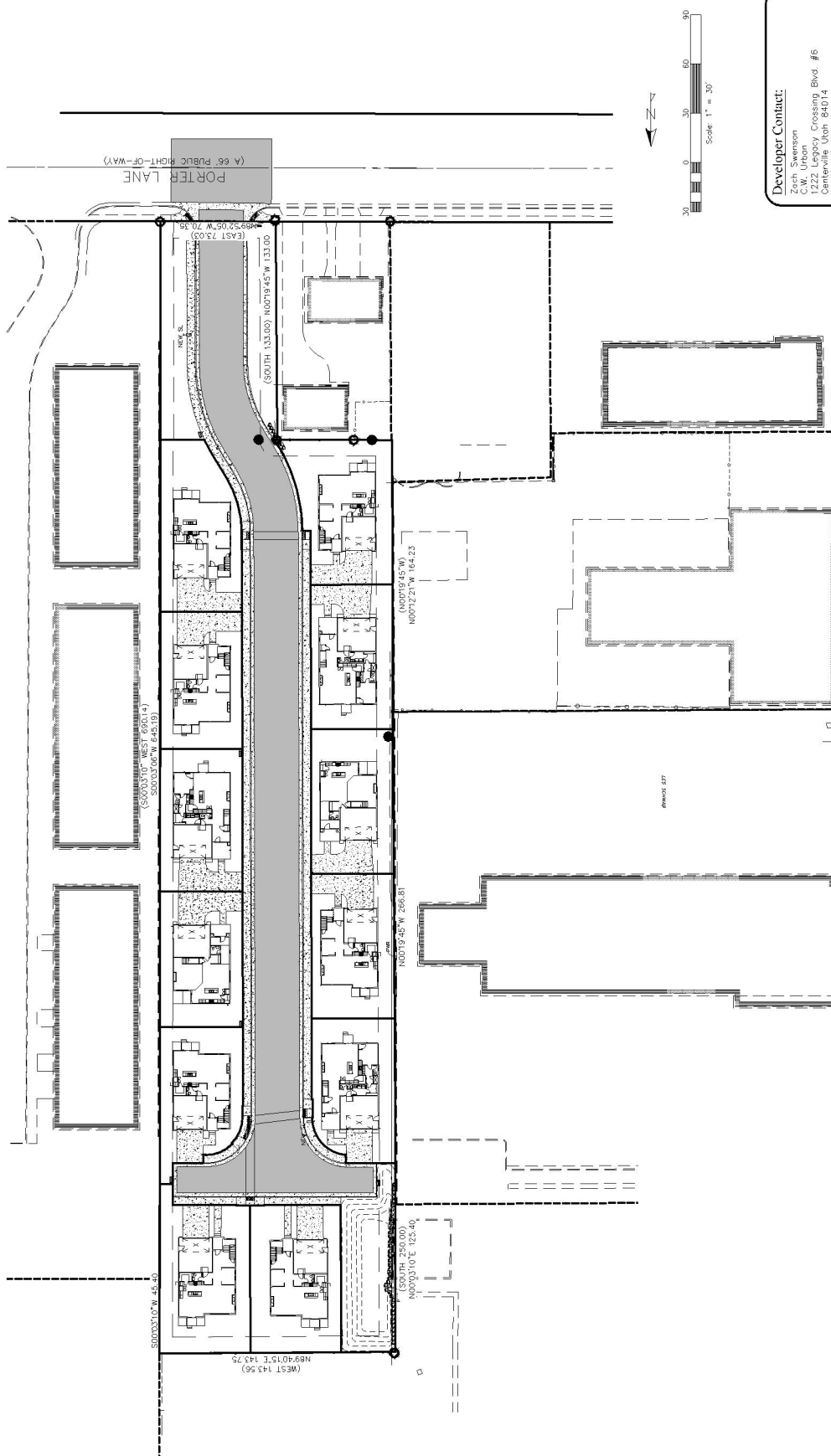
Street Light Exhibit

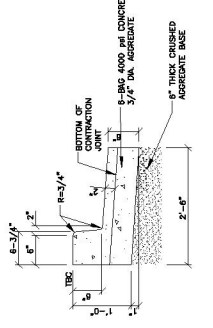
The Lane
700 West Porter Lane
Centerville, UT



HUNT
ENGINEERING, LLC

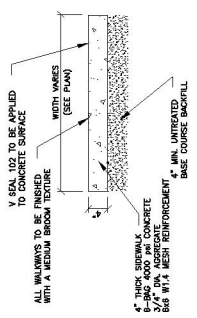
6619 Willow Creek Rd.
Mountain Green, UT 84050
C. 801.664.4724
thomas.bunt@hunting-engineering.com



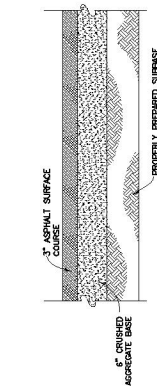


On-Site Curb & Gutter
SCALE: NONE

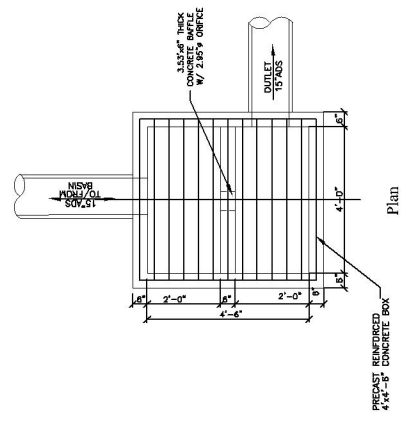
On-Site Outflow Curb & Gutter
SCALE: NONE



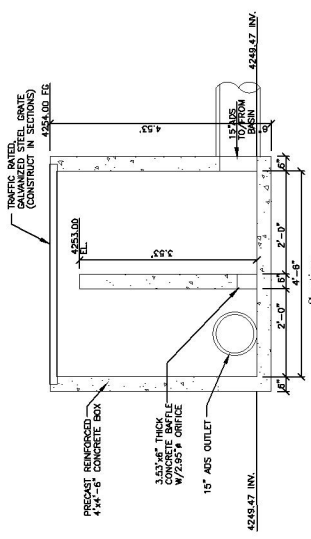
Concrete Walkway
SCALE: NONE



Typical On-Site Asphalt Paving
SCALE: NONE



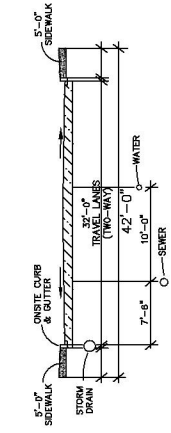
Plan



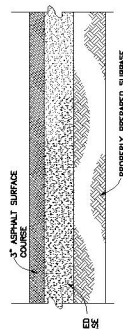
Control Box Detail
SCALE: NONE

[illegible]

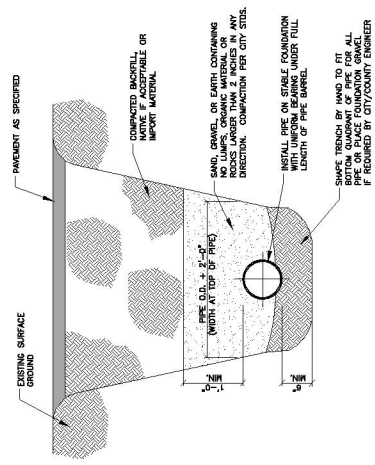
NOTICE TO CONTRACTOR:
ON ALL SECTIONS, REFER TO THE SITE SPECIFIC GEOTECHNICAL REPORT, GEOTECHNICAL REPORT PREPARED BY AGEC DATED OCTOBER 6, 2020. THIS REPORT IS TO GOVERN & CONTROL.



42'-0" PRIVATE ROADWAY SECTION



Private Road Section
SCALE: NONE



Typical On-Site Pipe Bed Section
SCALE: NONE

HE HUNT
ENGINEERING, LLC
Storm Runoff Calculations
The Lane
8/24/2021 TMI

The following runoff calculations are based on the Rainfall - Intensity - Duration Frequency Curve for the Centerville, UT area using the Rational Method, using a 60-year storm for Detention. Storm water runoff has been calculated for a fully developed site with a discharge rate of 0.2 cfs/acre. This calculation is done per Centerville City Standards, Section 15.05.050 and 15.05.060.

The calculations are as follows:

[illegible]

$\frac{C_{\text{max}}}{C_{\text{min}}}$ $2g =$ $H =$ $Cd =$	64.4 3.00 0.62	for circular openings
--	----------------------	-----------------------

R =	SORT(ceil(0.7*(64.4**n^0.5)))
R =	0.12 feet
	1.47 inches
D =	2.95 inches
A =	6.82 inches^2
	0.0474 ft^2

	4,992	cubic feet
The required storage volume is	5,321	cubic feet
The provided storage volume is		

Office Diameter Size is 2.95 inches

The storm water from The Lane's subdivision will discharge at a reduce rate of 0.2 cfs/acre and into the existing outlet pipe for the Truck World Detention Basin. The additional storm water being added to the system is 0.41 cfs.

Contribution to existing pipe is:	0.41	cfs
-----------------------------------	------	-----

Existing Pipe Sizing Description	Pipe Size	Slope	Cap. (cfs)	Req. Cap.
15" ADS	15	0.37%	3.97	

Based on the storm drain analysis performed by Hansen & Associates, dated July 19, 2021, the watershed area that is flowing into the existing detention basin is 1.40 acres. They analyzed the watershed area to have a runoff coefficient of 0.90 and a 1-hour rainfall intensity of 1.07 inches. Using the Rational Method, the existing flow rates into the pipe is:

Existing storm water flow rate from Truck World:
 The 1 inch stormwater addition:
 C = 0.9
 I = 1.07
 A = 1.4 acres
 1.35 cfs
 0.41 cfs

Combined storm water flow is: 1.76 cfs
Existing Pipe Capacity is: 3.97 cfs

HUNT ENGINEERING, LLC
HUNT ENGINEERING, LLC
6619 Willow Creek Rd.
Mountain Green, UT 84050
C. 801.664.1724
thomas.bunt@hunt-engineering.com

The Lane
700 West Porter Lane
Centerville, UT

Civil Details

	SDSD Comments	10/21
	Revisions	Date

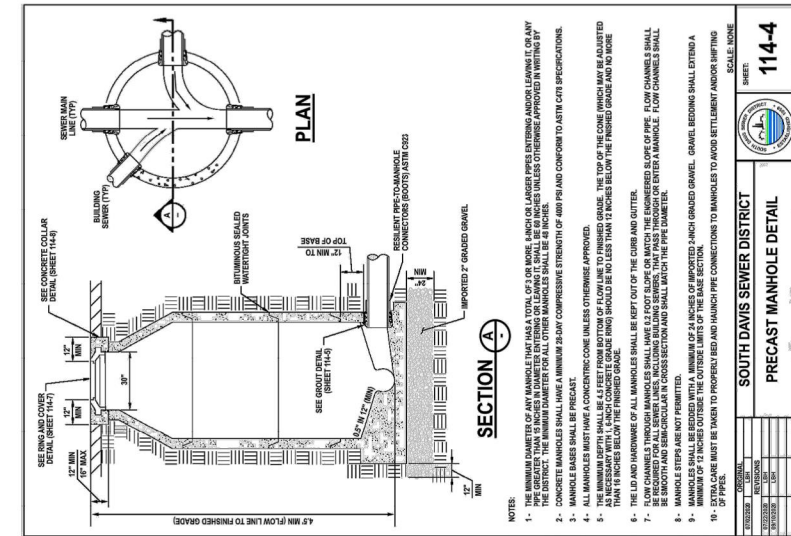


PROJECT INFO	
Engineer	T. MARR
Draftsman	T. MARR
Start Date	6/10/2023
Notes	The Love

SHEET	9	12	SHEETS
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Developer Contact:

Zach Swenson
C.W. Urban
1222 Legacy Crossing Blvd. #5
Centerville Utah 84014
PH: (866) 744-2489



8- MANHOLE STEPS ARE NOT FURNISHED.

9- MANHOLE SHALL BE RECESSED WITH A MINIMUM OF 24 INCHES OF IMPORTED 2-INCH GRADED GRAVEL. GRAVEL RECESSED SHALL EXTEND A MINIMUM OF 24 INCHES BEYOND THE MANHOLE.

10- STEEL CASK MUST BE TAKEN TO PROPERLY FIT AND MAINTAIN PIPE CONNECTIONS TO MANHOLES TO AVOID SETTLEMENT AND/OR SHIFTING OF STEEL CASK.

SOUTH DAVIS SEWER DISTRICT	
PRECAST MANHOLE DETAIL	
DATE: 10/15/18 BY: [Signature] SCALE: NONE 114-4	

Developer Contact:
Zach Swenson
C.W. Urban
1222 Legacy Crossing Blvd. #5
Centerville Utah 84014
PH: (866) 744-2489



The Lane

STORM WATER POLLUTION PREVENTION PLAN

LOCATED IN THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 2 NORTH,
RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN
CENTERVILLE CITY, DAVIS COUNTY, UTAH
AUGUST, 2021

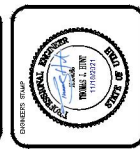


HUNT
ENGINEERING, LLC
6619 Willow Creek Rd.
Mountain Green, UT 84050
C. 801.664.4724
thomas.bunthunt@engineering.com

The Lane
700 West Porter Lane
Centerville, UT

SWPPP Exhibit

Revisions	Date
SSSD Comments	10/21

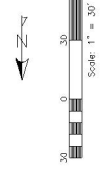
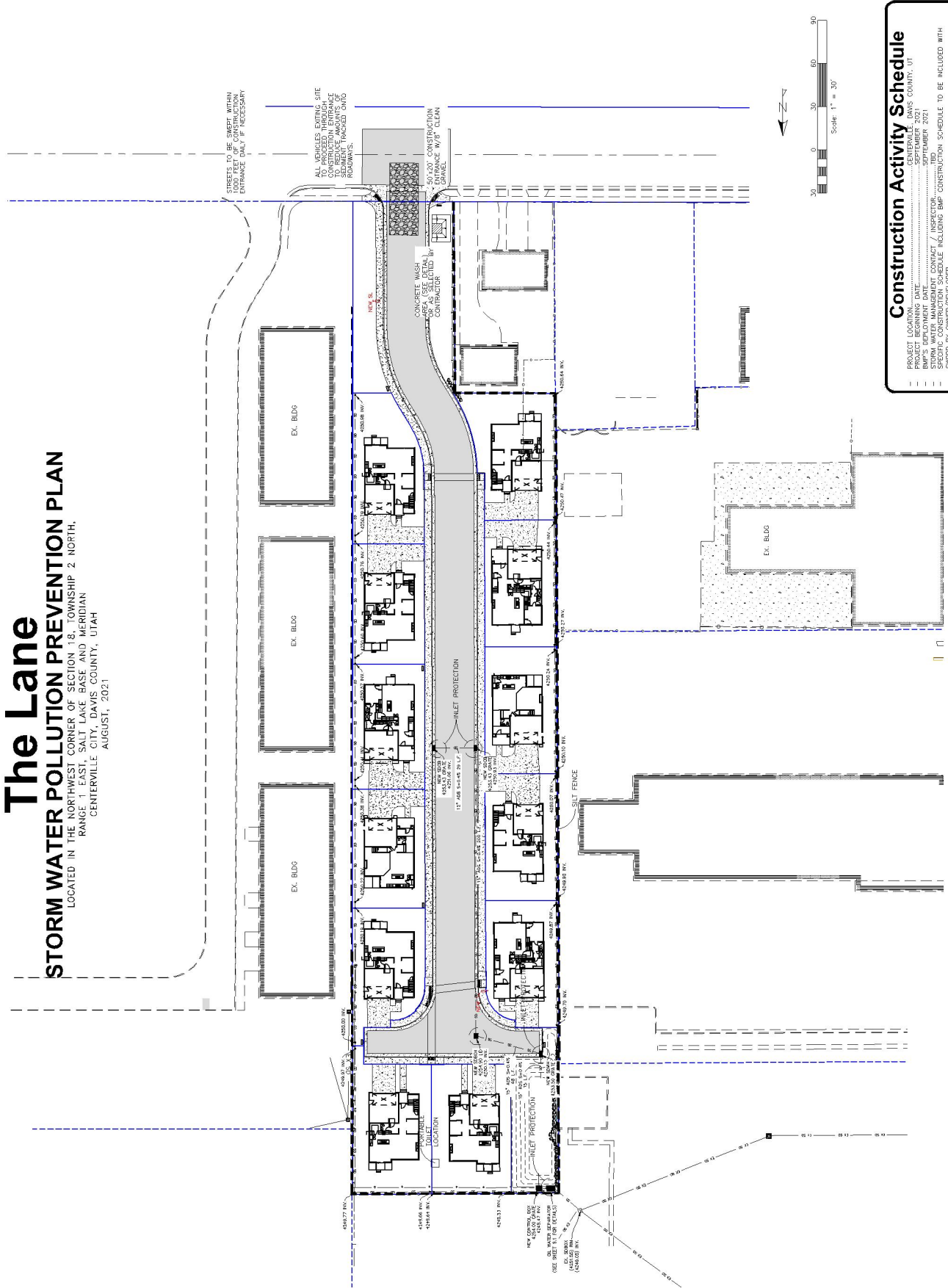


PROJECT INFO	
Project:	1. MGR
Drawn:	1. MGR
Start Date:	6/20/2021
Sheet:	No. 10 of 12

SHEET	10	12	SHEETS
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Construction Activity Schedule

PROJECT LOCATION: CENTERVILLE, DAVIS COUNTY, UT
PROJECT START DATE: SEPTEMBER 2021
BMP'S BEGINNING DATE: SEPTEMBER 2021
STORM WATER MANAGEMENT CONTACT / INSPECTOR: TBD
SWPPP CONSTRUCTION SCHEDULE TO BE INCLUDED WITH SWPPP 61. SWPPP/61000000



STREETS TO BE SWEEPED WITHIN
FOOTPRINT OF CONSTRUCTION
ENTRANCE ONLY IF NECESSARY

ALL FLOWERS EXIST. SITE
TO PROCEED THROUGH
CONSTRUCTION ENTRANCE
SEEDMENT TRACKED ONTO
ROADWAYS.

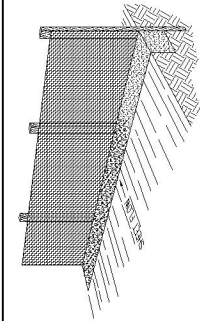
CONCRETE WASH
BASIN USE LOTUS
CONTRACTOR

50/200 CONSTRUCTION
ENTRANCE 8/8" CLEAN
WASH

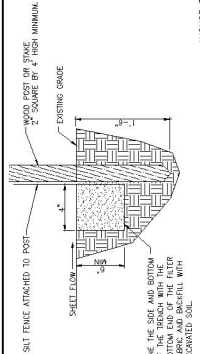
Notes:

- [illegible]

Perspective View



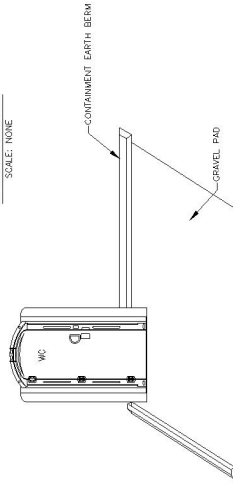
Section



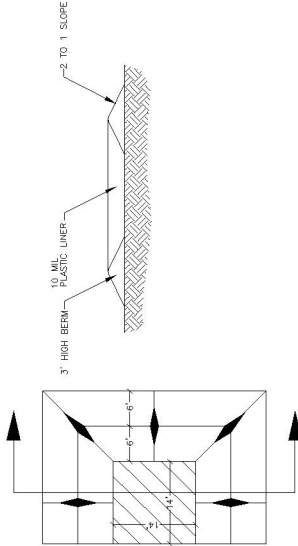
Silt Fence Notes:

1. WHERE POSSIBLE, LAYOUT THE SILT FENCE 5' TO 10' BEYOND THE TOE OF THE SLOPE.
2. ALIGN THE FENCE ALONG THE CONTOUR AS CLOSE AS POSSIBLE.
3. WHEN EXCAVATING THE TRENCH, USE MACHINERY THAT WILL PRODUCE NO MORE THAN THE DESIRED DIMENSIONS. AVOID USING JOINTS ALONG THE FENCE AS MUCH AS POSSIBLE. IF A JOINT IS NECESSARY, SPlice THE SILT FENCE AT A POST WITH A 6" OVERLAP AND SECURELY PASTEN BOTH ENDS TO THE POST.
4. MAINTAIN A PROPERLY FUNCTIONING SILT FENCE THROUGHOUT THE DURATION OF THE PROJECT OR UNTIL DISTURBED AREAS HAVE BEEN VEGETATED.
5. REMOVE SEDIMENT AS IT ACCUMULATES AND PLACE IT IN A STABLE AREA.
6. WHEN PLACING FENCE ON SLOPES STEEPER THAN 2:1, USE SWIFFY ROPES.

Silt Fence Detail



Portable Toilet

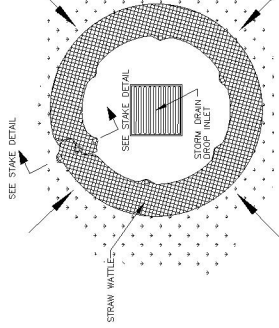


Concrete Washout Area

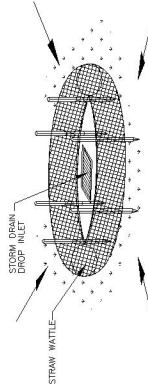


Cross Section 50' x 20' Construction Entrance

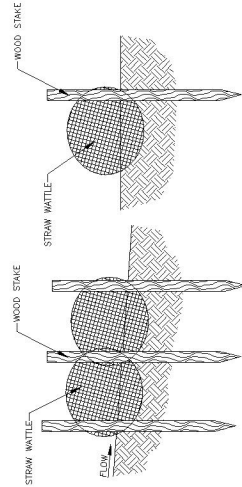
Inlet Box Protection



Plan View:



Drop Inlet Protection



				10/21	Date
				SDSD Comments	Revisions



PROJECT INFO:	
Topic:	T. HART
Writer:	T. HART
Start Date:	6/10/2023
Name:	The Love

SHEET	11	12	SHEETS
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HUNT

ENGINEERING, LLC

6619 Willow Creek Rd.

Mountain Green, UT 84050

C. 801.664.4724

thomas.bunthunt@engineering.com

The Lane
700 West Porter Lane
Centerville, UT

Landscape
Plan

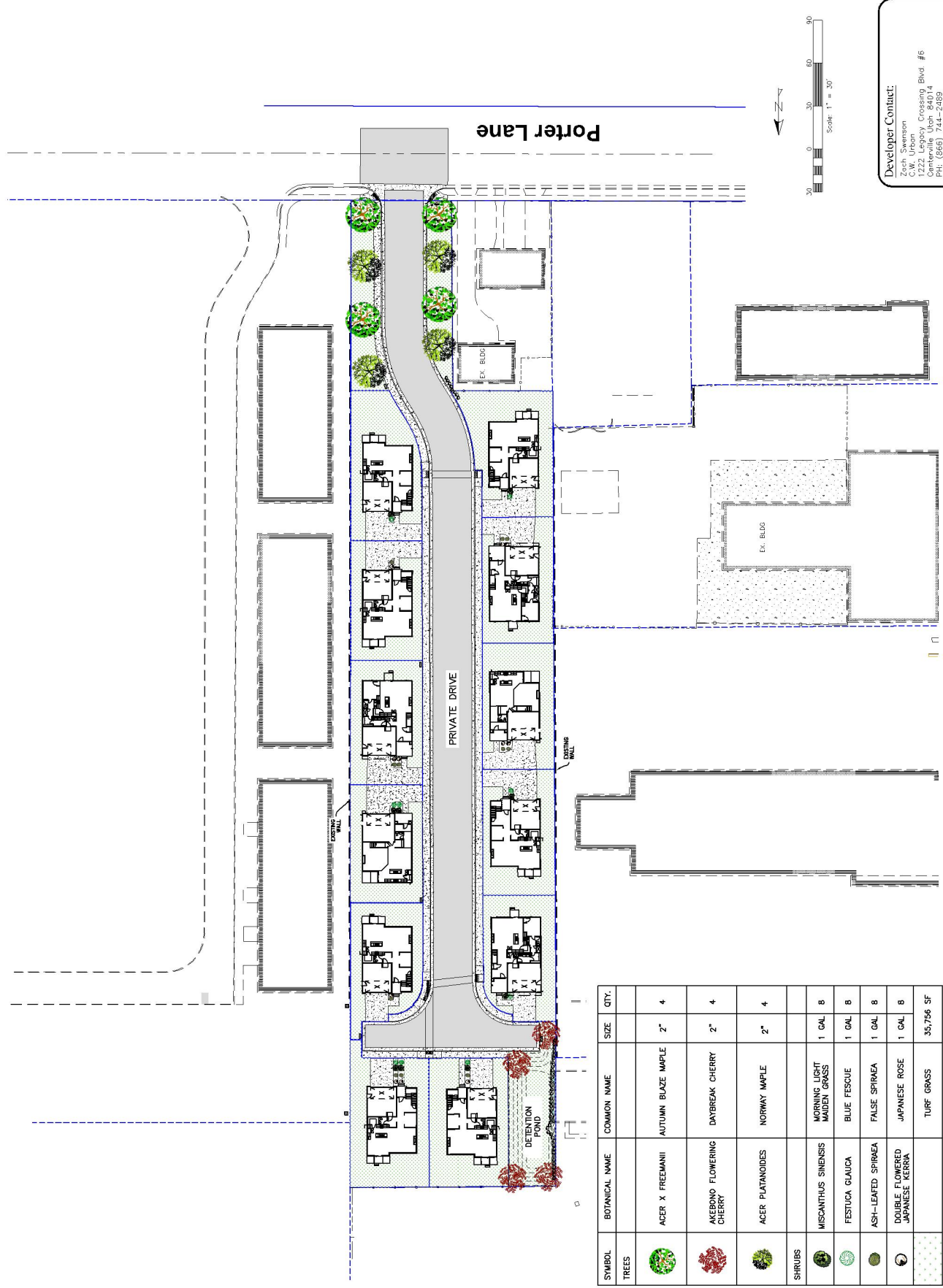
Revisions	Date
SSSD Comments	10/21



PROJECT INFO	
Project	1 - Lot
Parcel	1 - Lot
Start Date	6/20/2021
Owner	See Notes

SHEET	12	12	SHEETS
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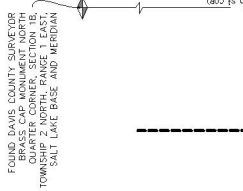
Developer Contact:
Zach Swenson
City of Upton - Crossing Blvd #6
1225 S. Crossings Blvd
Centerville Utah 84014
PH: (866) 744-2489



SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.
TREES				
	ACER X FREEMANII	AUTUMN BLAZE MAPLE	2"	4
	AKERSBOM FLOWERING CHERRY	DAYBREAK CHERRY	2"	4
	ACER PLATANODES	NORWAY MAPLE	2"	4
SHRUBS				
	MISCANTHUS SINENSIS	MORNING LIGHT MAIDEN GRASS	1 GAL	8
	FESTUCA GLAUCA	BLUE FESCUE	1 GAL	8
	ASH-LEAVED SPIRAEA	FALSE SPIRAEA	1 GAL	8
	DOUBLE FLOWERED JAPANESE KERRIA	JAPANESE ROSE	1 GAL	8
		TURF GRASS		35,756 SF

Surveyors Certificate

LOCATED IN THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 2 NORTH,
RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN
CENTERVILLE CITY, DAVIS COUNTY, UTAH
AUGUST, 2021



LEGEND		ADDRESSES	
PROPERTY LINE	—————	LOT 1:	
ROAD CENTERLINE	—————	LOT 2:	
TIE TO MONUMENT	-----	LOT 3:	
EASEMENT LINE	-----	LOT 4:	
SECTION CORNERS	-----	LOT 5:	
RECORD AREA	⬇	LOT 6:	
COMMON AREA & EASEMENTS	()	LOT 7:	
		LOT 8:	
		LOT 9:	
		LOT 10:	
		LOT 11:	
		LOT 12:	

NOTE:
1. ALL COMMON AREA SHALL BE A PUBLIC UTILITY EASEMENT.
2. THE LOWEST FINISHED FLOOR ELEVATION SHALL BE 4252.00

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	1.65	27.50	3.43	S89°13' 58"E	1.85
C2	33.59	22.50	85.53	S42°54' 20"E	30.55
C3	17.15	22.50	44.65	N22°11' 03"E	16.72
C4	35.36	64.50	31.41	N15°50' 47"W	34.92
C5	10.98	106.50	5.91	N29°35' 46"W	10.98
C6	55.14	101.50	31.13	S15°59' 15"E	54.46
C7	17.81	22.50	43.51	N67°19' 01"E	17.44

SHALL BE 4252.00.

BASIS OF BEARINGS

THE BASIS OF BEARING FOR THIS SURVEY WAS ESTABLISHED USING FOUND MONUMENTS LOCATED AT THE WITNESS CORNER TO THE NORTHWEST CORNER AND THE NORTH QUARTER CORNER TO SECTION 16, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AS SHOWN ON THIS SUBDIVISION PLAT.

THIS PROJECT IS LOCATED IN THE FEMA FLOOD ZONE X.

THE LANE SUBDIVISION

THIS SHALL WARRANT AND DEFEND AND SAVE THE CITY HARMLESS AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCES ON THE DEDICATED STREETS WHICH WILL INTERFERE WITH THE CITY'S USE, MAINTENANCE AND OPERATION OF STREETS.

THE LANE HOME OWNERS ASSOCIATION WILL MAINTAIN OWNERSHIP OF ALL OPEN SPACES INCLUDING THE DETENTION BASIN

Corporate Acknowledgement:

STATE OF UTAH)
COUNTY OF DAVIS

ON THIS _____ DAY OF _____, IN THE YEAR 20____, PERSONALLY
APPEARED BEFORE ME _____, WHOSE DENTISTRY IS PERSONALLY
RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF DAVIS, UTAH,
AND WHO BY ME DECLARED AND AFFIRMED, DID SAY THAT HE IS THE
OWNER OF _____ OF _____, AND THAT SAID _____
DOCUMENT WAS SIGNED BY HIM/HER IN BEHALF OF SAID "CORPORATION BY
LIMITED LIABILITY COMPANY" OF ITS BYLAWS, OF SAID "CORPORATION",
AND SAID _____ ACKNOWLEDGED TO ME THAT SAID
"CORPORATION" EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL

(NOTARY SIGNATURE)

NOTES:

- 1) COMMON SPACE AREA IS OWNED AND MAINTAINED BY THE LANE'S HOME OWNERS ASSOCIATION (HOA). THE HOA CANNOT MODIFY THE DETENTION BASIN OR THE LANE'S DRIVEWAY OR DRIVEWAY CURB OR LANDSCAPING WITHIN THE COMMON SPACE AREA.
- 2) THE HOA IS RESPONSIBLE FOR THE MAINTENANCE OF THE LANDSCAPING WITHIN THE COMMON SPACE AREA.
- 3) THE COMMON SPACE AREA IS PERPETUALLY COMMON AND THERE SHALL BE NO FUTURE DEVELOPMENTS IN THIS AREA.
- 4) THE REMOVAL OF ANY TREES OR PLANTS ON PARCEL A WILL BE THE RESPONSIBILITY OF THE HOA.
- 5) THE COMMON SPACE AREA IS PERMANENTLY RESTRICTED FROM FUTURE DEVELOPMENT AND SHOWN ON THE SUBDIVISION PLAN AS PERPETUALLY COMMON.

Davis County Recorder

ENTRY NO. _____ FEE PAID _____
FILED FOR RECORDER AND RECORDED THIS _____ DAY OF _____
20 _____ AT _____ IN BOOK _____ PAGE _____

DAVIS COUNTY RECORDER

1000

City Council Acceptance

APPROVED THIS _____ DAY OF _____
BY THE CENTREVILLE CITY PLANNING AND ZONING COMMISSION

City Attorney's Approval

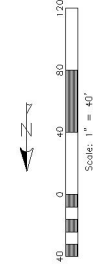
City Engineer's Approval

Rocky Mountain Power

Dominion Energy

APPROVED THIS _____ DAY OF _____ A.D., 20____
BY DOMINION ENERGY.

Rocky Mountain

ENERGY MOUNTAIN POWER

BASEMENT DEPTH TABLE		
LOT	TOP OF FINISH 3RD FLOOR ELEVATION	TOP OF FINISH 3RD FLOOR DEPTH FROM TOP OF CURB (FEET)
1	4262.00	3.0'
2	4262.00	3.0'
3	4262.00	2.75'
4	4262.00	2.75'
5	4262.00	3.0'
6	4262.35	2.75'
7	4262.35	3.0'
8	4262.00	3.25'
9	4262.00	2.75'
10	4262.00	2.75'
11	4262.00	3.0'
12	4262.00	3.4'

E 3433079 B 7880 P 717-725
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/04/2021 01:14 PM
FEE \$40.00 Pgs: 9
DEP RTT REC'D FOR C W URBAN

AFTER RECORDING, RETURN TO:

CW URBAN, LLC
Attn: Urban Development
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

Parcel No.: A portion of 02-026-0071

**TERMINATION OF EXISTING EASEMENT AND GRANT OF
ACCESS AND UTILITY EASEMENT AGREEMENT**

THIS TERMINATION OF EXISTING EASEMENT AND GRANT OF ACCESS AND UTILITY EASEMENT AGREEMENT (the "**Agreement**") is made and entered into as of the date set forth on the signature page by and between **Hadley Properties, LLC**, a Utah limited liability company, and assigns, successors, or heirs ("**Grantor**") and **CW Urban, LLC**, a Utah limited liability company, and assigns, successors, or heirs ("**Grantee**") (the Parties may be referred to herein collective as the "**Parties**" or each individually as a "**Party**").

RECITALS

WHEREAS, Grantor is the fee simple owner of that certain parcel real property located in Centerville City ("**City**"), Davis County ("**County**"), State of Utah more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("**Grantor Property**");

WHEREAS, Grantee is the fee simple owner of those certain parcels real property located adjacent to the Grantor Property and in the City, and more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference ("**Grantee Property**");

WHEREAS, Grantor and Grantee initially entered into that certain Access and Utility Easement Agreement recorded in the office of the Davis County Recorder on September 20, 2021, as Entry No. 3420190, in Book 7847, on Pages 2838-2845 (the "**Initial Utility Easement**");

WHEREAS, the Initial Utility Easement contained an incorrect description of the easement area and did not clearly establish that Grantor granted to Grantee an easement through the existing utility infrastructure on the Grantor Property to connect to the City's utility infrastructure in the Frontage Road;

WHEREAS, Grantee desires to construct utility infrastructure from the Grantee Property to the existing detention basin located on the Grantor Property (the "**Grantee Utility Improvement**");

WHEREAS, Grantee desires to connect the Grantee Improvement to Grantor's existing utility infrastructure located on the Grantor Property to discharge storm drain runoff through the Grantor Property to the City's infrastructure in the Frontage Road located West and adjacent to the Grantor Property (the "**Utility Improvement Connection**"); and

WHEREAS, Grantor desires to grant to Grantee a non-exclusive access and utility easement in perpetuity across a portion of the Grantor Property to enable Grantee to (i) construct the Grantee Utility Improvement, and (ii) connect to and utilize the Utility Improvement Connection for the discharge of storm

drain runoff from the Grantee Property through the Grantor Property to the existing City infrastructure in the Frontage Road.

NOW, THEREFORE, for and in consideration of the terms and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Termination of Initial Easement. Upon mutual execution and recordation of this Agreement in the office of the Davis County Recorder, the Initial Easement shall be deemed automatically terminated, abandoned, vacated, and have no further force nor effect without the need of either party thereto to execute and record any additional instruments.

2. Grant and Purpose of Easement. Grantor hereby grants and conveys a non-exclusive and perpetual access and utility easement (the "**Easement**") upon, over, under, through, and across the Grantor Property (the "**Easement Area**") for the construction of the Grantee Utility Improvement and the use of Utility Improvement Connection for the discharge of storm drain runoff from the Grantee Property through the Grantor Property to the existing City infrastructure in the Frontage Road. Grantor additionally grants and conveys to Grantee, or Grantee's successors, heirs, assigns, agents, contractors, subcontractors, or any other similarly situated entity or person necessary for the construction and connection of the Grantee Utility Improvement and the Utility Improvement Connection (collectively, the "**Grantee Parties**"), the right of vehicular and pedestrian ingress and egress upon the Grantor Property for the purpose of the location, construction, maintenance, use, installation, removal, and repair of the Utility Improvement. The Easement Area is further described and graphically depicted on **Exhibit C** attached hereto and incorporated herein by this reference.

3. Shared, Non-exclusive Use. Exclusive use of the Easement Area is not hereby granted by the Grantor. Instead, Grantor expressly reserves to itself, and any and all subsequent owners, users, licensees, invitees, guests, and other related parties, the full and unrestricted right to use the Easement Area, subject to the permitted use granted to Grantee under Section 2 above.

4. Easement Area; Maintenance and Repairs. As soon as commercially reasonably following completion of the Grantee Utility Improvement, Grantee and the Grantee Parties, shall restore the Easement Area to the same or better condition as existed prior to installation of the Grantee Improvement. Upon completion and connection of the Grantee Improvement to the Utility Improvement Connection, Grantee shall be obligated to perform all maintenance and repair activities related to the Grantee Improvement and otherwise confirm that said Grantee Improvement remains in a good condition and in compliance with applicable City, County, and other related regulations.

5. Default. A defaulting party (the "**Defaulting Party**") shall have ten (10) days following receipt of written notice from the other Party (the "**Nonbreaching Party**"), which notice shall specifically describe the default(s) to cure the same (the "**Cure Period**"); provided, however, if such default cannot be cured prior to expiration of the Cure Period, then so long as the Defaulting Party commences such cure within the Cure Period and thereafter diligently pursues the same to completion, the Cure Period shall automatically be extended for a reasonable period of time (not to exceed sixty (60) days after the original notice) to permit the Defaulting Party to cure the same. Failure to cure any described default(s) shall entitle the Nonbreaching Party to any remedies available at law or in equity including, but not limited to, specific performance, reasonable expenses, attorney fees and costs.

6. Waiver. The failure of a Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies

that such Party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other Party.

7. No Joint Venture; Merger. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the Parties. This Agreement contains the entire agreement and understanding between the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

8. Amendment and Termination. Except for a permitted assignment as set forth in Section 10 below, this Agreement may not be amended or modified except with the written consent of the Parties duly recorded in the office of the Davis County Recorder.

9. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. This Agreement shall be recorded in the records of the Davis County Recorder.

10. Successors and Assigns; Run with the Land. All of the provisions in this Agreement, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the Parties hereto. Grantee shall have the unilateral right to assign its rights, duties, and obligations to a party under common control and ownership with Grantee. All obligations of each Party under this Agreement, if more than one person or entity is the successor or assign of such Party, shall be jointly and severally binding on each such person or entity. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running in perpetuity with the Grantor and Grantee's respective properties and shall survive any death or termination of any Party's existence. The easements, agreements, duties, responsibilities, and covenants herein contained shall be easements and covenants running with the land.

11. No Third-Party Beneficiaries. Nothing in this Agreement is intended to create an enforceable right, claim, or cause of any by any third-party against any Party to this Agreement.

12. Authority of Signatory. Each person executing this Agreement certifies that he or she is duly authorized to execute this Agreement on behalf of the Party for which he or she is signing, and that the person has the authority to bind said Party to the terms of this Agreement.

13. Independent Provisions. If any provision herein is held invalid or unenforceable by a court of competent jurisdiction, such a finding shall not affect the validity of the remainder of the Agreement, the Parties hereto hereby stipulate that all provisions contained herein are severable and independent.

14. Counterparts. This Agreement and any originals of exhibits referred to herein may be executed in two (2) or more counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgement) shall be an original but all of which shall constitute one and the same instrument.

15. Miscellaneous.

a. The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Agreement;

b. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neutral, and vice versa;

c. The recital paragraphs set forth above are expressly incorporated in this Agreement by this reference;

d. This Agreement represents the wording selected by the Parties to define the Agreement and no rule of strict construction shall apply against either Party. Each Party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Agreement. The words "hereof," "hereto," "herein," and "hereunder" are words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

e. References herein to Paragraphs and Exhibits shall be construed as references to Paragraphs and Exhibits of this Agreement, and any amendments hereto, unless the context otherwise requires.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantor has executed this Agreement as of the 3rd day of November, 2021.

GRANTOR

Hadley Properties, LLC,
a Utah limited liability company

By: _____

Name: SHARIF R. HADLEY

Title: Mgr Member ✓

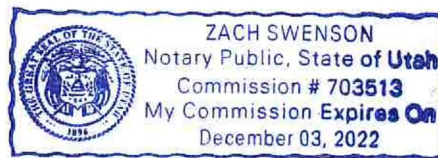
STATE OF UTAH)

COUNTY OF Davis)

On this 3rd day of November, 2021, personally appeared before me Sharif Hadley, to me known to be the Managing Member of Hadley Properties, LLC, a Utah limited liability company, the limited liability company that executed the within the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he / she was duly authorized to execute said instrument on behalf of said limited liability company.

Witness my hand and official seal.

Zach Swenson
(notary signature)



(seal)

EXHIBIT A
Grantor Property

BEG AT A PT N 89°40'15" E ALG THE SEC LINE 687.285 FT & N 0°03'10" E 35.40 FT FR THE NW COR OF SEC 18-T2NR1E, SLM; & RUN TH S 89°40'15" W 342.20 FT TO THE E'LY LINE OF THE UTAH STATE HWY DEPARTMENT FRONTAGE RD; TH N 2°51'00" E ALG SD E LINE 391.68 FT; TH S 89°06'27" E 466.89 FT; TH S 0°03'10" W 291.11 FT; TH S 89°40'15" W 143.77 FT; TH S 0°03'10" W 90.0 FT TO THE POB.

CONT. 3.937 ACRE

Parcel No. 02-026-0071 (for reference purposes only)

EXHIBIT B
Grantee Property

03-001-
BEG ON N LINE OF A STR 564.68 FT, M/L, S & 757.285 FT E FR THE NW COR OF SEC 18-T2N-R1E, SLM; TH E ALG N LINE STR 58 FT, M/L, TO E LINE OF PPTY CONV IN 746-632; TH N 441.98 FT, TH W 128 FT; TH S 308.68 FT, TH E 70 FT, TH S 133 FT TO THE POB. CONT. 1.085 ACRES. ALSO, BEG ON THE N LINE OF PORTERS LANE AT A PT N 89°40' E ALG THE SEC LINE 831.05 FT & S 0°03'10" W 564.74 FT FR THE NW COR OF SEC 18-T2N-R1E, SLM; & RUN TH ALG BNDRY LINE AGMT 1833-298 N 0°03'10" E 690.14 FT TO THE N LINE OF GRANTORS LAND; TH W 143.56 FT, TH S 148.00 FT; TH E 114.49 FT; TH S 543.98 FT TO THE N LINE OF PORTERS LANE; TH E 15.03 FT TO THE POB. CONT 0.70 ACRES. ALSO, BEG AT A PT WH IS N 89°40'15" E 831.05 FT ALG THE SEC LINE & S 0°03'10" W 38.36 FT ALG A BNDRY LINE AGMT LINE & S 89°40'15" W 29.02 FT FR THE NW COR OF SEC 18-T2N-R1W (S/B E), SLM; & RUN TH S 0°03'10" W 102.00 FT; TH S 89°40'15" W 113.81 FT TO THE GRANTOR'S W PPTY LINE; TH N 0°19'45" W 102.00 FT ALG SD LINE; TH N 89°40'15" E 114.49 FT TO THE POB. TOGETHER WITH A DESC ACCESS EASEMENT. CONT 0.27 ACRES. TOTAL ACREAGE 2.055 ACRES. (NOTE: THIS REMAINING LEGAL WAS WRITTEN IN THE DAVIS COUNTY RECORDER'S OFFICE FOR I.D. PURPOSES. IT DOES NOT REFLECT A SURVEY OF THE PROPERTY.)

CONT. 2.055 ACRE

Parcel No. 03-001-0214 (for reference purposes only)

EXHIBIT C
Easement Area

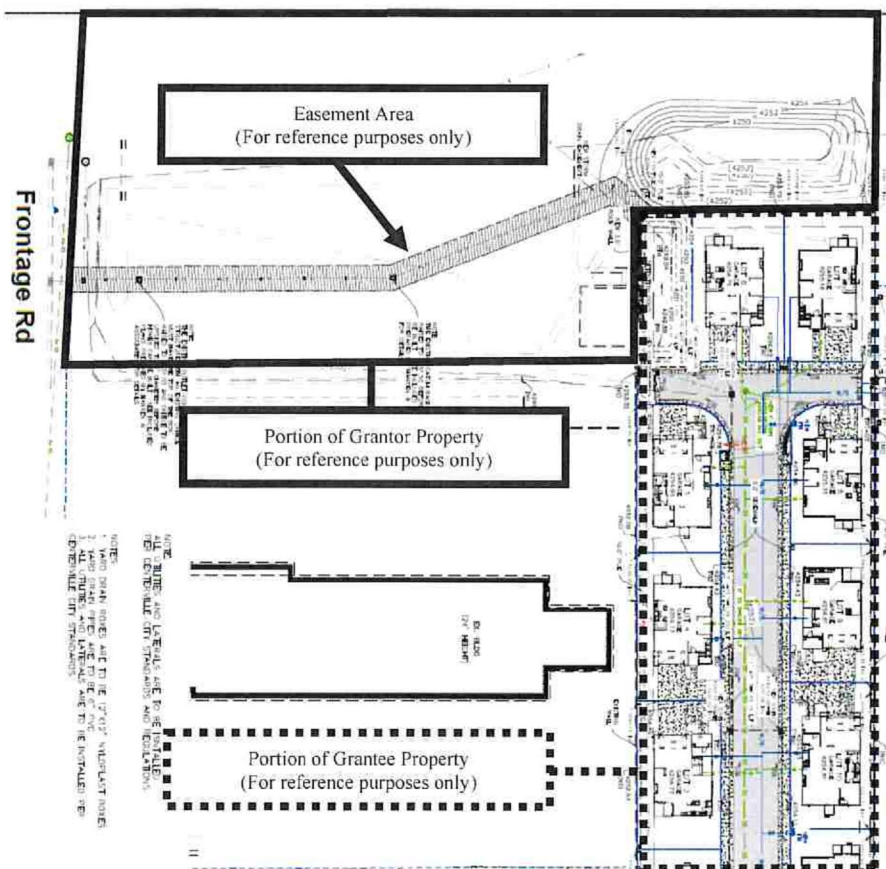
PREPARED BY: T.HUNT 10-08-2021 02-026-0071

15" STORM DRAIN EASEMENT LEGAL DESCRIPTION

BEGINNING AT A POINT WHICH IS NORTH 89°49'15" EAST 687.29 FEET ALONG THE SECTION LINE AND NORTH 00°03'10" EAST 115.41 FEET FROM THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH AND RUNNING:

NORTH 00°03'10" EAST 9.84 FEET;
THENCE NORTH 89°40'15" EAST 11.53 FEET;
THENCE NORTH 50°07'14" WEST 32.23 FEET;
THENCE SOUTH 68°33'45" WEST 145.91 FEET;
THENCE SOUTH 89°38'30" WEST 191.12 FEET;
THENCE SOUTH 02°51'00" WEST 15.02 FEET;
THENCE NORTH 89°38'30" EAST 194.75 FEET;
THENCE NORTH 68°33'45" EAST 139.81 FEET;
THENCE SOUTH 50°07'14" EAST 20.84 FEET TO THE POINT OF BEGINNING.

CONTAINS 5,379 SQUARE FEET OR 0.123 ACRES MORE OR LESS.



WHEN RECORDED, RETURN TO:
CW The Lane, LLC
Attn: Legal Department
1222 W. Legacy Crossing Blvd., STE. 6
Centerville, UT 84014

RETURNED
OCT 18 2021

E 3428192 B 7867 P 2588-2590
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/18/2021 04:39 PM
FEE \$40.00 Pgs: 3
DEP RT REC'D FOR CW THE LANE LLC

Parcel No(s): 03-001-0178[✓] and 03-001-0179[✓]

LOT CONSOLIDATION DEED

CW The Lane, LLC, a Utah limited liability company of 1222 W. Legacy Crossing Blvd., STE. 6, Centerville, UT 84014 ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00), hereby grants, conveys, warrants, and executes this Lot Consolidation Deed to CW The Lane, LLC, a Utah limited liability company of 1222 W. Legacy Crossing Blvd., STE. 6, Centerville, UT 84014 ("Grantee") for the purpose of combining two adjacent parcels of real property located in Centerville City, Davis County, State of Utah (the "Parcels"), together with all improvements and fixtures thereon and all rights and privileges appurtenant thereto, including, without limitation, any appurtenant water rights:

See Attached **Exhibit A.**

Upon execution and recordation of this Lot Consolidation Deed in the office of the Davis County Recorder, Grantor and Grantee intend and desire that said parcels be consolidated into one parcel and one legal description for tax purposes.

Witness the hand of Grantor, this 18th day of October, 2021.

[Signature and Acknowledgement Follows]

GRANTOR

CW The Lane, LLC,
a Utah limited liability company

By: *[Signature]*

Name: *Darlene Carter*

Title: *Manager*

Darlene Carter

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On this 18 day of October, in the year 2021, before me, Tony Hill a notary public, personally appeared DARLENE CARTER, proved on the basis of satisfactory evidence to be the person whose name is subscribed in this instrument, and acknowledged he executed the same.

Witness my hand and official seal.



[Signature]
NOTARY PUBLIC
Residing at: DAVIS COUNTY, UTAH

My Commission Expires:

05/07/2024

EXHIBIT A
Legal Description of the Parcels

Those certain parcels of real property located in Centerville City, Davis County, further described as follows:

Parcel Number 03-001-0178 ✓

BEG ON N LINE OF A STR 564.68 FT, M/L, S & 757.285 FT E FR THE NW COR OF SEC 18-T2N-R1E, SLM; TH E ALG N LINE STR 58 FT, M/L, TO E LINE OF PPTY CONV IN 746-632; TH N 441.98 FT, TH W 128 FT; TH S 308.68 FT, TH E 70 FT, TH S 133 FT TO THE POB. CONT. 1.085 ACRES

ALSO: BEG ON THE N LINE OF PORTERS LANE AT A PT N 89°40' E ALG THE SEC LINE 831.05 FT & S 0°03'10" W 564.74 FT FR THE NW COR OF SEC 18-T2N-R1E, SLM; & RUN TH ALG BNDRY LINE AGMT 1833-298 N 0°03'10" E 690.14 FT TO THE N LINE OF GRANTORS LAND; TH W 143.56 FT, TH S 148.00 FT; TH E 114.49 FT; TH S 543.98 FT TO THE N LINE OF PORTERS LANE; TH E 15.03 FT TO THE POB. CONT 0.70 ACRES

TOTAL ACREAGE 1.785 ACRES

Parcel Number 03-001-0179 ✓

BEG AT A PT WH IS N 89°40'15" E 831.05 FT ALG THE SEC LINE & S 0°03'10" W 38.36 FT ALG A BNDRY LINE AGMT LINE & S 89°40'15" W 29.02 FT FR THE NW COR OF SEC 18-T2N-R1W (S/B E), SLM; & RUN TH S 0°03'10" W 102.00 FT; TH S 89°40'15" W 113.81 FT TO THE GRANTOR'S W PPTY LINE; TH N 0°19'45" W 102.00 FT ALG SD LINE; TH N 89°40'15" E 114.49 FT TO THE POB. TOGETHER WITH A DESC ACCESS EASEMENT. CONT 0.27 ACRES

WHEN RECORDED, RETURN TO:
CW The Lane, LLC
Attn: Legal Department
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014

Affecting Parcel Number(s): _____

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR
THE LANE**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE LANE (“**Declaration**”), is made and executed as of the date first written below on the signature page and is effective when recorded in the office of the Davis County Recorder by CW The Lane, LLC (“**Declarant**”).

RECITALS

A. Declarant is the fee title owner of certain real property located in Centerville City, Davis County, Utah as more particularly described on Exhibit A attached hereto (the “**Property**”). The Property has been or will be developed as a single-family development.

B. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon each Unit within the Project.

C. Declarant hereby establishes and adopts this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements to establish a governance structure and standards and procedures for the development, administration, maintenance, and preservation of the Project. By signing this Declaration, Declarant subjects the Property to the Bylaws and terms, covenants, and restrictions contained herein.

D. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, an Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its

existence and from the Declarant's development of the Project and accepts the burdens and responsibilities that accompany these benefits.

E. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

DECLARATION

NOW, THEREFORE, for the reasons recited above and subject to the Restrictions set forth below, the Declarant hereby adopts this Declaration. The Recitals above are incorporated into and made a part of this Declaration.

1. DEFINITIONS

1.1 "**Accessory Structure**" shall mean and refer to any detached, subordinate building or structure incidental to the primary residence constructed on the Lot and shall include any shed, shack, detached garage, or other outbuilding in compliance with Section 9.5 herein.

1.2 "**Act**" shall mean and refer to the Utah Community Association Act codified beginning at §57- 8a-101, Utah Code Annotated ("**Utah Code Ann.**"), as amended.

1.3 "**Allocated Interest**" shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.

1.4 "**Articles**" shall mean and refer to the Articles of Incorporation for the Association, as amended from time to time.

1.5 "**Assessment**" shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration and shall include, without limitation, regular Assessments, special Assessments, Benefitted Common Area Assessments, and Service Area Assessments.

1.6 "**Association**" shall mean and refer to The Lane Owners Association, Inc., a Utah non-profit corporation, the membership of which shall include and be comprised of each Owner in the Project, and its successors or assigns. The Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.

1.7 "**Benefitted Common Area**" shall mean and refer to any real property and improvements designated by the Declarant in a Supplemental Declaration or Plat or in another recorded instrument (which designation is made in the sole and absolute discretion of the

Declarant) as Benefitted Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefitted Common Area Assessments attributable thereto, to one or more but less than all the Units within the Project and which is or will be conveyed to the Association or as to which the Association will be granted the rights and obligations for primarily the benefit of designated Units within the Project. The Supplemental Declaration, Plat or other recorded instrument establishing the Benefitted Common Area shall identify the Units assigned to that Benefitted Common Area and shall further identify whether the purpose of the Benefitted Common Area is for exclusive use of the Owners and Occupants of the assigned Units and payment of the Benefitted Common Area Assessments, or only for the purposes of paying the Benefitted Common Area Assessments attributable thereto.

1.8 **"Benefitted Common Area Assessments"** shall mean and refer to assessments levied against the Units assigned to a Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.9 **"Benefitted Common Area Expenses"** shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace a particular Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.10 **"Benefitted Common Area Improvements"** means patios, decks, hot tubs, fixed barbeque equipment (i.e., not readily mobile), playground equipment, basketball standards, trampolines, and other such outdoor improvements that may be placed within the Benefitted Common Area.

1.11 **"Board of Directors"** or **"Board"** shall mean and refer to the body with primary authority to manage the affairs of the Association.

1.12 **"Bylaws"** shall mean and refer to the Bylaws of the Association and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded. The Bylaws are attached hereto as Exhibit B.

1.13 **"City"** shall mean and refer to Centerville City, a political subdivision of the State of Utah, located in Davis County, Utah.

1.14 **"Claim"** (or collectively, **"Claims"**) means any and all claims, demands, suits, actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorney fees and costs.

1.15 **"Common Area and Facilities"** shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or property of a designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat and any area(s) designated as open space not dedicated to the City; (b) all utility installations and all equipment

connected with or in any way related to the furnishing of utilities for the common use and for the Common Area; (c) any fence or wall on common property; (d) any roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City or designated as Benefitted Common Area; or (e) and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, the and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned by the Association.

1.16 **"Common Expenses"** shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities which is maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.17 **"Declarant"** shall mean and refer to CW The Lane, LLC, a Utah limited liability company, and its respective affiliates, successors, and assigns.

1.18 **"Declarant Control Period"** shall mean and refer to the period of time commencing with the recording date of this Declaration and expiring the date the Declarant executes and records a written waiver of its rights to control.

1.19 **"Declarant Related Parties"** shall mean any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest and their respective members, managers, shareholders, officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.20 **"Design Guidelines"** shall mean and refer to The Lane Design Guidelines established for the Project herein and/or as a supplemental document hereto, as the same may be amended from time to time.

1.21 **"Design Review Committee"** shall mean and refer to the body responsible for review and approval of home and landscaping plans, construction and installation of the improvements identified therein in conformance with the requirements of the Design Guidelines.

1.22 **"Development Agreement"** shall mean and refer to any Development Agreement that is recorded against the Property.

1.23 **"Director"** shall mean and refer to each individual member of the Board of Directors.

1.24 **"Governing Documents"** shall mean and refer to this Declaration, including the Design Guidelines, the Plat, the Articles, the Bylaws, the Rules, and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.

1.25 **"Lender"** shall mean and refer to a holder of a first mortgage or deed of trust on a Unit.

1.26 **"Lot"** shall mean and refer to an individual lot created on the Plat on which a multi-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as "Lots."

1.27 **"Occupant"** shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.28 **"Owner"** shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Davis County Recorder. The term "Owner" shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" also shall not include the Declarant. More than one Owner is referred to herein as "Owners."

1.29 **"Person"** shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as "Persons."

1.30 **"Plat"** shall mean and refer to the record of survey map or maps for The Lane and any portions thereof, recorded with the Davis County Recorder, and all recorded amendments and supplements thereto.

1.31 **"Proceeding"** shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.32 **"Project"** shall mean and refer to The Lane and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Declaration at such time the Supplemental Declaration and plat map for the additional land is recorded.

1.33 **"Property"** as previously defined herein, shall include the real property made subject to this Declaration and all easements and rights appurtenant thereto.

1.34 **"Released Persons"** shall mean the following Persons: (i) every director and officer of the Association, (ii) every member of the Design Review Committee, or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association.

1.35 **"Restrictions"** shall mean and refer to any one or all of the terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth in the Governing Documents.

1.36 **"Rules"** shall mean and refer to the rules and regulations and policies adopted by the Association.

1.37 **"Service Area"** shall mean and refer to a group of Units designated as a separate Service Area pursuant to this Declaration for the purpose of receiving services or benefits from the Association which are not provided to all Units within the Project. A Service Area may be comprised of more than one type of dwelling and may include noncontiguous Units. A Unit may be assigned to more than one Service Area.

1.38 **"Service Area Assessments"** shall mean and refer to assessments levied against the Units in a particular Service Area to pay for Service Area Expenses.

1.39 **"Service Area Expenses"** shall mean and refer to the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Units within a particular Service Area, which may include amounts for reserves for capital repairs and replacements.

1.40 **"Subdivision"** shall mean and refer to The Lane, including all Units, Common Area and Facilities, and other property within the Project as shown on the Plat covering the entire Property.

1.41 **"Subdivision Improvements"** shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public road access and/or utility service to the Units, and includes such other and further construction or installations required to comply with any requirement of the Development Agreement.

1.42 **"Supplemental Declaration"** shall mean and refer to any amendment or supplement to this Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in the Declaration. A Supplemental Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area. A Supplemental Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

1.43 “**Transfer**” shall mean any of the following: (a) a conveyance, sale, or other transfer of a Lot or Unit as reflected by the recordation of a deed or other instrument in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not, excluding the grant of an interest in a Lot through a mortgage or deed of trust, (b) the granting of a life estate in a Unit, or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period.

1.44 “**Unit**” shall mean and refer to a subdivided Unit, within the Subdivision depicted as a separately identified parcel on the Plat or a survey, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residential unit. The term “Unit” refers to land, if any, which is part of a Unit, including the Lot, as well as to any structures or other improvements on the Unit. In the case of a building or other structure containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land shall be considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term “Unit” does not include Common Area and Facilities, common property of any Benefitted Common Area, or property dedicated to the City or the public.

2. **THE PROJECT**

2.1. **Binding Effect of Governing Documents.** The Declarant hereby declares and the Association hereby confirms that the Property is part of the Project and Association and that the Project and all of the Units shall be subject to the Restrictions, which Restrictions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Restriction in the Governing Documents.

2.2. **Nature of Project.** The Project shall be consistent with the terms and provisions of the Development Agreement, if any, recorded against the Property.

2.3. **Project Name.** The Project is named “The Project”. Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and on the Plat. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.

3. **UNITS, COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS**

3.1. **The Unit.** The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit. Each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

3.1.1. **Variances between the Plat and As-Built Construction.** The original construction shall be the initial installation of foundations, framing, wallboard, and the like (the “**Original Construction**”) and shall be the controlling dimensions for any Unit. If the Board of Directors determines that the present construction varies from the Original Construction, then the Association, at the expense of the Association or the Owner, may require that the present construction be made to comply with the Original Construction. Nothing herein will excuse an Owner from the need to obtain any variances from any municipality or governmental authority.

3.2. **Allocated Interest of Each Unit in the Votes of the Association.** The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth herein. Each Unit shall have an equal Allocated Interest.

3.3. **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application or controlling law.

4. **ASSOCIATION GOVERNANCE AND ORGANIZATION**

4.1. **Association Organization.** The Association shall be organized as a Utah non-profit corporation and shall serve as the organizational body for all Owners. The Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

4.2. **Membership.** Membership in the Association shall at all times be comprised exclusively of the Owners, which membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the Transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. Membership in the Association is mandatory.

4.3. **Availability of Documents.** Consistent with the requirements of both the Act and the Utah Revised Nonprofit Corporation Act, the Association shall make available to Owners, Lenders, and insurers of Lenders, copies of Association documents, which may be redacted to avoid disclosure of sensitive personal or financial information of any Owner or Association agent.

4.4. **Board of Directors.** The governing body of the Association shall be the Board of Directors selected pursuant to the Bylaws, subject to the provisions herein. Except as otherwise provided in this Declaration, Bylaws, or the Articles, the Board, in all instances except those explicitly reserved to the Owners, shall act on behalf of the Association. During the Declarant Control Period, the Declarant shall have the exclusive right and authority to control, appoint, and/or remove Directors or act as the Board of Directors.

4.5. **Director Qualifications.** Except as otherwise provided herein, to serve on the Board of Directors, a Person must be an Owner current on the payment of Assessments, and, if a natural person, over the age of eighteen (18) years old. No two Directors may reside in the same Unit, be the spouse or significant other of one another, or be business partners if the business is related to their ownership of a Unit(s). Additional Director qualifications may be contained within the Bylaws, as well as the election, number and term limits of Directors. This Section 4.5 shall not be applicable during the Declarant Control Period.

4.6. **Limitation on Authority of Owners, Directors, Officers, and the Board of Directors.** Except as provided in the Governing Documents, neither any individual Director nor any individual Owner shall have authority to or is authorized to act on behalf of the Association except as may be provided by the Act or other applicable law.

5. **ASSOCIATION GENERAL RIGHTS AND RESPONSIBILITIES**

5.1. **Rights and Responsibilities of the Association.** The Association shall have the rights and responsibilities as set forth in this Section 5 and as reasonably necessary to carry out the terms of the Governing Documents in addition to any others set forth in the Governing Documents or provided by law.

5.2. **Maintenance.** The Association and Owners respective responsibilities pertaining to the Common Areas and Facilities and Units is established on the Maintenance Allocation Table attached hereto as Exhibit C. Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Association from taking on obligations of the City pursuant to a written agreement between the City and the Association.

5.3. **Setting and Collecting Assessments; Paying Expenses.** The Association shall establish, collect, and account for Assessments as necessary to operate and maintain the Project consistent with the requirements of the Governing Documents. The Association shall provide for the payment of Association expenses and any expenses related to the Project.

5.4. **Adopting and Enforcing Rules.** The Association may adopt reasonable Rules for the regulation and operation of the Project. If adopted, the Rules shall be consistently and uniformly enforced.

5.5. **Hiring Managers and Delegating Responsibilities.** Subject to the terms and conditions of Section 18.4 below, the Association shall hire a manager to assist the Board of Directors in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers delegated may be revoked by the Board of Directors at any time, with or without cause.

5.6. **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (i) impose fines; (ii) collect rents directly from tenants if Owners fail to pay Assessments; (iii) suspend voting rights; (iv) suspend rights to utilize the Common Area and Facilities; and (v) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. The Board of Directors shall uniformly and consistently enforce the Restrictions in the Governing Documents. Additionally, the Board of Directors shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act.

5.6.1. **Discretion.** The Association may not be required to take enforcement action if, after a fair review and acting in good faith and without conflict of interest, the Board of Directors determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interest to pursue and enforcement action, based upon reasonable criteria.

5.7. **Reserve Fund.** Subject to the exemptions found herein, the Association shall maintain a reserve fund and shall obtain and update a reserve analysis as required herein.

5.8. **Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process on an as-needed basis for particular matters in case a hearing process is required by law. Any such hearing process shall provide, at a minimum for: (a) at least ten days' notice of the hearing to the affected Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.9. **Annual Meeting.** The Association shall arrange for and conduct an annual meeting of the Owners (except as otherwise allowed by law) as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.

5.10. **Payoff Information Fees.** An Owner may request payoff information from the Association needed in connection with the financing, refinancing, or Transfer of an Owner's Lot by: (a) providing written notice to the designated manager for the Association requesting the payoff information, which notice must contain (i) the name, telephone number, and address of the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information, and (b) a written consent for the release of the payoff information, which identifies the person requesting the information as a person to whom the payoff information may be released, and signed and dated by the Owner of the Lot for which the payoff information is requested. The Association is specifically authorized to establish a fee to provide payoff information related to the Transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board of Directors may increase or decrease the fee amount so long as it is consistent with the Act.

5.11. **Reinvestment Fee Covenant upon Sale or Transfer of Unit.** The Board of Directors, or the Declarant during the Declarant Control Period, may require the transferor/seller or transferee/buyer to pay a fee related to the Transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. §57-1-46 in an amount to be determined by the Board of Directors, or the Declarant during the Declarant Control Period, and to the extent allowed by law. For purposes of this Section 5.13, a transfer is any change in the ownership of the Unit as reflected in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not but shall not include (a) any Transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant, (b) an involuntary transfer, such as a transfer as part of a condemnation proceeding or sale in lieu of condemnation, (c) a transfer that results from a court order, (d) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, (e) a transfer or change in interest due to death, provided in a will, trust or decree of distribution, or (f) the transfer of a burdened property by a financial institution, except to the extent the reinvestment fee covenant requires a payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.00. The amount shall be established by the Board of Directors, or the Declarant during the Declarant Control Period, consistent with Utah Code Ann. §57-1-46 or in the Notice of Reinvestment Fee Covenant. The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code Ann. §57-1-46. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include requirements for Owners to provide sales and transfer documents, and other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

6. **BUDGET AND ASSESSMENTS**

6.1. **Covenant to Pay Assessments.** The Owner of any Unit, excluding Declarant whose obligations regarding Assessments are set forth below, by accepting a deed for said Unit, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the

Association all fees, annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

6.2. **Budget and Regular Assessment.** The Board of Directors is authorized and required to adopt a budget for the fiscal year prior to the beginning of each fiscal year. The Board of Directors shall use its reasonable discretion to revise the budget from time to time as appropriate. The budget shall include a line item for the amount to be placed into the reserve fund. The Board of Directors shall divide the total budget amount for Common Expenses by the Allocated Interest for each Unit to determine the amount of the regular Assessments to be paid by each Owner. The Board of Directors shall present the adopted budget to the Owners at an annual or special Association meeting. In the event no new budget is prepared and adopted by the Board of Directors, the last adopted budget shall continue until a new budget is adopted.

6.3. **Payment of Assessments.** Unless otherwise established and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment, annually or on such other quarterly or monthly installment as determined by the Board of Directors or the manager. Assessments shall be allocated to Owners based on the Allocated Interest of each Unit unless otherwise communicated to the Owners.

6.4. **Adjustment to the Regular Assessment.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board of Directors, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.

6.5. **Personal Obligation for Assessment.** Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents, including any Benefitted Common Area Assessments and Service Area Assessments. Any and all Assessments, together with such interest, collection charges, and attorney fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.

6.6. **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

6.7. **Certificate of Payment.** Consistent with the Act, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board of Directors is authorized to charge a fee as provided in the Act for issuance of a certificate.

6.8. **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

6.9. **Special Assessments to a Particular Unit.** Special Assessments may be levied by the Association against a particular Unit and its Owner for:

(a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;

(b) Fines, late fees, collection charges, and interest; and

(c) Attorney fees, costs and other expenses relating to any of the above.

6.10. **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project or Benefitted Common Area or in a Service Area, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board of Directors, in its discretion.

6.11. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors, in its discretion, may determine how to apply such excess reserves. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.12. **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason,

including, without limitation, a claim that the Board of Directors is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

6.13. **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

6.14. **Declarant's Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Units owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.

7. **EFFECT OF NONPAYMENT AND REMEDIES**

7.1. **Late Fees and Interest.** Any Assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board of Directors. In addition, all fees and Assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors.

7.2. **Lien for Assessments.** The Association has a lien on a Unit for Assessments and, except as otherwise provided in this Declaration, for fines, fees, charges, and costs associated with collecting an unpaid Assessment, including court costs and reasonable attorney fees, late charges, interest, fines, and any other amount that the Association is entitled to recover under this Declaration, at law, or an administrative or judicial decision. The obligation to pay Assessments hereunder is part of the purchase price of each Unit when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby transferred and assigned to the Association. Additionally, Declarant (and each Owner by acceptance of a deed to a Unit) hereby conveys and warrants pursuant to Utah Code Ann. §§57-1-20 and 57-8a-302 to the Association's attorney, as trustee, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration to secure the payment of Assessments and other amounts owed hereunder. The recording of this Declaration constitutes record notice and perfection of the above-described lien. If an Assessment is payable in installments, the lien will be for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in a notice of Assessment. An unpaid Assessment or fine accrues interest at the rate provided in this Declaration. The lien provided in this Section 7.2 has priority over each other lien and encumbrance on a Unit except: (a) a lien or encumbrance recorded before the Declaration is recorded; (b) a first or second security interest on the Unit secured by a Mortgage that is recorded before a recorded notice of lien by or on behalf of the Association; or (c) a lien for real estate taxes or other governmental Assessments or charges

against the Unit. To evidence any lien hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the Assessments and other amounts due and owing, the name of the Owner of the Unit subject to such Assessments and other amounts due and owing and a description of such Unit, which shall be signed by an officer of the Association and may be Recorded.

7.3. **Legal Remedies.** The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. In addition, to enforce the lien, the Association may cause a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, in the manner provided by Utah Code Ann. §§57-1-24, 57-1-25, 57-1-26, and 57-1-27 (as amended from time to time) and the Act, or foreclose the lien through a judicial foreclosure in the manner provided by law for the foreclosure of a Mortgage and the Act. Foreclosure or attempted foreclosure or the sale or attempted sale of a Unit by the Association of its lien as addressed in Section 7.2 above shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent Assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at Foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code §§57-8a-302 and -303, as the same may be amended. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

7.4. **Association Responsibilities after Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay Assessments or maintain the Unit.

8. DESIGN REVIEW COMMITTEE

8.1. **Purpose.** In order to create, maintain, and improve the Project as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to establish procedures for the enforcement of the terms and conditions of this Declaration to protect and promote the value of the Project, the exterior design of all improvements constructed within the Project, landscaping, and changes or alterations to existing use, landscaping, and exterior design and development shall be subject to the prior review and approval of the Design Review Committee.

8.2. **Creation of Design Review Committee.** Except as provided for herein during the Declarant Control Period, the Design Review Committee shall be composed of at least three (3), but not more than five (5) natural persons appointed by the Board of Directors. The Board of Directors may remove a member of the Design Review Committee and appoint a new Design Review Committee member at any time, provided that at all times there shall be a least three (3) persons serving. The Design Review Committee shall enforce the Design Guidelines and shall have and may exercise all the powers, duties and responsibilities set out in this Declaration. The Design Review Committee may hire a secretary or other personnel to perform administrative, clerical, and other functions. The Design Review Committee has exclusive jurisdiction on behalf of the Association regarding: (a) implementation of all provisions of this Section 8; and (b) promulgation of all Design Guidelines pertaining to the development and construction of Improvements within the Project.

8.3. **Submission of Plans Required.** No improvements may be commenced, constructed, erected, placed, maintained or made upon any Unit or within or upon any part of the Project unless and until complete plans and specifications have been submitted to and approved in writing by the Design Review Committee, as applicable, as to compliance with applicable Design Review Guidelines as set forth in Section 8.6 and Section 9.2 below. Two complete sets of plans and specifications must be submitted with each request for approval. In addition to any other applicable requirements per applicable Design Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the Design Review Committee may reasonably require:

- (a) the location upon the Unit or within the Project where the improvement will occur or be placed;
- (b) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the improvement;
- (c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;
- (d) intended uses; and
- (e) such other information, plans or specifications as may be requested or required by the Design Review Committee that in the sole opinion of the Design Review Committee is reasonably necessary to fairly and fully evaluate all aspects of the proposed improvements.

8.4. **Design Review Fee.** The operating costs of the Design Review Committee, including the services of its planning consultants, professionals, and other staff, shall be covered through a fee paid to the Design Review Committee by Owners applying for plan review and approval, consistent with §57-8a-109(2) of the Act. The Design Review Committee shall make available to all Owners a current design review fee schedule, which may be modified from time to

time in accordance with the Act. Fees must be paid in full before any review by the Design Review Committee commences and the unused portion thereof, in any, is refundable.

8.5. **Scope of Authority.** Except as otherwise provided in this Declaration, no improvements of any kind or changes in the natural condition of any land within the Project shall be erected, altered or permitted to remain on any Unit or elsewhere in the Project unless complete architectural plans, specifications and a site plan showing the location and orientation for such construction, alteration or landscaping are approved by the Design Review Committee prior to the commencement of any work. Work subject to Design Review Committee approval may include, but is not limited to, the construction of structure, installation of utility line, fence, grading, planting, antennas, satellite dishes, flag poles, any renovation, expansion or refinishing of the exterior of an existing Unit or other structure, excavating, clearing, landscaping or other modification. Notwithstanding the foregoing, any work performed by or on behalf of Declarant to any of the property within the Project including, but not limited to, the construction of Subdivision Improvements and infrastructure, or the initial construction of the Units by the Declarant or plans of a bulk-builder that have been pre-approved by the Declarant, shall not require approval of the Design Review Committee.

8.6. **Design Guidelines.** The Board or the Design Review Committee, subject to Board approval, may, from time to time, effective immediately, adopt, modify, amend and repeal the Design Guidelines applicable to the Project, including Units and any Benefitted Common Area. Such authority includes, but is not limited to, the right to specify:

(a) specific procedural guidelines for submission of requests for, and plans, specifications and other information and documentation necessary to obtain, Design Review Committee approval, and procedural requirements for the conducting of all activities necessary to accomplish same;

(b) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application;

(c) specific types of improvements which may be commenced, constructed, erected or maintained upon any Unit or anywhere within the Project;

(d) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of an improvement;

(e) minimum setbacks;

(f) the location, height, and extent of fences, walls or other screening devices, walks, decks, patios or courtyards;

(g) the orientation of structures and landscaping with respect to streets, walks, driveways and structures on adjacent properties; and

(h) in general, all requirements reasonably deemed necessary to maximize compliance with the Design Guidelines.

WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE DESIGN REVIEW GUIDELINES MAY PROVIDE FOR A FINE OF UP TO \$10,000.00 AGAINST ANY OWNER AND UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE DESIGN REVIEW COMMITTEE, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

8.7. **Design Review Criteria.** The Design Review Committee will evaluate all submitted applications for approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed improvement with Project-Wide Standards as of the date of submission of an application and compliance with applicable Governing Documents, including this Declaration and applicable Design Guidelines and other Rules and Regulations. The Design Review Committee must use reasonable efforts to achieve consistency in the approval or disapproval of specific types of improvements. To this end, consideration will be given to (but the Design Review Committee is not bound by) similar applications for architectural approval and the decisions and actions of the Design Review Committee with regard thereto.

8.8. **Disapproval by Design Review Committee.** It is understood and agreed by each Person having or acquiring an interest in the Project that the Design Review Committee will include aesthetic judgment in its decision making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The Design Review Committee may disapprove any request for approval for any reasons, including the following: (i) failure to comply with any applicable Design Guidelines; (ii) lack of sufficient information, plans or specifications as reasonably determined by the Design Review Committee to enable the Design Review Committee to fairly and fully evaluate the proposed improvement or the uses thereof; or (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the Design Review Committee. In the event of disapproval, the Design Review Committee shall so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the Design Review Committee shall also notify applicant of the additional information, plans or specifications required.

8.9. **Submission and Response; Failure of Design Review Committee to Act.**

8.9.1. **Submission.** Applications for Design Review Committee approval are deemed submitted to the Design Review Committee only upon actual receipt. All responses by the Design Review Committee shall be in writing, and are deemed given when delivered to, or

when deposited in the United States mail, postage prepaid and addressed to, the applicant at the address specified in the application or the last known address of the applicant according to the records of the Association. The Design Review Committee has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as members or Owners according to the books and records of the Association unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the Design Review Committee. Lessees/Occupants shall file applications or requests for variance in the name of the Owner, and such Owner shall either appoint the Lessee/Occupant as their agent in a letter to the Design Review Committee or join the application. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

8.9.2. **Response and Failure to Respond.** Upon receipt by the Design Review Committee of a written request for approval provided for or required by this Declaration, the Design Review Committee shall, within thirty (30) days after receipt of such request for approval, either after review for compliance with the Design Guidelines: (i) approve the plans and specifications as submitted; or (ii) notify the party making such request of any objections thereto (such objections to be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval rectifying any such objections to the Design Review Committee. The Design Review Committee shall then have an additional fifteen (15) days after receipt of said revisions to approve or disapprove same. Failure to give any written notice of disapproval within the periods provided for above shall constitute approval thereof by the Design Review Committee. In the event the Design Review Committee fails to approve, conditionally approve or disapprove an application or fails to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the application, then the application shall be deemed denied.

8.10. **Conditions of Approval.**

8.10.1. **Applicability.** Unless expressly waived or modified by the Design Review Committee (or the Board as to variances) in writing, each and every approval or conditional approval of an improvement is subject to all provisions of this Section 8 whether or not stated in the approval or conditional approval.

8.10.2. **Commencement and Completion of Work.** Approval of an application for an improvement is effective for one (1) year from the date of approval or grant of a variance. If work on an improvement is not commenced within one (1) year after approval or conditional approval or grant of a variance, such approval or grant will become null and void and the Owner must submit a new application and obtain a new approval for the improvement. Prior approval of an improvement shall not bind the Design Review Committee or the Board or require the Design Review Committee or the Board to approve a re-submitted application for the same improvement. Upon commencement, the Owner must diligently prosecute and complete all work as soon thereafter as reasonably possible. The Design Review Committee (or the Board as to variances) is authorized to set specific schedules for completion of a Regulation Modification on a case-by-case basis and/or pursuant to applicable Design Guidelines.

8.10.3. **Compliance With Plans.** All work on an improvement must proceed in strict compliance with: (i) the application and plans and specifications approved by the Design Review Committee (or variance granted by the Board), (ii) any and all conditions stated by the Design Review Committee (or the Board as to variances) in the approval, (iii) any and all applicable governmental laws, rules, regulations, ordinances, and building codes, and (iv) all applicable Governing Documents.

8.10.4. **Permit Requirements.** Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the Design Review Committee may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the Design Review Committee that no such permitting requirements exist.

8.10.5. **Compliance With Laws and Governing Documents.** Each applicant is solely responsible for insuring that (and nothing in the Governing Documents or any written decision of the Design Review Committee (or the Board as to variances) shall be construed as a covenant, representation, guaranty or warranty that) any proposed improvement will be in compliance with applicable governmental laws, ordinances or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents.

8.11. **Inspection Rights.** Upon reasonable notice (oral or written), any member of the Design Review Committee or the Board, or their designated representatives, may enter a Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any improvements in compliance with the approved plans, specifications, information and documentation for same, and as to compliance with any applicable provisions of the Governing Documents.

8.12. **Records.** The Design Review Committee is not required to maintain records of any of its meetings. The Design Review Committee and the Board, however, will keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four years. The Design Review Committee will provide copies to Owners upon request.

8.13. **Limitation of Liability.** The Released Parties shall not be liable to any Owner, Occupant, or any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Design Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the improvement will comply with

applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the improvement. The provisions hereof are cumulative of other release, waivers or limitations contained herein.

9. COVENANTS, CONDITIONS, AND RESTRICTIONS

9.1. **Use of Lots.** All Lots within the Project shall be used only for the construction and occupancy of one single-family dwelling, not to exceed two and one-half stories (2 ½) in height, together with a private attached garage for not less than two (2) vehicles and for not more than four (4) vehicles. Subject to review by the Design Review Committee, Lots may also be used for the construction of typical residential amenities such as a family swimming pool. All Lots shall be used, improved, and devoted exclusively for such single-family residential use.

9.2. **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other Lot in the vicinity thereof or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection therewith shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be stored only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored to kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas.

9.3. **Garbage and Refuse Disposal.** No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such materials shall not be kept except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The burning of rubbish, leaves, or trash within the Project is prohibited. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

9.4. **Signs.** No signs, posters, displays, or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Design Review Committee; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven (7) square feet or smaller in size which states that the premises are for rent or sale. During construction of the residence, builder, or Owner of any Lot may display a sign up to sixteen (16) square feet, provided that the design and construction of said sign complies with the sign design and construction criteria issued by the

Design Review Committee. The Design Review Committee may cause all unauthorized signs to be removed. This Section shall not apply to any signs used by Declarant or its agents in connection with the original development and construction of the Lots.

9.5. **Repair of Improvements.** No improvements on any Lot shall be permitted to fall into disrepair and such improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required in this Section 9, such building or structure shall be immediately repaired, rebuilt, or shall be demolished.

9.6. **Restriction on Further Subdivision, Property Restrictions, and Rezoning.** Except by the Declarant during the Declarant Control Period, no Lot shall be further subdivided or separated into smaller Lots by any Owner, and portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Design Review Committee, which approval must be evidenced on the plat or other instrument creating the subdivision, easement, or other interest. Except by the Declarant during the Declarant Control Period, no further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Committee and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. Except by the Declarant during the Declarant Control Period, no application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Design Review Committee and the proposed use otherwise complies with this Declaration. Notwithstanding the foregoing, nothing herein shall limit the rights reserved by the Declarant.

9.7. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs necessary or convenient to the development, marketing, or sale of property within the Project.

10. **RIGHT TO USE COMMON AREA AND FACILITIES**

10.1. **Rights and Nonexclusive License to Use Common Area and Facilities.**

10.1.1. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities and the right and nonexclusive license for the use and enjoyment of the Benefitted Common Area to which that Owner's Unit has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities and assigned Benefitted Common Area, if any, as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board of Directors,

from time to time. Additionally, the Association may enter into an agreement with an adjacent property owner authorizing the same to use identified Common Areas.

10.1.2. The Association shall have nonexclusive easements with the right of access over and across each Unit, to make inspections, to prevent or mitigate damage to Common Area and Facilities or Benefitted Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Association is responsible for maintaining, including any Benefitted Common Area or Service Area, which are accessible from such Unit. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities, Benefitted Common Area, and Service Area for purposes necessary for the proper operation of the Project or for the use of the Common Areas by an adjacent property owner and its guests, tenants, invitees, or other similarly situated individual.

10.1.3. The right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area and Facilities or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Association is reserved to the Declarant and the Association; provided, however, that the Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Association to the Owner of any such Unit.

10.2. **Limitation on Easement.** Notwithstanding anything to the contrary in foregoing Section 10.1, an Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

10.2.1. The right of the Association to impose reasonable limitations on the number of Occupants per Owner or guests who at any given time are permitted to use the Common Area and Facilities;

10.2.2. The right of the Association to suspend an Owner's right to the Common Area and Facilities: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; and

10.2.3. The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

10.3. **Utilities.** Easements and rights-of-way over, under and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

10.4. **Easements for Encroachments.** If any portion of the Common Area and Facilities or any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

10.5. **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

11. **INSURANCE**

NOTICE: The Association's insurance policy does not cover the real or personal property or personal liability of the Owners or their Occupants.

11.1. **Insurance Held by Owner.** Each Owner shall be responsible to obtain and maintain any insurance on a residence and any improvements on such Owner's Lot or Unit and

within any Benefitted Common Area, and the fixtures, furniture, furnishings, equipment, and contents within the residence or Unit, and any other personal property of such Owner.

11.2. **Insurance Held by Association.** The Association shall obtain and maintain all insurance policies required by the Act consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be funded by Assessments. Without limiting the foregoing, the Association shall obtain and maintain: (i) property and liability insurance for all Common Area and Facilities; (ii) Fidelity Insurance (e.g., directors and officers coverage); (iii) other insurance authorized and/or required by the Act that is not the obligation of individual Owners; and (iv) such other insurance policies for casualty or liability as the Board of Directors deems necessary or desirable and with coverages and coverage limits comparable to similarly situated homeowner associations in Davis County.

11.3. **Deductible.** If permitted by the Act, the deductible on any claim made under a policy maintained by the Association shall be allocated among all Owners if the loss affects the Common Area and Facilities or all the Lots in the Project or, if the loss affects or impacts less than all the Lots in the Project, the deductible shall be allocated among the Owners of the affected Lots.

12. **DURATION AND AMENDMENT**

12.1. **Duration.** This Declaration shall be effective, and the Declaration shall encumber the Property, from the date the Declaration is recorded in the office of the Davis County Recorder and, as amended from time to time, this Declaration shall continue in full force and effect against the Project and the Restrictions shall run with the land in perpetuity, for as long as the law allows unless amended or terminated.

12.2. **Amendment.** During the Declarant Control Period, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. After the Declarant Control Period, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the members of the Association and must also be approved by the Declarant in writing before it can be effective, and such amendment must contain a statement from the Board of Directors certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the office of the Davis County Recorder.

12.3. **Termination.** An agreement to terminate this Declaration and the Restrictions set forth herein, shall require same approval required for an amendment as set forth in Section 12.2 above.

13. **EMINENT DOMAIN**

13.1. **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose

permitted by this Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Area and Facilities are taken.

13.2. **Taking of Common Area.** If the Common Area and Facilities or Benefitted Common Area, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.

13.3. **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated, and the Board of Directors shall wind down the Association in accordance with applicable law.

13.4. **Priority and Power of Attorney.** Nothing contained in this Section 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area and Facilities, or any part thereof.

14. **INTERPRETATION, CONSTRUCTION, AND APPLICATION**

14.1. **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

14.2. **Interpretation of Declaration and Applicability of the Act.** The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

14.3. **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

14.4. **Severability.** Invalidation of any one or a portion of the Restrictions by judgment or court order shall in no way affect any other Restrictions, all of which shall remain in full force and effect.

14.5. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a planned unit development and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

14.6. **Applicable Law.** Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

14.7. **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

14.8. **Effect of Declaration.** This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Restriction is determined to be unenforceable in whole or in part for any reason.

14.9. **Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice by electronic means, including text message, email, or through the Association's website; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

The Association shall maintain a list of contact information for Owners of all Lots within the Project. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Restrictions, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

In the event that any Owner desires to sell or otherwise Transfer title to the Owner's Unit, such Owner shall give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of Assessments, notwithstanding the Transfer.

15. ATTORNEY FEES AND COSTS

15.1. Legal Costs Associated with Disputes with Owners.

15.1.1. **Owners Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Restriction after notice to the Owner that the Association intends to enforce the Restriction or after the Owner communicates or demonstrates an intent not to comply with the Restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

15.1.2. **Costs.** The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

15.1.3. **Exception to Owner's Liability for Fees and Costs.** If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Restriction, or (iii) a request of an Owner for direction on the application of a Restriction, the Association incurs legal fees or costs related to the interpretation and application of a Restriction that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

16. RESERVES

16.1. **Requirement for Reserves.** Subject to the provisions of this Declaration, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

16.1.1. **Collection.** Reserve funds may be collected as part of regular or special Assessments.

16.1.2. **Amount.** In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. For purposes of this Section 16, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

16.1.3. **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

16.1.4. **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.

16.1.5. **Reserve Analysis.** The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) 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 (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future. As further provided below, the Association is not required to obtain a reserve analysis during the Declarant Control Period.

16.1.6. **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

16.1.7. **Summary and Copies of Reserve Analysis.** The Association shall annually post and/or provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

16.2. **Exceptions for Benefitted Common Area and Service Area Reserves.** The requirements set forth in Subsections 16.1.1 - .7 shall not apply to reserves, if any, for a Benefitted Common Area or Service Area.

17. **GENERAL PROVISIONS**

17.1. **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any such Restrictions and the right to recover damages and other sums for such violation, including, but not limited to attorney fees and costs incurred in conjunction with such enforcement.

17.1.1. Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorney fees.

17.2. **No Liability of Officers.**

17.2.1. To the fullest extent permitted by applicable law, the Released Person shall not be liable to any Owner, Occupant, the Association, or any other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Project, including the transmission of any infectious disease or illness. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Project.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person, even if funds of the Association are used for such a purpose.

17.2.2. To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (Utah Code Ann. §16-6a-101, et seq.), the Association shall indemnify the Released Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in Utah Code Ann. §16-6a-102(37)), including but not limited to, attorney fees, witness fees (including expert witness fees), costs, and litigation related expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement of any such proceeding. The Board further may elect to indemnify any agent of the Association. Any Released Person shall be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association shall pay or reimburse reasonable expenses incurred by any such Person who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Section 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Released Person in question to make the repayment referred to in such Section. This right of indemnification shall be in addition to, and not exclusive of, all other rights to which the Released Person to be indemnified may be entitled at law or otherwise.

17.3. **Use of Funds Collected by the Association.** All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.

17.4. **Owner Liability and Indemnification.** Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent

act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

17.5. Areas of Owner Responsibility.

17.5.1. Singl-Family Unit Maintenance. Each single-family Unit Owner shall have the obligation to provide interior maintenance of their Unit and the Limited Common Areas serving each respective single-family Unit unless such maintenance is otherwise allocated to the Association as set forth herein or by a separate written instrument. Except to the extent that maintenance, repair, and upkeep of the Unit exteriors and/or Lots has been assigned to the Association as part of a Service Area, each single-family Unit Owner shall be responsible for the Lot and Unit exterior maintenance, repair, and upkeep including, without limitation, snow and ice removal. Likewise, each Owner shall be responsible to maintain the landscaping and other improvements within and on the Owner's Lot except to the extent such maintenance has been assigned to the Association as part of a Service Area. If applicable, each Owner of a Lot shall be responsible for the maintenance and upkeep of any landscaped park strip area adjacent to such Owner's Lot in compliance with City ordinances, unless the Association assumes the obligation for maintenance of the park strip through a written instrument.

17.6. Maintenance Allocation Table. A maintenance allocation table is attached here to Exhibit C, and clarifies the maintenance allocation for the Association, single-family Owners, and multi-family Owners. Unless expressly assumed by the Association, all maintenance obligations shall be the responsibility of the Owners. In the event of a conflict between Section 5.2, this Section 17 and Exhibit C, then Exhibit C shall control.

17.7. Benefitted Common Area Improvements. Subject to the terms and conditions of this Declaration, Owners, at their sole cost and expense, may install Benefitted Common Area Improvements within the Benefitted Common Area appurtenant to their respective Unit, in accordance with the following requirements:

17.7.1. The Owner shall submit an application to the Board requesting that a portion of the Common Area and Facilities adjacent to the Unit be converted from Common Area and Facilities to Benefitted Common Area. The application shall include a plan showing the exact location of the Benefitted Common Area and a description of the proposed Benefitted Common Area Improvements to be placed thereon.

17.7.2. The Owner shall be solely responsible for all costs and expenses associated with or relating to such Benefitted Common Area Improvements, including, without limitation, all

costs and expenses of installation, design, permits, insurance, construction, maintenance, repair, and replacement thereof, and the Benefitted Common Area and the Benefitted Common Area Improvements shall otherwise be considered part of the Unit for purposes of maintenance, repair, reconstruction, and insurance.

17.7.3. The Owner shall obtain the required approvals from the Design Review Committee and comply with the requirements of Sections 8 and 9. Without limiting the discretion and authority of the Design Review Committee, the Design Review Committee may withhold approval for installation of Benefitted Common Area Improvements based upon any of the following factors:

(a) The Design Review Committee has reason to believe that the Benefitted Common Area, patio, deck or other supporting structure will not support the size or weight of the Benefitted Common Area Improvements. If the Design Review Committee has such concerns, the Owner may overcome the same and obtain approval if the Owner, at the Owner's sole cost and expense, obtains and submits to the committee a written opinion from a licensed structural engineer providing the Design Review Committee with reasonably satisfactory assurances that the Benefitted Common Area, patio, deck or other supporting structure will structurally support the proposed Benefitted Common Area Improvements;

(b) The proposed Benefitted Common Area Improvements has a color scheme that detracts from and is not reasonably consistent with the appearance and colors of the exteriors of the Units in the Project;

(c) The size of the proposed Benefitted Common Area Improvements is unusually large for the proposed location, such that it detracts from the consistency and aesthetic visual appeal of the Project; or

(d) There is a risk of damage or harm to person or property.

17.7.4. The Owner shall be responsible for ensuring that the Benefitted Common Area on which the proposed Improvement will be located will structurally support the proposed Improvement, and that the proposed Improvement will not jeopardize the structural integrity of the Benefitted Common Area or the Unit.

17.7.5. The Owner shall indemnify, hold harmless, and agree to defend the Released Parties from and against any and all Claims arising from or relating to the installation, use, presence, repair, or removal of the Benefitted Common Area Improvements.

17.7.6. The Owner, at its sole cost and expense, shall obtain and maintain adequate and appropriate insurance coverage relating to the Benefitted Common Area Improvements. The Association shall not have any responsibility to obtain any form of insurance coverage relating to the Benefitted Common Area Improvements.

17.7.7. If the Owner removes the Benefitted Common Area Improvements, the Owner shall be responsible for all costs of removal. The Owner shall restore the Benefitted Common Area or the Unit on which the Benefitted Common Area Improvements were located to its original condition, and shall pay for all costs and expenses relating to such restoration.

17.8. **Variances.** The Board of Directors, at its option and in extenuating circumstances, may grant variances from the Restrictions set forth in Declaration if the Board of Directors determines, in its discretion: (a) either that the Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial effect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Governing Documents. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Directors. No variance may be granted that is inconsistent with the Development Agreement, City ordinance, or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

17.9. **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to affect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

17.10. **Security.** Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Board of Directors are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically

waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

17.11. **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

17.12. **No Representations and Warranties and Disclaimers.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARM LAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

18. **DECLARANT RIGHTS AND CONTROL**

18.1. **Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the all rights and powers provided for in this Section 18. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the article shall all nonetheless be subject to the terms in this Section 18.

18.2. **Right to Appoint the Board of Directors During Declarant Control Period.** The Declarant shall have the right to appoint and remove all Directors during the Declarant Control Period. In the appointment of Directors, the Declarant shall not be bound by any qualifications for Directors in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Board of Directors without appointing Directors pursuant to the rights granted in the Articles to the Declarant.

18.3. **Right to Appoint the Design Review Committee During Declarant Control Period.** The Declarant shall have the right to appoint and remove the member(s) of the Design Review Committee during the Declarant Control Period. In the appointment of the Design Review Committee, the Declarant shall not be bound by any qualifications in the Governing Documents, if any. The Declarant may elect to have a Design Review Committee of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Design Review Committee without appointing members during the Declarant Control Period.

18.4. **Declarant Retains All Rights and Authority During Declarant Control Period.** During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to have assumed unless the Declarant notifies the Association otherwise) the powers and authority of the Design Review Committee without the Board of Directors appointment of Design Review Committee members. During the Declarant Control Period, the Declarant may pre-approve plans and/or waive design review fees for a bulk-lot builder. Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, the Declarant shall have the discretion, without obligation, to hire a professional manager to manage the Project during the Declarant Control Period.

18.5. **Easement Rights.** The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

18.6. **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, supplement, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

18.7. **Reinvestment Fee and Assessment Exemption.** The Declarant shall be exempt from any Reinvestment Fee and Assessments including any regular Assessment, Benefitted Common Area Assessment, Service Area Assessments or Special Assessment.

18.8. **Right to Amend Governing Documents.** Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, any Supplement to the Declaration establishing a Benefitted Common Area or Service Area or Additional Covenants, the Bylaws, the Articles, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to §57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the

Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

18.9. **Right to Designate Benefitted Common Area and Service Area and Modify Prior Designations.** Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to designate Benefitted Common Area and Service Area and to designate the particular Units assigned to such Benefitted Common Area or Service Area, as the case may be. During the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to modify any previously designated Common Area and Facilities or Service Area and to adjust or modify the assignments of Units respectively thereto.

18.10. **Assignment of Special Declarant Rights.** The Declarant, at any time, may assign, transfer, or share all or some of its control, power, rights, exemptions, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the Project or to be expanded into the Project.

18.11. **No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents and, specifically, in this Section 18, may not be substantively or procedurally altered during or after the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void ab initio.

18.12. **Use of Units and Common Area and Facilities for Sales Activities.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Area and Facilities and any part of any Benefitted Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Area and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

18.13. **Facilities Open to the Public.** The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks and other neighborhood areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Association or the Board of Directors may so designate at any time thereafter.

18.14. **Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Section 18 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner, by taking title to a Unit, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

18.15. **Declarant Exemption from Statutory Obligations.** Pursuant to §57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of §57-8a-217 of the Act. Pursuant to §57-8a-211(10) of the Act and elsewhere herein, §57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

18.16. **Authority to Grant Exemptions.** In its sole discretion, Declarant may grant exemptions from any provisions of this Declaration or other Governing Documents to a Person engaged in the construction, development, marketing, or selling of Lots or Units within the Property. This includes, without any limitation, exemption from Assessments, reinvestment fees, Design Guidelines, and so forth.

19. **CONFLICT AND LITIGATION AVOIDANCE**

NOTICE: Notwithstanding anything in this Declaration to the contrary, this Section 19 shall not limit, supersede or override the Association's legal remedies or cure period(s) set forth in Section 7 of this Declaration related to an Owner's nonpayment of Assessment(s) or other monetary obligations set forth in the Declaration. The Association may immediately exercise any rights under Section 7 of this Declaration and exercise its remedies related to non-payment of Assessments or to enforce the terms and conditions of this Declaration.

19.1. **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly

prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Section 19 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, the Benefitted Common Area and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

19.2. **Association Warranties.** The Declarant may, but is not obligated to, provide for certain warranties from contractors or subcontractors to the Association related to the construction of the Project (“**Association Warranties**” or an “**Association Warranty**”). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the contractors or subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

19.3. **Owner Warranties.** The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased (“**Owner Warranties**” or an “**Owner Warranty**”). The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties granted to any Owner and the Owner shall have no right to assign any rights of any kind arising under a warranty to the Association.

19.4. **Limitation on Claims.** Any Claims by the Association, the Board or any Owner against Declarant or any building, contractor and/or subcontractor for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach arising out of or related the design or construction of the Common Area and Facilities, the sale of or conveyance of any portion of the Project, or this Declaration or any other agreement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law shall be commenced within two (2) years of substantial completion of the Common Area and Facilities. The Association, the Board and the Owners waive all Claims not asserted within this time. This Section is expressly intended to set forth a period of repose enforceable under Section 78B-2-225(9) of the Utah Code and to reduce the periods of limitation and repose prescribed by Section 78B-2-225 of the Utah Code. Also, the Association, the Board and the Owners waive all Claims for consequential damages, including but not limited to lost rents, rental expenses, loss of use, financing, stigma, and loss of reputation. To the extent the Association, the Board and the Owners damages are covered by insurance or a third-party warranty, including but not limited to the Association Warranties or the Owner Warranties,

the Association, the Board and the Owners waive all rights against Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees for damages. The Association, the Board and the Owners agree that they shall not participate in any class action proceeding and that any Claims shall not be joined or consolidated with the Claims made by any other party, including any other Owner. In the event the Association, the Board or an Owner does participate in any class action or joins or consolidates the Claims with the Claims of any other party, the Association, the Board and the Owner understands that such action is a material default under this Declaration and the Association, the Board or the Owner, as the case may be, shall thereby waive and generally and completely release any and all Claims whatsoever, known or unknown against Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees.

19.5. **Waiver of Subrogation and Release.** The Association and each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, a builder, a contractor, or a subcontractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by law, the Association and Owners hereby release Declarant and builder and contractors and subcontractors, their officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant, builder, contractor, or subcontractor, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, the contractor and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

19.6. **Waiver of Claims by Owner.** Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, the contractor, and/or the subcontractors, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.

19.7. **Waiver of Claims by Association.** Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association or the Board or any officer of the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, a builder, and/or the contractor or any of their officers,

directors, members, employees, or agents for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom other than arising from an Association Warranty.

19.8. **Indemnification and Waivers by Association and Owners.** The Association shall indemnify and defend the Declarant, the builder, and/or the contractor and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any Claims arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom, except to the extent covered by an Association Warranty. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant, the builder and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that the Association Warranties and the Owner Warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any Claims, litigation or legal proceedings asserted or related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees related to any such Claim) from any such Claim and to indemnify Declarant, the builder, the contractor, and/or the subcontractors from any liability arising therefrom.

19.9. **Acceptance of Condition.** Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Area and Facilities, and Limited Common Area and Benefitted Common Area "AS IS" and "WITH ALL FAULTS" with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims, and the Association and any Owner hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

19.10. **Dispute Resolution.** Declarant, Association, its officers and Directors, and all Owners (each a "**Bound Party**" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and Claims regarding the design, initial construction, allegations of latent or patent construction defects, condition, or sale of any part of the Project or any improvements thereon involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

19.10.1. If otherwise allowed by law notwithstanding the terms of this Declaration or if allowed in this Declaration, prior to the Association or any Owner (a "**Claimant**") initiating a Claim or making any demand or commencing any mediation, arbitration, or litigation (any "action") (other than Claims made solely upon an Association Warranty or an Owner Warranty against a contractor or subcontractor) against the Association (if applicable), a Declarant or any builder, contractor, or subcontractor involved in the original construction of the Project ("**Respondent**") (the Claimant and Respondent referred to herein being individually referred to as

a “**Party**” or collectively referred to as the “**Parties**”) shall notify each Respondent in writing (“**Notice**”), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- (b) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- (c) A specific breakdown and calculation of any alleged damages;
- (d) A specific description of the Claims along with any supporting opinions, information, or other factual evidence upon which the Claims are based;
- (e) Photographs of any alleged condition, if applicable;
- (f) Samples of any alleged defective conditions or materials;
- (g) All efforts taken to avoid, mitigate, or minimize the Claims or any alleged damages arising therefrom;
- (h) The names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claims;
- (i) The proposed remedy;
- (j) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- (k) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

19.10.2. Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

19.10.3. In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited by Section 20 below.

19.10.4. Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, in addition to the requirements and limitations set forth in Section 19.3 below, the Association shall:

19.10.4.1. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable. The notice will also contain the following information:

(a) a disclosure/statement in bold and upper case type and not less than 22-point font:

The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.

(b) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;

(c) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;

(d) a written statement of each Board member indicating that Person's position on the litigation;

(e) a copy of a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney (not compensated on a contingency fee basis) not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

(f) all terms of the agreement between the Association and the attorney or law firm proposed to prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and

(g) a detailed description of the alleged Claims against the Declarant and of all efforts by the Association to resolve those Claims prior to commencing any action, and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or the builder, contractor or subcontractor, if applicable.

19.10.4.2. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

19.10.4.3. Receive approval from at least two-thirds (2/3) of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

19.10.5. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential Claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

19.10.6. Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; and (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than seventy-five percent (75%) of the total voting power of the Board, and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

19.10.7. The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, §57-8a-228.

19.10.8. The Association, the Board, any officer of the Association, and the Owners agree that any Claims or Actions, the subject matter of any proceeding, and the results of any proceeding, including any settlement, shall be confidential and not disclosed to any other person or entity, including any other Owner, other than (a) in confidence with its own legal, financial, insurance or tax professionals, (b) in necessary communication with appropriate federal, state or local tax authorities, (c) to any person necessary to perform or satisfy the award, or (d) to any other person as may be required to comply with a subpoena, court order or legal process; provided, however, that Declarant shall be afforded a reasonable opportunity after written notice to object to the same. The Association, the Board, the officers of the Association, and the Owners, as the case may be, shall advise any legal, financial, insurance, or tax professional to whom such party discloses any confidential information or information about the Claims and/or Actions and any settlement or award that such information as permitted herein is to be held in confidence.

19.10.9. In addition to the requirements set forth in this Section 19 and Section 20 below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Declarant (if during the Declarant Control Period) and a vote of seventy-five percent (75%) of the Class “A” Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

19.10.10. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

20. MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT

In addition to the requirements and procedures set forth in Section 19.2 above, the Association and each Owner is deemed to have accepted and agreed to comply with the terms of this Section.

20.1. Any and all Claims, controversies, breaches, or disputes (each a “**Dispute**”) involving the Declarant or any affiliate of the Declarant, and any Owner or the Association (individually referred to as a “**Party**” or collectively referred to as the “**Parties**”) arising out of or related to this Declaration, the Units, the sale of a Unit, or any transaction related thereto, whether such Dispute is based on contract, tort, statute, or in equity, including, without limitation, any Dispute over: breach of contract, negligent or intentional misrepresentation or fraud,

nondisclosure, breach of any alleged duty of good faith and fair dealing, allegations of latent or patent construction defects, breach of any fiduciary duty, or any other matter arising out of or related to the interpretation of any term or provision of this Declaration, sales agreement, or otherwise, shall be arbitrated pursuant to the Federal Arbitration Act (9 U.S.C. §1, et seq.) (“FAA”) and subject to the procedures set forth in Sections 19.

20.2. Such Dispute shall be submitted to binding arbitration by and pursuant to the rules of the American Arbitration Association (“AAA”), pursuant to its construction arbitration program, or such alternative as mutually agreed by the Parties. If AAA is not available and the Parties involved in the Dispute are unable to agree on another alternative, then either Party may, pursuant to the applicable provisions of the FAA, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the Parties. The rules and procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

20.3. The following are general arbitration provisions:

20.3.1. The matters herein involve and concern interstate commerce and are governed by the provisions of the FAA now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the FAA.

20.3.1.1. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the arbitration service rules shall govern the conduct of the proceeding.

20.3.1.2. This Section 2019.3 shall inure to the benefit of, and be enforceable by, the Declarant, affiliates of the Declarant, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom the Association or Owner contents is responsible for any alleged defect in or to the Project.

20.3.1.3. In the event any dispute is submitted to arbitration, each Party shall bear its own attorney fees and costs (including expert costs) for the arbitration, unless the arbitrator orders otherwise in accordance with the terms of Section 15.

20.3.1.4. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. The Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in Davis County.

20.3.1.5. The participation by any party in any judicial proceeding concerning this Section 20.3 or any matter arbitration-able hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 19.3. Attorney fees and costs shall be borne pursuant to Section 3.1.3 above.

20.3.1.6. The fees to initiate the arbitration shall be advanced by the Party bringing the Claim and subsequent fees and costs of the arbitration and/or arbitrator shall be borne equally by the Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator shall ultimately be borne as determined by the arbitrator.

20.3.1.7. The arbitrator appointed to serve shall be a neutral and impartial individual.

20.3.1.8. If any provision of this Section 20.3 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

20.3.1.9. All parties governed by this Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 20.3 decided in a court or by a jury trial.

20.4. **Landowners.** All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Section 19.

21. HUD APPROVAL

The Declarant and the Association desire that the Project shall become and remain an approved project by the U.S. Department of Housing and Urban Development (“**HUD**”) and the Federal Housing Administration (“**FHA**”). It is acknowledged that the requirements for approval by HUD and FHA may change over time. In the event of any conflict between the terms and conditions of the HUD and/or FHA approval guidelines for the Project, the terms and conditions of this Declaration and the Governing Documents shall be modified to be in compliance with the then existing requirements of FHA and HUD subject to the Act and any applicable laws. In the event of any conflict between the Act (and any applicable laws), the Declaration, and any HUD and/or FHA approval guidelines, the Act (and any applicable laws) shall control and govern. Notwithstanding the above, the Declarant during the Period of Administrative Control or at least sixty-seven percent (67%) of the total voting interest of the Owners at a meeting of the Association may modify this provision whereby the Declaration and other Government Documents shall no longer be subject to the then existing requirements of FHA and HUD.

[CERTIFICATION AND SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the ____ day of _____, 2022.

DECLARANT

CW THE LANE, LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF UTAH)
 §
COUNTY OF DAVIS)

On the ____ day of _____, 2022, personally appeared before me _____ who by me being duly sworn, did say that she/he is the _____ of CW The Lane, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

(Notary Signature)

(Seal)

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

EXHIBIT B
BYLAWS OF
THE LANE OWNERS ASSOCIATION, INC.
(Centerville City, Davis County, Utah)

THESE BYLAWS OF THE LANE OWNERS ASSOCIATION, INC., are effective upon recording in the office of the Davis County Recorder pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred to collectively herein as the “**Acts**”).

RECITALS

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for The Lane (the “**Declaration**”) and Articles of Incorporation for The Lane Owners Association, Inc. (the “**Articles**”).

B. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project, and, to further the Association’s efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I
DEFINITIONS

Capitalized terms used herein shall have the same meaning and effect given to such terms in the Declaration except as otherwise provided herein or as may be required by context.

ARTICLE II
APPLICATION

All present and future Owners, Occupants, mortgagees, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and the Rules. The mere acquisition or rental of any of the Units, or the mere act of occupancy or use of any such Units or the Common Area and Facilities will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by such persons.

ARTICLE III
MEMBERSHIP IN ASSOCIATION; VOTING; MEETING OF OWNERS

3.1 Membership in Association. Declarant, so long as Declarant owns a Lot, and every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to ownership of any Lot. Each Lot in the Project shall be entitled to one (1) vote. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If a Lot is owned by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, conveyance or other disposition of a Lot shall constitute a devise, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

3.2 Voting. Unless otherwise provided for herein, or required by the Declaration, all matters submitted to a vote shall be by a majority vote of all votes cast. Notwithstanding the foregoing, during the Declarant Control Period, Declarant may act in all Association matters with or without a vote of the Owners. To the extent any matters are submitted to a vote of the Owners during the Declarant Control Period, the same shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Association shall be decided by the votes of the Owners. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one (1) Owner the vote for the Lot shall be cast as such Owners decide among themselves. In the event such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

3.3 Annual Meeting. During the Declarant Control Period, annual meetings are not required and will only be held in the sole discretion of the Declarant. Thereafter, the annual meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.4 Special Meetings. During the Declarant Control Period, the Declarant shall have the

sole right to call a special meeting. Thereafter, special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty-three percent (33%) of all of the total votes of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the Board and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The Board shall then call, provide notice of, and conduct a special meeting within forty-five (45) days of receipt of the request.

3.5 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary / Treasurer or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, or by email, text message or other mode of electronic or digital communication, to the extent not prohibited by law, at least fifteen (15) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address, email address, number for text messaging, or other mode of electronic or digital communication last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Each Owner shall register with the Association such Owner's current email address, phone number (indicating whether the same is capable of receiving text messages), and mailing address for the purposes of notice hereunder. Such registered email, phone number, and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. Such notice shall specify the place, day and hour of the meeting, and, the purpose of the meeting. The President of the Association will chair meetings of the Owners. The presence of an Owner at a meeting shall be deemed to waive any objection such Owner has to the form and scope of the notice unless such Owner objects at the outset of the meeting.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice for any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 Place of Meetings. The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.8 Quorum. Except for meetings addressing an amendment of these Bylaws, an amendment of the Declaration, or other matters for which the affirmative votes of a certain percentage of Owners is required for approval, the Owners present in person or by proxy at a meeting of the Association shall constitute a quorum. Where a certain percentage of affirmative

votes of Owners is required to approve an action and such action is to be discussed at the meeting, a quorum shall consist of not less than the number of affirmative votes required to approve such action.

3.9 Proxies. At all meetings of the Association, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the applicable Owner(s) of the Unit(s), and filed with the Secretary / Treasurer or any professional manager the Association chooses to retain. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner(s) of his or her Lot(s).

3.10 Waiver. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver of any notice requirements.

3.11 Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code Ann. §16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

ARTICLE IV BOARD; SELECTION; TERM OF OFFICE

4.1 General Powers. The Project and the affairs and business of the Association shall be managed by the Board. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, the Bylaws, the Articles of Incorporation, or the Acts except such powers that the Declaration, the Bylaws, the Articles of Incorporation and the Acts vest solely in the Owners.

4.2. Number, Selection and Tenure. The Association will be composed of three (3) Directors. Initially, the Board will have three (3) Directors who will be selected by the Declarant. The Declarant shall decide who serves on the Board during the Declarant Control Period and may increase the number of Directors. After the Declarant Control Period, the Board will consist of three (3) Directors. Within ninety (90) days after the end of the Declarant Control Period, the Association shall hold an election at which the Owners shall be entitled to elect all three (3) Directors. Upon such election, the terms of the Directors will be staggered as follows: the two (2) Directors receiving the highest number of votes in such election shall serve for an initial term of three (3) years, and the one (1) Director receiving the next highest number of votes shall serve for an initial term of two (2) years. After the expiration of the initial terms, all Directors shall serve terms of two (2) years. After the Declarant Control Period, the Board may change the number of Directors on the Board by the vote of a majority of Directors. In addition, after the Declarant

Control Period the Owners may change the number of Directors by the vote of a majority of Owners. Notwithstanding the foregoing, there shall always be an odd number of Director slots and the terms of the Directors shall be staggered. Notwithstanding the foregoing, Declarant may, at Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Declarant Control Period. Such action shall not be deemed as a termination of the Declarant Control Period or a waiver of any of the rights of Declarant as provided herein.

4.3 Removal and Replacement. After the Declarant Control Period, a Director may be removed with or without cause by a majority vote of the other Directors or by a majority vote of the Owners at a meeting of the Owners called for the purpose of voting on removal. If a Director is removed, the remaining Directors (provided there are at least two (2) Directors serving) shall determine a replacement Director to fill the remainder of the term of the removed Director. If the Board cannot determine a replacement, or if there are not two (2) Directors then serving, the Owners shall fill vacancies on the Board at a meeting called for the purpose of filling vacancies.

4.4 Non-Liability of Officials. To the fullest extent permitted by law, none of the following Persons: (i) every Director and officer of the Association, (ii) every member of the Design Review Committee, or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association (collectively, the "Released Persons") shall be liable to any Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties. Each Owner, Occupant and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Project. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Project.

(c) No provision of these Bylaws or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person, even if funds of the Association are used for such a purpose.

4.5 Indemnification. In the event that any legal claim or action is asserted or commenced against a Director or Officer for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless a court of competent jurisdiction determines that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such determination, the Association is no longer liable for the cost of defense and may recover costs already expended from the Director or Officer who so acted.

ARTICLE V MEETINGS OF THE BOARD OF DIRECTORS

5.1 Regular Meetings. Meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a weekend or legal holiday, then that meeting shall be held at the same time on the next day which is not a weekend or legal holiday.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than five (5) days written notice to each Director.

5.3 Open Meetings. After the Declarant Control Period, meetings of the Board shall be open to the Owners or Owners' agents except in cases where the Utah Revised Nonprofit Act permits private meetings. After the Declarant Control Period, any Owner may request notice of all meetings of the Board, in which case the Board shall provide notice of all meetings to such Owner not less than forty-eight (48) hours prior to such meeting.

5.4 Quorum and Voting. A majority of the number of Directors shall constitute a quorum for the transaction of business. During the Declarant Control Period, all matters requiring a vote of the Directors or otherwise submitted to a vote of the Directors shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Directors shall be decided by the votes of the Directors. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board and of the Association.

ARTICLE VI POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACTS

6.1 Powers. The Board shall have power to:

6.1.1 Adopt and publish Rules and Regulations governing the use of the Common Area and Facilities within the Neighborhood or as shown on the Plat Map or identified in

the Declaration, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

6.1.2 Adopt and publish other Rules and Regulations for the management of the Association as are not in conflict with the Acts, the Declaration, or these Bylaws;

6.1.3 As the Board deems necessary, employ a professional manager, or other independent contractors or employees, to carry out the functions of the Association and exercise the powers of the Board which are properly the subject of delegation; and

6.1.4 Exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Acts, the Declaration, or the Articles of Incorporation.

6.2 Duties. It shall be the duty of the Board to:

6.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote thirty-three percent (33%) of the total votes;

6.2.2 Supervise any professional manager and all Officers, agents and employees of this Association, and to see that their duties are properly performed;

6.2.3 After the Declarant Control Period, do each of the following in the manner set forth in the Declaration:

6.2.3.1 Prepare the budget for the Association as provided in the Declaration and Section 10.1 of these Bylaws; and

6.2.3.2 Fix the amount of the annual assessment assessed against each Lot and fix the amount of any supplemental assessments or special assessments applicable to any Lots;

6.2.4 Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each supplemental assessment or special assessment;

6.2.5 Foreclose the lien (at the option of the Board) against any Lot for which assessments are not paid in the manner provided for in the Association Act and the Declaration or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same;

6.2.6 Issue, or to cause an appropriate Officer to issue, upon demand by any

person, a certificate setting forth whether or not any assessment has been paid and to charge a reasonable fee for the issuance of these certificates;

6.2.7 Procure and maintain insurance as required by the Declaration and the provisions of the Association Act relating to insurance;

6.2.8 Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions of the Association Act relating to reserve funds;

6.2.9 Cause all Officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate; and

6.2.10 Cause the Common Area and Facilities to be properly maintained and managed.

6.3 Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against Declarant, the individual managers, owners, members, or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units or Units thereon unless and until all of the "MANDATORY DISPUTE RESOLUTION REQUIREMENTS" set forth in the Declaration have been satisfied. Any Claims against Declarant shall comply with all the terms and conditions of the Declaration.

6.4 Applicability of the Community Association Act. The provisions of the Community Association Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

6.5 Applicability of the Utah Revised Nonprofit Act. The provisions of the Utah Revised Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise provided in these Bylaws, the Declaration, or the Articles of Incorporation.

ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The following positions shall constitute the officers of this Association ("Officers"): a President, a Vice-President, a Secretary / Treasurer, and such other Officers as the Board may from time to time by resolution create.

7.2 Selection of Officers. The Declarant shall select the three (3) initial Officers, and the Declarant shall decide who serves as Officers during the Declarant Control Period. After the Declarant Control Period, the Board shall annually, at the next meeting of the Board after the Association's annual meeting, select the Officers. After the Declarant Control Period, all Officers

shall be members of the Board.

7.3 Term. After the Declarant Control Period, the Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

7.4 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.5 Resignation and Removal. After the Declarant Control Period, any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary / Treasurer. Such resignation shall take effect on the date of 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.

7.6 Vacancies. After the Declarant Control Period, a vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

7.7 Multiple Offices. Members of the Board may be Officers in the Association. No person shall simultaneously hold more than one (1) of any of the offices identified above, except in the case of special Officers created pursuant to Section 7.4, above.

7.8 Duties of Officers. The duties of the Officers are as follows:

7.8.1 President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all written contracts or agreements of the Association. The President shall execute any amendments to the Declaration and deliver the same to the Secretary / Treasurer for certification and recordation, provided approval for such amendment has been obtained as provided in the Declaration.

7.8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

7.8.3 Secretary / Treasurer. The Secretary / Treasurer shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; certify that any amendments to the Declaration have received the required approval and have been executed by the President and shall record the same; and shall perform such other duties as required by the

Board. The Secretary / Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep the Associations book and accounts; and shall assist the Board with the preparation of the annual budget to be presented to the Owners as provided herein.

ARTICLE VIII COMMITTEES

8.1 Committees Authorized. The Board may appoint Committees as it deems appropriate for carrying out the purposes of the Association.

ARTICLE IX BOOKS AND RECORDS

9.1 Open Records. Notwithstanding Section 6.2.1, above, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation, the Bylaws, and any Rules promulgated by the Board shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE X BUDGET AND ASSESSMENTS

10.1 Budget. The Board shall prepare an annual budget showing the estimated expenses of the Association and the anticipated annual assessment for the following year attributable to each Lot. The budget shall be completed and distributed to the Owners on or before December 1 of each year.

10.2 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

10.3 Payment of Assessments. As more fully set forth in the Declaration, and subject to the exemptions set forth in the Declaration, each Owner is obligated to pay to the Association all assessments, and the Owner's obligation to pay such assessments is secured by a continuing lien upon the Owner's Lot. Any assessment which is not paid when due is delinquent. If the assessment is not paid on time, then the Board has the authority to establish late fees and collect the same from the delinquent Owner. The Board, in the name of the Association, may bring an action at law against the Owner personally obligated to pay the assessments and late fees or foreclose the lien against the Lot in the manner provided by the Association Act, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Area and Facilities or abandonment of his or her Lot.

10.4 Set-up Fee. In addition to the assessments identified in the Declaration, the Association may charge an administrative set-up fee whenever a new Owner takes title to a Lot. The amount of any set-up fee will be determined by the Board in accordance with these Bylaws and may be adjusted by the Board from time to time. The set-up fee will be used to offset the administrative, data entry, and recordkeeping costs associated with the change of ownership from one Owner to another.

ARTICLE XI AMENDMENTS

11.1 Amendment. During the Declarant Control Period, the Declarant shall have the right to amend these Bylaws without the consent of the Association or any Owner. After the Declarant Control Period, these Bylaws may be amended, at a regular or special meeting of the Association, by an affirmative vote, in person or by proxy, of the Owners entitled to cast at least sixty-seven percent (67%) of the total votes of the Association; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction. No amendment to these Bylaws shall be effective until they are recorded in the office of the Davis County Recorder.

11.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII MISCELLANEOUS

12.1 Governing Law. These Bylaws shall be governed by, and interpreted in accordance with, the laws of the State of Utah, without regard to conflict of law provisions.

12.2 Severability. If any section, term, or provision of these Bylaws is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Declaration which shall all remain in full force and effect.

12.3 No Waiver. The failure by the Declarant or the Association to enforce any term or provision of these Bylaws shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, on the ____ day of _____, 2022, the Incorporator of the Company has executed and adopted these Bylaws.

CW THE LANE, LLC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

STATE OF UTAH)
)
 §
COUNTY OF DAVIS)

On the ____ day of _____, 2022, personally appeared before me _____ who by me being duly sworn, did say that he/she is the _____ of CW THE LANE, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

(Notary Public)

(Seal)

EXHIBIT C

MAINTENANCE ALLOCATION TABLE

Improvement	Owner	Association	Notes
A/C Pad & Unit	X		
Address Numbers	X		Subject to Board approval upon replacement.
Attic	X		
Cable/Satellite TV	X		Subject to Board approval.
Ceiling	X		
Circuit Breakers for Unit	X		
Common Area Amenities		X	
Door and Door Frames (Exterior)	X		Subject to Board approval upon replacement.
Door and Door Frames (Interior)	X		
Door Hardware/Doorbell	X		Subject to Board approval upon replacement.
Drains - Unit and Limited Common Area (Patio/Porch)	X		
Dryer Vent	X		
Electrial Wiring/Panels	X		
Exterior Wall Finishes	X		
Fencing - Project Perimeter	X		
Fencing - Lots and Limited Common Areas	X		Subject to Board/Design Review Committee approval.
Fireplace, Flue, and Vent Pipes - Cleaning and Repair	X		
Floor coverings	X		
Foundation - Structural	X		
Foundation - Cosmetic	X		
Furnace	X		
Garage Doors - Repair and Replacement	X		Subject to Board/Design Review Committee approval.
Gas Pipes (Meter to Unit interior)	X		
Hose Bib/Faucet/Spigot	X		
Hot Water Heater	X		
Insurance - Property (attached buildings)	N/A	N/A	
Insurance - HO6 Policy	X		
Insurance - Loss Assessment	X		
Insurance - Deductible	X	X	Assess to Owners pro-rata according to losses. HO6

			deductible is Owner's responsibility.
Irrigation Lines/Heads - Common Area (Front Yards)		X	
Landscaping - Common Areas		X	
Landscaping - Owner Maintained Areas/Limited Common Areas	X		
Lights - Exterior (Porch, Driveway, Garage, Wall Pack (Fixtures & Bulbs))	X		
Limited Common Area - Patios, Porches and Decks (Repair and Replacement)	X		
Limited Common Area - Driveways	X		
Mailbox and Stand/Structure	X		
Mailbox Lock and Key	X		
Paint - Exterior Walls and Trim	X		
Paint - Exterior Doors and Garage Doors	X		
Paint - Interior	X		
Patio Slab	X		
Pest Control - Interior	X		
Phone Lines	X		
Playgrounds and Open Space		X	
Plubming Valves and Pressure Regulators	X		Owner: point of connection/meter to Unit and Association: before point of coneciton/meter.
Plumbing Main Line	X		Owner: point of connection/meter to Unit and Association: before point of coneciton/meter.
Plumbing Leak	X		Owner: point of connection/meter to Unit and Association: before point of coneciton/meter.
Plubming Cloggage	X		Owner: point of connection/meter to Unit and Association: before point of coneciton/meter.
Plumbing Interior Pipes	X		Owner: point of connection/meter to Unit and Association: before point of coneciton/meter.
Rain Gutters - Cleaning, Repair, and Replacement	X		
Rain Gutters - Drains away from Building	X		
Roof Repair and Replacement	X		

Screen Doors	X		Subject to Board/Design Review Committee approval.
Sewer Pipes and Utilities (Single Unit)	X		
Sewer Pipes and Utilities (Serving Multiple Units)		X	Unless otherwise handled by Centerville City or others.
Sidewalks and Paths on Common Areas		X	
Sliding Glass Doors	X		
Snow Removal - Limited Common Areas, Driveways, Porches and Sidewalks on Lots	X		
Snow Removal - Private Roads and Common Area Sidewalks		X	
Storm Drains		X	
Street Lights		X	
Streets - Private		X	
Termites, Pests, Rodents, Insects, etc.	X		
Trash	X		
Vent Covers - Exterior	X		
Wall - Load Bearing Interior Wall	X		
Wall - Partition Interior Wall	X		
Water - Culinary or Owner Maintained Landscaping	X		
Water - Common Areas		X	
Weather Stripping	X		
Windows - Glass, Screens, Frames, Boxes, and Wells	X		Subject to Board/Design Review Committee approval.

Cory Snyder

From: Kevin Campbell <Kevin.Campbell@esieng.com>
Sent: Tuesday, October 19, 2021 4:32 PM
To: Cory Snyder; Mackenzie Wood
Cc: Lisa Romney; Zach Swenson; Tony Hill
Subject: FW: Flood plain Permit for the Lane 644 West 400 South
Attachments: 10.08.2021 CivilPlans - TheLandV9 - Edits.pdf; theLane flood control focus Area.PNG

Cory and Mackenzie,

I spoke with Carl Hansen, Davis County Public Works Permit Officer this afternoon and Davis County is not going to require a permit for The Lane Subdivision.

Kevin

Kevin Campbell, P.E.
Centerville City Engineer

Kevin Campbell, P.E.
ESI Engineering, Inc
3500 S. Main St.
SLC, Ut 84115
801.263.1752

This email may contain confidential or privileged information. If you believe you have received it in error, please notify the sender immediately and delete this message without copying or disclosing it.

From: Carl Hansen [mailto:carl@co.davis.ut.us]
Sent: Tuesday, October 19, 2021 3:57 PM
To: Kevin Campbell <Kevin.Campbell@esieng.com>; Anthony Fletcher <anthony@builtbycw.com>
Cc: Adam Wright, P.E. <awright@co.davis.ut.us>; Jason Fielding <jfielding@co.davis.ut.us>; Kenneth Achter <kachter@co.davis.ut.us>; Chad Britt <chad@co.davis.ut.us>
Subject: Fwd: Flood plain Permit for the Lane 644 West 400 South

Kevin;

As we just talked about by phone and for your records, here are the emails between **Anthony Fletcher of C.W. Urban** and myself regarding ' The Lane' development at **644 West 400 South in Centerville**. As I explained to Anthony, the County would not have jurisdiction for this project as the site drains north from 400 South to a detention basin (Truck World) from which it drains west to the I-15 Frontage Road for discharge there. There would be no direct discharge or impact to **Deuel Creek** on the south side of 400 South per the plans CW Land has provided. I told Anthony he may need to contact UDOT if they strictly control the pipe connection/discharge in the I-15 Frontage Road.

Good to hear from you and hope all is going well with you and your work.

Carl Hansen, Permits Officer
DCPW

----- Forwarded message -----

From: **Anthony Fletcher** <anthony@builtbycw.com>

Date: Tue, Oct 19, 2021 at 3:07 PM

Subject: RE: Flood plain Permit for the Lane 644 West 400 South

To: Carl Hansen <carl@co.davis.ut.us>

Cc: Zach Swenson <zach@builtbycw.com>, Adam Wright, P.E. <awright@co.davis.ut.us>, Jason Fielding <jfielding@co.davis.ut.us>, Kenneth Achter <kachter@co.davis.ut.us>, Chad Britt <chad@co.davis.ut.us>

Hi Carl,

Thanks again for the response. Kindly find attached a copy of the project's civil plans and a screenshot of the measured distance to the Deuel Creek.

As discussed over the phone, there will not be a direct discharge from our property into the creek. Our drainage plan shows that we will be discharging into an adjacent property (i.e. truck World). Could you kindly review the attached and advise on the way forward?

Thanks.



Anthony Fletcher

Land Development Intern

C. 507.340.5402

www.builtbycw.com

From: Carl Hansen <carl@co.davis.ut.us>

Sent: Tuesday, October 19, 2021 1:53 PM

To: Anthony Fletcher <anthony@builtbycw.com>

Cc: Zach Swenson <zach@builtbycw.com>; Adam Wright, P.E. <awright@co.davis.ut.us>; Jason Fielding <jfielding@co.davis.ut.us>; Kenneth Achter <kachter@co.davis.ut.us>; Chad Britt <chad@co.davis.ut.us>

Subject: Re: Flood plain Permit for the Lane 644 West 400 South

Phone Inquiry (507-340-5402) from Anthony Fletcher, CW Urban; no plans submitted.

Attached please find a **Davis County Property Search** for the Parcels you have listed, plus a **Pictometry Photo (UTDAV 119 (61) showing proximity to the centerline of Deuel Creek in 400 South**. Also included is our ***Flood Control Permit Requirements and Guidelines for Permitting***; it appears that if you are generating storm drainage and intend to direct discharge into Deuel Creek you will need a permit from our office (fillable Permit form, Guidelines, Policy Statements attached). If you are connecting to a local drain (Centerville City's) before it discharges into Deuel Creek you only need permission from Centerville City and should contact them directly for permitting.

This portion of **Deuel Creek** has been under re-construction recently so it is not correctly represented in the Pictometry photo attached. The **Stream Alteration Folder** attached represents much of the re-construction in this area for Deuel Creek and may show the new channel configuration that might serve your development, depending on the current status of Deuel Creek at your required point of discharge. Onsite detention is often required of all new development for run-off exceeding .2 cfs/acre; several other general parameters are discussed in the *Permit Requirements and Guidelines* (attached).

We hope this helps explain portions of the drainage system in this area and if it can serve your project. We look forward to your response.

Carl Hansen, Permits Officer

DCPW

 [FolderPDF20210806142742.pdf](#)

On Tue, Oct 19, 2021 at 11:58 AM Anthony Fletcher <anthony@builtbycw.com> wrote:

Hi Carl,

Thanks for calling back. The parcel numbers as mentioned are 030010178 & 030010179.



Anthony Fletcher

Land Development Intern

C. 507.340.5402

www.builtbycw.com

CENTERVILLE

Staff Backup Report

1/12/2022

Item No. 3.

Short Title: PUBLIC HEARING -ADMINISTRATIVE DECISION - Conceptual Site Plan - Chipotle, 370 WEST 400 NORTH

Initiated By: Ben Fiedler, Applicant

Staff Representative: Planning Staff - Cory Snyder

SUBJECT

The property owner desires to remodel the existing building, which will be utilized for another restaurant use known as Chipotle Mexican Grill. As part of the remodel, the owner has plans for an building exterior redesign.

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- ▣ 01-12-2022 PC Staff Report Chipotle Building Design Change
- ▣ Chipotle Building Design Scheme Submittal
- ▣ Digital Story Board Submittal
- ▣ PC Minutes Prior Dairy Queen Approval
- ▣ Applicant's revised storyboard
- ▣ Applicant's revised building elevations

**CENTERVILLE CITY
COMMUNITY DEVELOPMENT DEPARTMENT
655 North 1250 West, Centerville, Utah 84014
(801) 292-8232**

**STAFF REPORT
AGENDA: ITEM 3**

APPLICANT:	FHA ARCHITECTS c/o BEN FIEDLER 14344 Y STREET, SUITE 204 OMAHA, NE 68137 (<i>bfiedler@fhaarchitects.com</i>)
PROPERTY:	370 WEST 400 NORTH (<i>PARRISH LANE</i>) (<i>FORMER DAIRY QUEEN SITE</i>)
PROPERTY OWNER:	TERRFORM COMPANIES, LLC c/o JOE PIENEZZA 66770 SOUTH 900 EAST, SUITE 102 SALT LAKE CITY, UTAH 84047 (<i>jpienezza@terraformco.com</i>)
ACREAGE:	0.65 ACRES
ZONING:	COMMERCIAL VERY-HIGH (C-VH)
APPLICATION:	CONCEPTUAL SITE PLAN APPLICATION (<i>FOR AMENDING THE BUILDING DESIGN SCHEME FOR CHIPOTLE</i>)
RECOMMENDATION:	CONSIDER A DECISION TO TABLE FOR FURTHER REVIEW

BACKGROUND

The property owner desires to remodel the existing building, which will be utilized for another restaurant use known as Chipotle Mexican Grill. As part of the remodel, the owner has plans for a building exterior redesign. Due to a previous site plan condition of approval by the Planning Commission regarding the exterior, the Zoning Administrator is NOT authorized to approve the changes [*see CZC 12.21.110(k)(1)(A)*]. Therefore, such change is required to return to the Commission for review and approval [*see CZC 12.21.110(k)(2)*].

In accordance with CZC 12.21.110(c)(1), a Site Plan approval is a two-step process consisting of: (1) conceptual site plan review and approval; and (2) final site plan review and approval. In order to provide for appropriate review and analysis, conceptual and final site plan applications shall not be reviewed by the Planning Commission concurrently or at the same meeting.

ORIGINAL CONDITION OF APPROVAL FOR THE FORMER DAIRY QUEEN

On April 8, 2009, the Centerville City Planning Commission made a motion to approve the final site plan for the Dairy Queen addition/remodel located at 370 West Parrish Lane, Centerville, with this following condition:

4. The applicant shall insure that all colors, including the red, blue, and rust orange shall be muted.

CONCEPTUAL SITE PLAN REVIEW - CZC 12.12.110.d

General Plan – 12-430-3-2.

Parrish Lane Corridor – “As a major gateway to the city, the appearance of the Parrish Lane Commercial Area should be of utmost importance to the City. City officials and commercial developers should create a “gateway” impression of Parrish Lane. Such features as landscaping, bermed frontage areas, streetlights, City identification monuments, and framing views of the city and the Wasatch Mountains should be used in development of properties along the commercial area of Parrish Lane, which is hereby designated as the Parrish Lane Commercial Gateway Corridor.

Specifically, elements of strip commercial development should be avoided along Parrish Lane, such as frequent curb cuts, lack of landscaping, large unattractive signs, expansive parking areas and pavement, and generally unappealing streetscapes. A thirty-foot (30') wide bermed and landscaped buffer strip should be required along properties fronting the commercial area of Parrish Lane. While freestanding signs may be allowed in this area, monument signs are encouraged. Where allowed, freestanding signs should be limited to size, well designed and become gradually smaller in height and size the further away the sign is located from Interstate-15. All signs in this area should be tightly controlled and arranged to avoid clutter. Monument signs should be encouraged in bermed landscaped areas. Development of a few commercial centers is preferable to the subdividing of the Parrish Lane frontage into numerous individual commercial pads, each with its own sign and curb cuts. City monument signs and landscaped islands in Parrish Lane should be placed near the Interstate 15 interchange and any other future major traffic corridor interchange west of Interstate 15 to further create the gateway impression.”

General Plan – 12-480-5 - Commercial Development:

- Goal – “Preserve and enhance commercial activity along Parrish Lane.”
- ❖ Policy – “Actively work to improve the appearance and function of existing strip commercial development and discourage new strip commercial projects reduce strip commercial development and disallow any new strip commercial projects.”

Table of Uses – CZC 12.36.040

“Restaurant, fast food” continues to be an allowable Conditional Use in C-VH zone.

Staff Comments: At this time, the proposed **Restaurant, fast food use may continue**, as originally approved or amended by the City [*see CZC 12.21.100(j)*].

Applicable Commercial Development Standards

(Building Elevation Changes) Parrish Lane Gateway Design Standards (*CZC 12.63*) - The gateway standards have been adopted to enhance the economic viability and aesthetic value of the Parrish Lane Gateway Area. Please keep in mind that many of the guidelines are “*should*” rather than “*shalls*” meaning that there is some discretion in whether a “*should*” is to be applied to a particular project. Nonetheless, a summary of these design standard concepts, and a brief Staff response are being provided below:

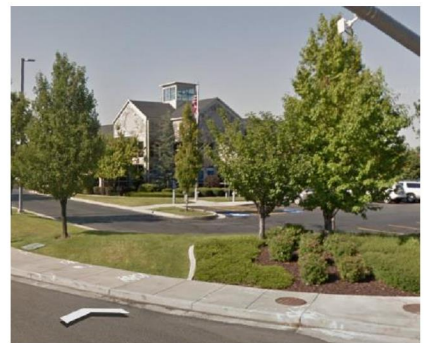
Architecture (CZC 12.63.040)

❖ **Colors & Materials (040c)**

- ❖ All applications for site plan review of construction within the Parrish Lane Gateway Area shall include a "storyboard" with samples of the colors and materials to be used on-site. **"Storyboard" materials should harmonize with existing, surrounding development**
- ❖ Buildings should be constructed primarily of cement block, brick, or **similar maintenance-free material**.
- ❖ At least 25% of the primary façade shall have upgraded architectural features such as canopies, pillars, archways, and other treatments.
- ❖ At least 15% of a secondary facade (the façade facing a none-primary frontage) shall be of upgraded architectural features.
- ❖ At least 5% of all other facades shall be of upgraded architectural features.

Staff Conclusion – The submittal **has provided required “storyboard” regarding the use of colors, materials, and the expected articulation parameters.** Staff is **NOT** convinced that the new design is of the **expected harmony with the surroundings.** Additionally, staff is **NOT** convinced that the new design meets the General Plan’s intent for “*the appearance of the Parrish Lane Commercial Area should be of utmost importance.*”

Below are staff’s reasons for concern:



- Surrounding Development Aesthetics - When reviewing the surrounding buildings, their materials and colors, directly adjacent to the site the new design (*i.e. cool tones*) is starkly different than the Quick Quack site, located to the north and Beans & Brews, located to the east. These adjacent sites use warm tones and colors. Additionally, the sites located across the street to the south and west, also consist of warm tones. However, staff does acknowledge that the America First site uses the cool tones, which consist solely of a distinctive light-grey rock.
- Use of Paint Overcoat of Existing Rock Material - Staff does not believe that the use of a paint overcoat is a long-term viable solution for the expected use of a “*maintenance-free material*.” Painting over a hard surface with a resistant material is more easily subject to weathering and bleaching. Additionally, the over paint requires continual maintenance and once paint is used it’s much harder or nearly impossible to adequately remove without significant damage to the original material.

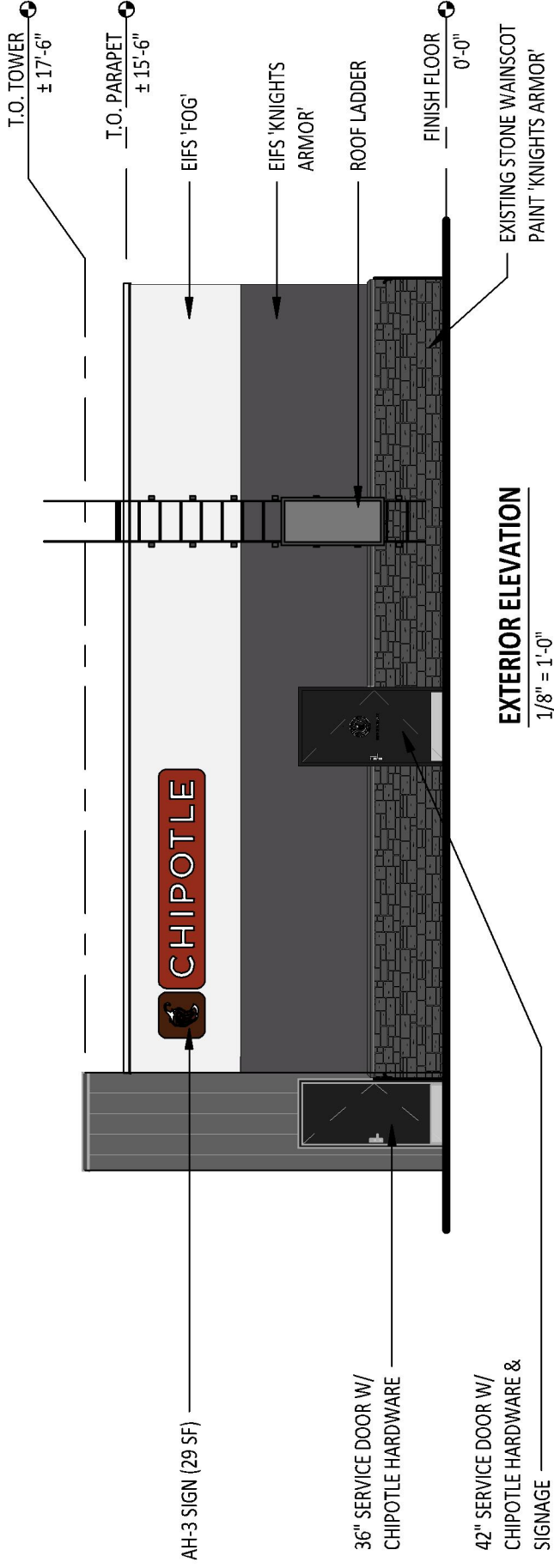
Use of Signs 12.54

From review of the building elevations plans, it appears there will be changes to the Wall Signs. Additionally, staff is assuming there will be changes to the existing pole sign and the menu board. Such use of signs will need to comply with CZC 12.54 (Signs) and submit and obtain a required separate sign permit, which is reviewed and approved by the City’s Zoning Administrator.

PLANNING STAFF RECOMMENDATION

PROPOSED ACTION: *“I hereby make a motion for the Planning Commission to **TABLE** the conceptual site plan for the proposed exterior building elevation changes to site located at 370 West 400 North, involving the remodel for Chipotle, with the following directives:*

1. *The applicant shall readdress the use of colors and materials to better harmonize the exterior use of materials and colors with the immediately adjacent development.*
2. *The Applicant shall eliminate the use of paint cover-coating of the building’s existing rock in order to maintain the maintenance-free expectation of the Parrish Gateway Design Guidelines. The applicant ought to consider the following:*
 - *Keep the existing rock material in place, as constructed with some modifications.*
 - *Consider removal of the existing rock and replace with brick that is suitable and in harmony with the surrounding development.*



EXTERIOR ELEVATION

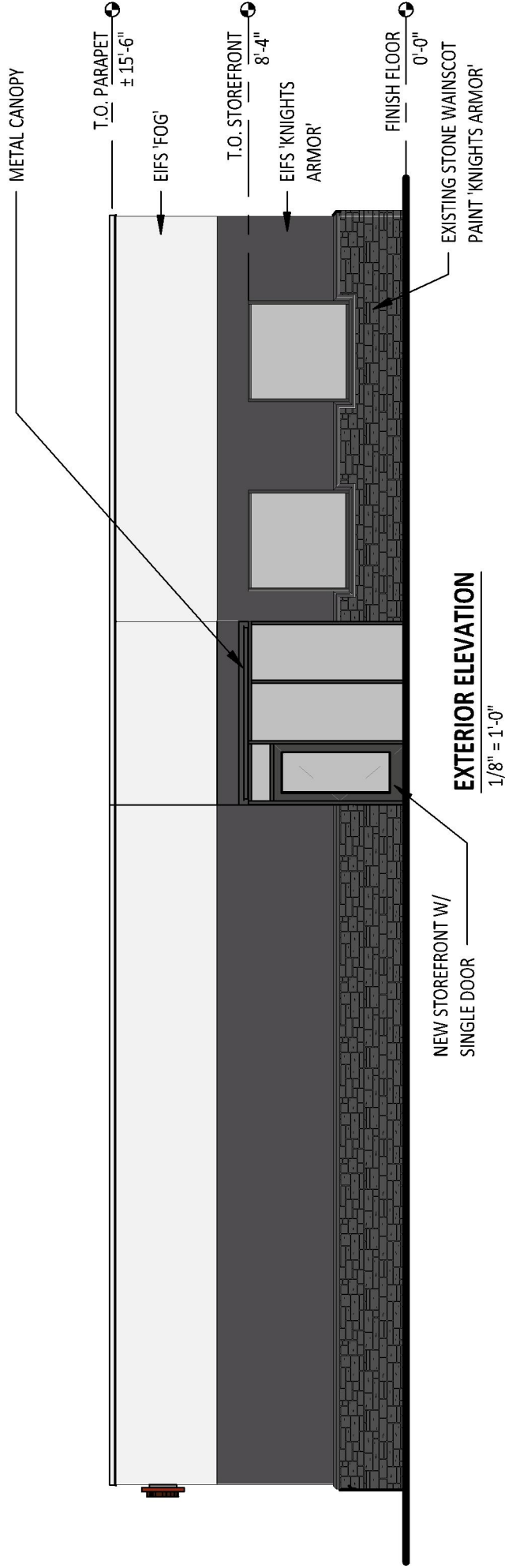
FHA
ARCHITECTS

14344 "Y" STREET
SUITE NO. 204
OMAHA, NE 68137-2805
TEL: 402.895.0878
FAX: 402.895.9561
www.fhaarchitects.com

CENTERVILLE - UT
370 W 400 NORTH
CENTERVILLE, UT 84014
12/6/2021

EAST





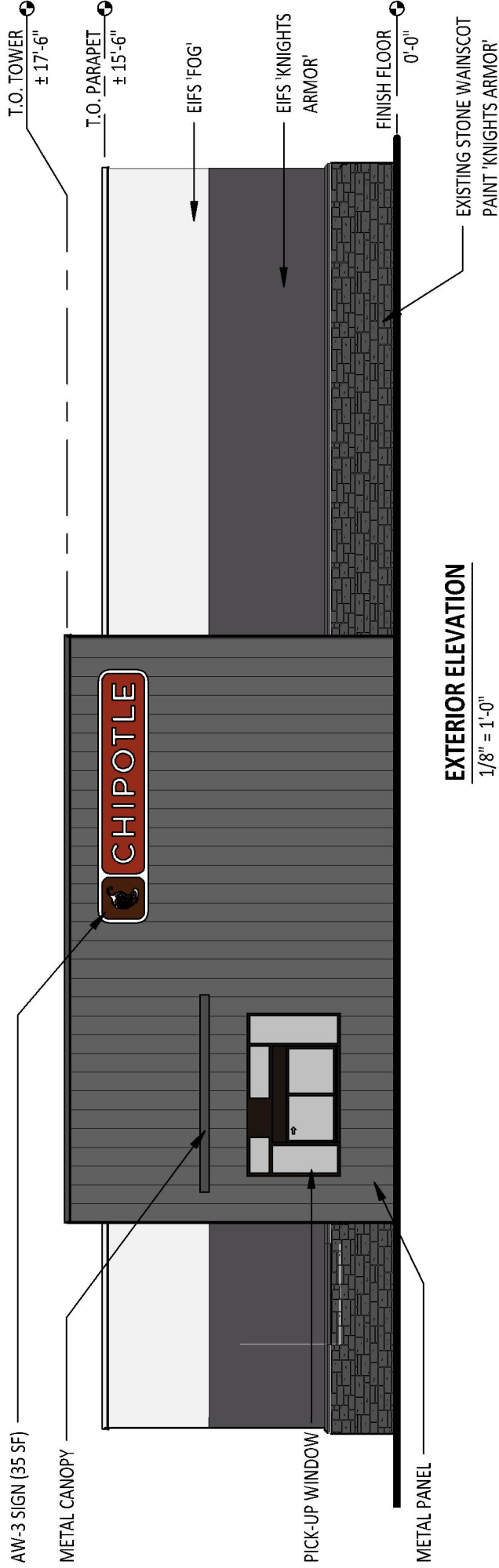
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CENTERVILLE, UT 84014
12/6/2021

NORTH





EXTERIOR ELEVATION

1/8" = 1'-0"

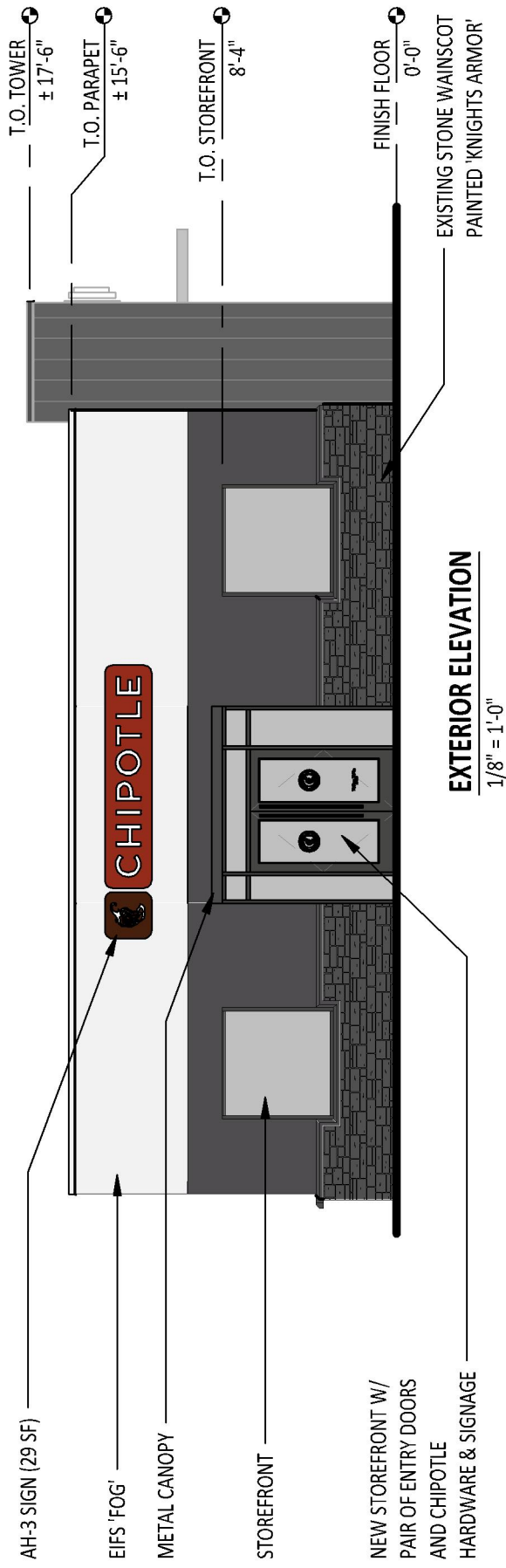
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SOUTH



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 CENTERVILLE, UT 84014
 12/6/2021

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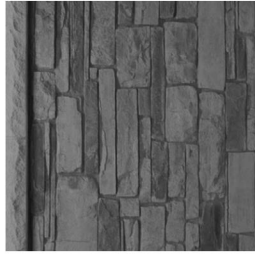
WEST



STOREFRONT
CHARCOAL KAWNEER
STOREFRONT



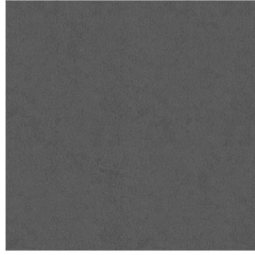
METAL PANELING
MBCI DESIGNER SERIES 12" FLAT
'CHARCOAL GREY'



EXISTING STONE
COLOR TO MATCH 'KNIGHT'S
ARMOR'



EIFS
COLOR TO MATCH
'FOG'
FINE/MEDIUM TEXTURE



EIFS
COLOR TO MATCH
'KNIGHT'S ARMOR'
FINE/MEDIUM TEXTURE

1 **PLANNING COMMISSION MINUTES OF MEETING**

2 **Wednesday, April 8, 2009**

3 **7:00 p.m.**

4
5 A quorum being present at Centerville City Hall, 250 North Main Street, Centerville,
6 Utah. The meeting of the Centerville City Planning Commission was called to order at 7:00 p.m.

7
8 **MEMBERS PRESENT**

9 Tamilyn Fillmore

10 Steve Markham, arrived at 7:22 p.m.

11 Jason Nichols, arrived at 7:10 p.m.

12 Jim Palmer, Chair

13 Jim Pedersen

14 Dianna Rasmussen

15 John Walton

16
17 **STAFF PRESENT**

18 Cory Snyder, Community Development Director

19 Brandon Toponce, Assistant Planner

20 Lisa Romney, City Attorney

21 Steve Thacker, City Manager/RDA Executive Director

22 Kathy Streadbeck, Recording Secretary

23
24 **VISITORS**

25 Finn Howell

 Jeff Fisher, FFKR

26 Scott Thompson

 Scott Vandyke, Architect

27 Julie Thompson

 Scott Marquardt, MTC

28 Lyle Fuller

 Landon Howell

29 Chris Fuller

30
31 **OPENING COMMENT/LEGISLATIVE PRAYER**

Commissioner Pedersen

32
33 **MINUTES REVIEW AND APPROVAL**

34
35 The minutes of the Planning Commission meeting held March 25, 2009 were reviewed.
36 Commissioner Pedersen made a **motion** to approve the minutes as written. The motion was
37 seconded by Commissioner Rasmussen and passed by unanimous vote (5-0).

38
39 **FINAL SITE PLAN – CENTERVILLE DAIRY QUEEN – 370 WEST PARRISH**
40 **LANE - Consideration of a final site plan for an addition and remodel to the exterior and**
41 **site of the Centerville Dairy Queen located at 370 West Parrish Lane in the C-VH Zone.**
42 **Julie Thompson, G & A Foods, Inc., Applicant**

43
44 Brandon Toponce, Assistant Planner, reviewed the final site plan application as listed in
45 the staff report dated April 8, 2009. He reported the applicant has worked with staff in addressing
46 the conditions of the conceptual site plan accepted by the Planning Commission on March 25,

2009. The applicant has submitted plans showing the exterior elevations including measurements, patio area, colors (muted), style, and design. Staff is concerned with what appears to be a blue ribbon of neon lighting around the top portion of the building. If this is in fact neon lighting, it will need to comply with the current Sign Ordinance. The applicant has addressed the landscape concerns and has complied with the needed tree and shrub requirements. The applicant has also provided plans for the required pedestrian pathway, which will be constructed of stamped concrete. It appears all garbage and mechanical equipment will be screened as needed.

Mr. Toponce reported there are still a few items to be addressed including acceptance of easement, recording of the delay agreement for the pedestrian crossing along the driveway access from Parrish Lane, and finalized plans for pedestrian lighting (lighting will most likely mirror those on the Wal-Mart site across Parrish Lane to the south). The improvements to the Parrish Lane/400 West corner, with the City's placement of additional landscaping are shown on the plans and will take place in the future.

Mr. Toponce reported the applicant is requesting a Waiver of Strict Compliance with regard to landscaping. The applicant has provided the necessary information showing sufficient hardship. Staff has reviewed this information, believes the provided landscaping meets the intent of the ordinance and recommends the waiver be granted. Mr. Toponce said staff reviewed with the applicant, as requested by the Planning Commission, the proposed hedge along Parrish Lane to satisfy the required berm. After much review, it seems grass would be the best option. A hedge could have a wall-like appearance, would over-crowd the site, would require significant maintenance and may become a collect-all for garbage. Staff believes grass is in harmony with surrounding properties on Parrish Lane.

Commissioner Pedersen asked if the City and Dairy Queen have come to an agreement regarding the sale of four (4) feet of Dairy Queen's property to the City for the purpose of widening the Parrish Lane/400 West intersection. Mr. Toponce said the two parties are currently working on an agreement.

Steve Thacker, City Manager, reported the kiosk shown as part of the enhancements on the Parrish Lane/400 West corner will be a future addition. He also clarified that Option B shows a possible future widening of the intersection. An interim Option B will include the re-location of the sidewalk which will take place until the future widening can be accomplished.

Julie Thompson, applicant, said the blue ribbon of lights along the top of the building are neon. She said these lights are on a raised metal panel which is also illuminated from lighting behind it. She also said they are close to an agreement with the City regarding the purchase of four (4) feet of property. Scott Thompson, applicant, said there are neon lights around the current building, more than what is proposed for the remodel.

Cory Snyder, Community Development Director, said the lights behind the raised metal panel are allowed, but the neon lights will have to comply with the Sign Ordinance. Under the current Zoning Ordinance neon lights are considered signage; therefore, the lights will have to comply with the overall square footage allowed for signs on the site. If the neon lights exceed the allowed square foot for signage, then a separate sign permit will be required. He said under old

ordinances neon lighting may have been allowed, but the remodel must comply with current ordinances.

Ms. Romney suggested adding a condition to the approval stating the neon lights must comply with the current Sign Ordinance, if utilized.

Commissioner Palmer made a **motion** for the Planning Commission to approve the final site plan for the Dairy Queen located at 370 West Parrish Lane with the following conditions:

Conditions:

1. All professional service fees shall be paid.
2. The applicant shall post a bond for all improvements before a building permit may be issued.
3. The final site plan approval shall include both Option A and B.
4. The applicant shall insure that all colors, including the red, blue, and rust orange shall be muted.
5. After final approval, the applicant shall apply for a building permit submitted to the City for review and approval and shall follow all applicable building code requirements.
6. A sign permit application shall be submitted in relation to all sign changes located on the building exterior. The pole sign shall remain in the existing location with existing height and sign face square footage. Any change outs of the plastic sign face, repainting of the pole or general maintenance, shall be allowed by ordinance.
7. A legal description for the new drainage easement shall be submitted to the City for review and approval by the City Council before a building permit may be issued. After approval the easement shall be recorded with the Davis County Recorder's Office.
8. The applicant shall work with the Public Works Director in the placement and location of the pedestrian lighting along 400 West and Parrish Lane.
9. A Delayed Improvement Agreement shall be signed by the applicant with the City Recorder's Office before a building permit shall be issued.
10. The applicant shall work with the City regarding the timing of the landscaping improvements on the enhanced landscaping corner of Parrish Lane and 400 West.
11. A landscaping waiver shall be approved for the Dairy Queen site in relation to the following landscaping requirements:
 - a. Landscaping width along Parrish Lane shall be allowed to stay at the width of six-feet with no berming being required. The applicant shall still be responsible for the proposed four (4) trees within the six-foot grass strip.
 - b. Landscaping width along 400 West shall be allowed at the width of six-feet to accommodate the sidewalk realignment and the possible future road widening.
12. The neon lighting which is depicted to surround the building shall comply with the current Sign Ordinance.

Reasons for Action (findings):

1. A complete final site plan application has been submitted [Section 12-21-110(e)].
2. The applicant has addressed the conditions of the conceptual site plan [March 25, 2009 Planning Commission Meeting].
3. The submitted application and site plan meet the requirements for the final site plan application [Section 12-21-110(e)(2)].
4. All Parrish Lane Guidelines, besides the landscaping depth requirement, and berming, have been satisfied [Chapter 12-63].
5. The berming options along Parrish Lane and 400 West was addressed by the applicant and staff, yet was found to be unfeasible [Section 12-63-070(b)].
6. The findings required for the Planning Commission to approve a waiver of strict compliance has been satisfied [Section 12-51-050(c)(1-3)(a)(b)].

The motion was seconded by Commissioner Pedersen and passed by unanimous roll-call vote (7-0).

PUBLIC HEARING – CENTERVILLE CORPORATE PARK PLANNED CENTER/DAVIS CULTURAL ARTS CENTER – 525 NORTH 400 WEST

CONDITIONAL USE PERMIT FOR A PLANNED CENTER AND A PARKING MODIFICATION APPROVAL FOR THE ENTIRE CENTERVILLE CORPORATE PARK SUBDIVISION;

FINAL SITE PLAN FOR LOT 2 OF THE CENTERVILLE CORPORATE PARK SUBDIVISION, PHASED DEVELOPMENT APPROVAL TO DEVELOP TWO DIFFERENT PHASES AND A CONDITIONAL USE PERMIT FOR INCREASED BUILDING HEIGHT OF 56 FEET;

FINAL SITE PLAN FOR LOT 3 OF THE CENTERVILLE CORPORATE PARK SUBDIVISION AND A CONDITIONAL USE PERMIT FOR AN AUDITORIUM USE AND INCREASED BUILDING HEIGHT OF 48 FEET. Centerville City, applicant.

Cory Snyder, Community Development Director, reported that since Lot 1 was approved in 2000, the new zoning ordinances have been adopted. After careful review, it seems prudent to “upgrade” the conditional use permit and site plan approvals for Lot 2 and Lot 3 to the new zoning standards. Lot 2 and 3 will be built in Phases as part of a Planned Center design incorporating Lots 1, 2, and 3 of the Centerville City Corporate Park Subdivision along with a parking modification/shared parking scenario.

Mr. Snyder reviewed the needed approvals for the Planned Center (conditional use permit and Parking Modification) as listed in the staff report dated April 8, 2009. These approvals will provide for the proposed build out of the Planned Center. Lot 1 is already built and in use, Lot 2 will be split into two development phases, and Lot 3 is proposed to be a Cultural Arts Center building. The Planned Center will be required to follow the Parrish Lane Design Guidelines as well as all other applicable ordinances.

1 Mr. Snyder reported a daily use parking traffic study was conducted and it appears that
2 Lot 1 of the Planned Center is over parked (has too many parking stalls). The applicant is
3 requesting the ULI standards of 3.4 parking stalls per 1,000 square feet of building space be
4 followed rather than the five (5) stalls per 1,000 required by City ordinances. As part of this, the
5 applicant is proposing a Parking Modification or shared parking scenario for all lots included in
6 the Planned Center. Staff believes the proposed shared parking scenario is appropriate. However,
7 until Phase 2 of Lot 2 is complete, Lot 3 (Cultural Arts Center) will be short 40 parking stalls for
8 their use. The applicant will need to acquire the needed agreements for off-site parking from
9 surrounding businesses for these 40 stalls (of which 158 stalls are available). In addition, if the
10 proposed Cultural Arts Center on Lot 3 is not constructed then the Parking Modification will not
11 work for the Planned Center and will need to be amended. Mr. Snyder also explained if a
12 deficiency in parking becomes apparent then the use responsible for that deficiency will be
13 required to fix the parking problem(s).
14

15 Mr. Snyder reviewed the needed approvals for Lot 2 (conditional use permit and final site
16 plan) as listed in the staff report dated April 8, 2009. Phase 1 on Lot 2 will include 76 shared
17 parking stalls, a drive isle connecting to the Frontage Road, and the required 30-foot buffer along
18 the north property line. Phase 2 on Lot 2 will include a future office building development
19 (Option A, B, or C) and all other needed improvements. Staff recommends a temporary
20 pedestrian pathway through Lot 2 along with some other landscaping improvements be installed
21 now as part of Phase 1. This will enhance circulation within the Planned Center until Phase 2 is
22 completed. The proposed conditional use permit for Lot 2 addresses the need for additional
23 building height. Staff is comfortable with the proposed 53-foot building on Lot 2 since the
24 proposed Cultural Arts Center on Lot 3 has a permitted 62-foot fly loft. It seems unnecessary to
25 restrict the building height on Lot 2.
26

27 Mr. Snyder reviewed the needed approvals for Lot 3 (conditional use permit and final site
28 plan) as listed in the staff report dated April 8, 2009. The proposed site plan for Lot 3
29 incorporates additional landscaping that could be easily converted to some additional parking if
30 needed in the future. The proposed site plan includes the needed landscaping and features,
31 pedestrian pathways, walkways, lighting, articulation, etc. Mr. Snyder reviewed the proposed
32 Cultural Arts Center building elevations pointing out the enhanced amenities. The proposed
33 conditional use permit addresses the many possible impacts of the Cultural Arts Center on
34 surrounding properties, including noise, hours of operation, building height, dock use
35 (loading/unloading), parking, construction procedures, etc. Overall, staff recommends approval
36 of the many applications presented.
37

38 Lisa Romney, City Attorney, distributed several pages (page 4, 21, 23, 26, 29, and 30 of
39 32) of suggested revisions to the staff report dated April 8, 2009. She reviewed each of the
40 proposed revisions stating they help clarify the understanding of all parties involved. She
41 informed the Commission that the City, the Redevelopment Agency (RDA), and the
42 Management Training Center (MTC) have entered into agreements regarding the proposed
43 Parking Modification/shared parking scenario. If the Cultural Arts Center is not built, then the
44 Parking Modification will become null and void. In this case, the Planned Center will still work,
45 but the parking models will need to be amended. She also clarified that these new approvals, if
46 granted, will replace the original approvals granted in 2000.

1 Commissioner Nichols questioned the recourse for needed parking if Lot 2 is never
2 completed or if off-site parking agreements are not arranged. Mr. Snyder said City ordinances
3 provide the Zoning Administrator the ability to require additional parking stalls on Lot 2 if
4 needed. However, the use creating the parking problem will first be required to convert their
5 additional landscaping into parking stalls.
6

7 Commissioner Fillmore said originally an outdoor amphitheater was planned as part of
8 Lot 3. She asked if this is still the case. She also questioned the possibility of public
9 art/sculptures on the site. She said this was suggested in the staff report during the conceptual
10 application process and she was hoping to see the possibility on the final site plan. She said the
11 proposed Cultural Arts Center has been referred to as an iconic civic building. She would like to
12 discuss requiring public art/sculptures as part of the final site plan, or at least designate a number
13 of locations where this can take place on the site. Commissioner Palmer asked if the State still
14 provides a 1% for arts projects, which could help in this regard.
15

16 Mr. Snyder said the site plan does reference a future option for an outdoor amphitheater,
17 but it may not be built at this time. He also explained that local jurisdictions often adopt their
18 own 1% for arts program, but Centerville does not have this program. He said City ordinances
19 request ("should" not "shall") public art if a program is available. However, in order to satisfy
20 the intent of the ordinance, Mr. Snyder looked at the public features that provide an artistic
21 impression. He said he interpreted the following features as artistic, i.e., the corner signage, rock
22 use in landscaping beds, the rock island feature with paving, and the crosswalk to the buffer
23 zone. Mr. Snyder also pointed out several appropriate, natural locations for public art within the
24 proposed landscaping plan.
25

26 Ms. Romney said this project is subject to the Parrish Lane Design Guidelines, which list
27 public art as an option. She suggested having the applicant respond to this request. Often
28 requiring one amenity means the elimination of another. The Planning Commission needs to
29 decide if the proposed amenities are sufficient and in harmony with the Parrish Lane Design
30 Guidelines.
31

32 Steve Thacker, RDA Executive Director, said they considered asking the State for the 1%
33 arts appropriation during the last legislative session, but were told this is not the time, due to the
34 slow economy, to ask for this funding. He said public art could be implemented, but it would
35 require the elimination of other features. At this time the rock island depicted on the corner may
36 also need to be eliminated to stay within budget. He explained the Cultural Arts Center project is
37 proposed to have a \$14 million budget plus any funds raised by the theater company. He said
38 they are trying to reserve as much budget as possible for the interior of the building. It is easier to
39 add to the exterior in the future, but the actual building amenities need to take place now. The
40 RDA and the City Council will be finalizing the budget plans within the next several weeks. The
41 RDA is also funding Phase 1 on Lot 2 (shared parking, 30-foot buffer, and the drive isle
42 connection) as part of this budget.
43

44 Scott Vandyke, landscape architect, said they are not opposed to public art. If an artist
45 desires to place a piece on the site they can present their plan to the RDA for approval. He said
46 there are several locations where art could be placed and most artists will want to present their

1 desired location. He said the site plan does depict an outdoor amphitheater but due to budget
2 constraints it will not be built at this time. He said they would also like to install some type of
3 water feature, but the same budget constraints apply. Hopefully, these amenities can be added in
4 the future as additional funding becomes available.

5
6 Scott Marquardt, MTC, said he is concerned with the limit set on the conditional use
7 permit and site plan approvals. He asked the Planning Commission to extend this limit to ten
8 (10) years rather than the eight (8) years listed on the proposed approvals.

9
10 Mr. Thacker said he is not opposed to Mr. Marquardt's request to extend these approvals
11 to ten (10) years. He said the City is also still waiting for the signed affidavits stating that Mr.
12 Marquardt's company is a joint owner in this project. Once these documents are received the
13 project will move forward.

14
15 Ms. Romney said staff requested a limit on the approvals in order to meet the intent of the
16 ordinance, but staff is not opposed to ten (10) years as suggested. Mr. Snyder agreed.

17
18 Chair Palmer opened the public hearing. There was no comment. He closed the public
19 hearing.

20
21 Commissioner Pedersen made a **motion** to adopt the revised pages (pages 4, 21, 23, 26,
22 29, and 30 of 32) as submitted by Lisa Romney, City Attorney, into the official staff report dated
23 April 8, 2009. The motion was seconded by Commissioner Fillmore and passed by unanimous
24 roll-call vote (7-0).

25
26 Chair Palmer made a **motion** for the Planning Commission to approve a Parking
27 Modification for the entire Corporate Park Subdivision, subject to the following conditions:

28
29 **Conditions:**

- 30
31 1. The "Parking Modification" is limited to and encompasses the entire Corporate
32 Park Subdivision (*see Section 12-52-110 for requirements*).
33 2. The "Parking Modification" is specifically conditioned upon and subject to Lot 3
34 being developed with the proposed "auditorium use," which creates a mixed-use
35 development basis for considering this modification (*see Section 12-52-110(c)*). In
36 the event an auditorium is not constructed on Lot 3 within three (3) years from the
37 date of the approval of the Parking Modification, the Parking Modification shall be
38 deemed null and void.
39 3. The minimum on-site parking for the entire development shall be as follows:
40 a. The parking standard for the Corporate Park shall be 3.4 stalls per 1,000
41 square feet of gross floor space.
42 b. Lot 1 shall maintain a minimum of 219 parking stalls for the existing office
43 use, as shown on the final site plan documents.
44 c. Lot 2, Phase One (1) shall install and maintain 76 parking stalls as a shared
45 use area for Lot 3, as shown on the final site plan documents.
46 d. Lot 2, Option A – 189 parking stalls for a 40,000 sq. ft. building.

- e. Lot 2, Option B – 257 parking stalls for a 60,000 sq. ft. building.
 - f. Lot 2, Option C – 271 parking stalls for an 80,000 sq. ft. building.
 - g. Lot 3 shall maintain a minimum of 63 parking stalls for the Cultural Arts Center and shall secure a minimum of 398 “peak performance” parking stalls, as described in the parking study and staff report documents and shall be located on-site within the Corporate Park development or within 500 feet of the site, as required by Section 12-52-070.
4. If off-site (i.e., Colonial Lumber, or Kinder Care) parking agreements are secured for the Cultural Arts Center, the recommended pedestrian crossing for 400 West shall be installed. It is likely that users will use parking at these other off-site locations; therefore, it is recommended that this crossing be installed regardless of the need to secure such parking arrangements (*see September 2008, A-Trans Recommendations*).
 5. On-street parking along 400 West of the Corporate Park Subdivision shall be prohibited on both sides of the street (*see September 2008, A-Trans Recommendations*).
 6. The approval of this parking modification shall be subject to the following terms and conditions (*see Section 12-52-110(b)(3) for terms and conditions for shared use approval*) :
 - A. The parking stalls shall be continually available for all lots within the Corporate Park through the existing written shared-access agreement and any needed modifications to that agreement that comply with this parking modification approval.
 - B. All parking spaces for the entire Corporate Park Subdivision are to be available without charge.
 - C. The Zoning Administrator shall be notified thirty (30) days prior to the expiration or termination of the shared parking agreement or easement.
 - D. The development shall be subject to future provision of additional parking up to the amount otherwise required by the Zoning Ordinance, if the Zoning Administrator determines, based on the existing parking counts, that a shared parking no longer provides adequate off-street parking demand of the uses involved.
 - E. Notwithstanding Subparagraph D, if future parking stalls are deemed necessary, such additional parking shall be obtained and/or installed by the land use that creates the need for any additional parking. Thus if the demand is created by the office use (Lots 1 & 2) then the property owner of such use shall be required to convert any appropriately located excess landscaped area(s) into parking. Likewise, if the auditorium use (Lot 3) creates more parking demand, then the same solution above shall be required. Nonetheless, this parking modification recognizes that the planned center site design can only accommodate a certain maximum number of parking stalls, after which no further parking stalls shall be required by this specific approval.

Reasons for Action (findings):

- a. Section 12-52-110 authorizes the Planning Commission to approve shared use parking subject to specific conditions. Thus, the Commission finds that parking modification approval will comply or can be conditioned to comply with the standards with the terms listed in Condition 5 of this approval.
- b. The Commission finds that a "parking study" was performed and submitted containing evidence that the shared use of parking would provide adequate parking.
- c. The Commission finds that the study's conclusions were reviewed and endorsed by A-Trans, a traffic-consulting firm.
- d. The Commission finds that evidence in the parking study concluded the following:
 - That ULI recommends that office uses be calculated ranging from 3.4 to 3.8 parking stalls per 1,000 square feet of office space, depending upon building sizes ranging from 24,000 to 100,000 total floor area respectively.
 - The City's current requirement of 5.0 parking stalls per 1,000 square feet appears to be excessive.
 - For the maximum development scenarios depicted, the proposed 334 on-site stalls for Lots 2 and 3, would provide sufficient parking for these two lots of the Corporate Park Subdivision.
 - The peak demand of the auditorium use would require additional stalls for a peak use of 398 stalls.
 - Lot 1 of the Corporate Park Subdivision currently provides 219 parking stalls, which would provide 553 total parking stalls for the entire Corporate Park Subdivision, when all lots are completely developed at the maximum scenarios proposed.
 - The analysis also concludes that an additional 158 stalls are within 500 feet of the Corporate Park Development that could be made available in an off-site arrangement (see Section 12-52-070 for distance requirement).
 - A total of 700 parking spaces could be made available for the auditorium evening use, which far exceeds the estimated theoretical maximum (i.e., 85-90% efficiency standard) need of 468 parking stalls for Lot 3 that is called out in the A-Trans review of the parking study.
- e. The Planning Commission finds that peak parking period of the office is during the daytime hours and the peak parking period of the auditorium use will be in the evening hours.
- f. The Commission finds that there is an existing ongoing-shared use agreement of the parking areas that is currently in place for the Centerville Corporate Park. The Commission further finds that the added conditions imposed for this parking modification approval will continue to assure, by the recorded easement for the entire Centerville Corporate Park Subdivision, that all the parking stalls will be made available for the approved uses of the planned center.

The motion was seconded by Commissioner Fillmore.

Commissioner Nichols made a **motion to amend** to change condition #4, making it a requirement. Condition 4 will be stated as follows:

4. If off-site (i.e., Colonial Lumber, or Kinder Care) parking agreements are secured for the Cultural Arts Center, the pedestrian crossing for 400 West shall be installed. It is likely that users will use parking at these other off-site locations; therefore, it is required that this crossing be installed regardless of the need to secure such parking arrangements (*see September 2008, A-Trans Recommendations*).

The motion to amend was seconded by Commissioner Pedersen and passed by unanimous roll-call vote (7-0).

The original motion as amended passed with a unanimous roll-call vote (7-0).

Commissioner Nichols made a **motion** for the Planning Commission to approve a final site plan and Phasing Plan for Lot 2 of the Corporate Park Subdivision, subject to the following conditions:

Conditions:

1. The final site plan for Lot 2 shall be approved for the construction of an office use building, as submitted in the documents arranged and compiled by the Planning Staff, dated April 08, 2009 (*see Section 12-21-110(c)(2) for requirement*).
2. The property owner of Lot 2 shall complete and submit the City's "Affidavit or Agent Authorization" form acknowledging that the submitted plans are agreeable to or reflect the desires of the owner.
3. The final site plan approval shall be conditioned upon and subject to the approval a conditional use permit for "Increased Building Height" and the approval of a "Parking Modification" by the Planning Commission (*see Section 12-36-Table of Uses & Section 12-52-110 for requirements*).
4. The Phasing Plan approval (*see Section 12-21-110(f)(2) for requirements*) for Lot 2 consists of the following minimums, as shown on the final site plan documents:
 - a. Phase 1:
 - The installation of a partial parking lot to be shared to meet the parking stall needs of the Cultural Arts Center, as shown of the final site plan documents.
 - Constructing an access drive, with the required pedestrian crossing, connecting to the Frontage Road for secondary access and circulation for the Cultural Arts Center, as shown on the final site plan documents.
 - Installing a 30' landscape buffer (with a trail) to meet the City's ordinances where development abuts residential uses, as shown on the final site plan documents.
 - b. Phase 2:
 - The construction of an office building and the remaining site plan improvements, as shown on the final site plan documents.

- The building of Phase two (2) shall comply with the required setbacks of the Commercial-Very High Zone (*see Table 12-34-1 for requirements*).
 - Option A shall be limited to the construction of a 40,000 square foot office use building with a minimum installation of 189 parking stalls, as shown on the final site plan documents.
 - Option B shall be limited to the construction of a larger 60,000 square foot office use building with a minimum installation of 257 parking stalls, as shown on the final site plan documents.
 - Option C shall be limited to the construction of a larger 80,000 square foot office use building with a minimum installation of 271 parking stalls, as shown on the final site plan documents.
 - The property maintains the right to install all of the depicted 271 parking stalls at any time regardless of the size of the building constructed.
5. A pedestrian pathway shall be provided connecting the Cultural Arts Center of the Corporate Park Subdivision with the parking lot construction of Phase 1, as shown on the final site plan documents. This walkway shall be five (5) feet in width and lined with decorative borders within drive isles, and centered within landscaped isles with bollard lighting marking the pathway, as depicted on the final site plan documents. As the pathway terminates in Phase 1 a temporary pathway connection through Phase 2 shall be installed and continued west to the Frontage Road sidewalk system. Once Phase 2 is constructed this formal pedestrian pathway shall be continued along the south side of the office building and then proceed west to the Frontage Road sidewalk system to complete this segment of the public pathway system approved for the Corporate Park Subdivision (*see Section 12-63-040 for requirements*).
 6. The Frontage Road shall be subject to the installation of the required Parrish Lane Design Guidelines streetscape improvements, consisting of street trees, decorative street lamps, an undulating berm, and the pedestrian crossings of the access drives for each of the respective phases to be reviewed and approved by the Zoning Administrator (*see Section 12-63-070 for requirements*).
 7. The use of parking lot lighting and pedestrian pathway lighting shall be the same fixture style utilized for Lot 3. No lighting fixtures shall exceed a maximum height of 25 feet.
 8. The required 30-foot architectural buffer shall be installed along the north boundary for Phase one (1), consisting of six (6) foot solid fencing, tree plantings, and the pedestrian trail, as depicted on the final site plan documents (*see Section 12-51-070(b) & Section 12-63-050 for requirements*).
 9. The perimeter pedestrian pathway around the main building of Phase 2 shall provide the associated decorative street lamps and/or bollard lighting, benches, trash receptacles, which have not been depicted on the site plan for Phase 2 when the phase is constructed (*see Section 12-63-040(b) & Section 12-63-050 for requirements*).
 10. Art and Furnishings for Lot 2 shall consist of providing the pedestrian connection to the existing common plaza area on Lot 1, the bollard lighting of this pathway, and the benches and trash receptacles that are to be provided in Condition Six (6), and

- the pedestrian pathway system's way finding signs, as depicted in the final site plan documents (*see Section 12-63-050(a) & Section 12-63-050(g) for requirements*).
11. The building architectural design, materials, and colors for Phase 2 shall consist of the materials and colors used for the building on Lot 1. Furthermore, the building of Phase 2 shall be subject to the articulation standards of the Parrish Lane Design Guidelines, or as amended by the City (*see Section 12-63-040(a) & Section 12-63-040(c) for requirements*).
 12. The appearance of the western building elevation for Phase Two (2) shall be enhanced with trees and the plantings, as has been done for Lot 1 and Lot 3 building elevations that are facing a public right-of-way (*see Section 12-63-040(a) & Section 12-63-040(c)(2) for requirements*).
 13. The building elevation appearance for Phase 2, specifically the west and south sides, shall be enhanced with building lighting, as was similarly done on Lot 3 of the Corporate Park Subdivision (*see Section 12-63-050(g)(2) & Section 12-63-070(b) for requirements*).
 14. All mechanical equipment, ground mounded utilities, dumpster areas, and roof top equipment shall be screened from direct view from a public street (*see Section 12-51-110 for requirements*).
 15. A landscaping plan for Phase 2 shall be prepared by a landscaped architect to meet applicable ordinance requirements of Chapters 12-51 and 12-63 of the Zoning Ordinance and shall be reviewed for compliance by the Zoning Administrator prior to receiving a building permit to construct the office building.
 16. During the construction activities, any needed minor construction changes to the grading plan, utilities, landscaping, or other site improvement plans shall be subject to review and approval of the applicable City staff (*see Section 12-21-110(i) for allowances*).
 17. The implementation and construction of any phase or development options for Lot 2 shall be subject to the Zoning Administrator's review for compliance with the conditions of the related final site plan, conditional use permit and parking modification approvals and any applicable ordinance regulations in effect with these approvals. Any disputes regarding compliance with the approvals or standards shall be considered by the Planning Commission to render a final decision, prior to filing any appeals to the Board of Adjustment.
 18. The approval of the Phasing Plan for the development of Lot 2 is subject to and conditioned upon the development of a building on Lot 2 within ten (10) years from the date of final site plan approval. For purposes of this condition, "development of a building" shall be considered the issuance of a building permit for a building on Lot 2 within the required time frame and diligent construction of the building under the issued permit.
 19. The development of Lot 2 shall comply with the Parrish Lane Gateway Neighborhood Development Plan and all applicable federal, state and local laws, ordinances, standards and regulations.
 20. The development of Lot 2 shall comply with the conditional use permit issued for the Planned Commercial Center, and recorded against the property.
 21. In conjunction with the development of Phase 2 of Lot 2, Developer shall be required to comply with Section 2(c) of the Development Agreement, and Section 3

- 1 of the Option Agreement, regarding entering into a separate, written development
2 agreement for the development of Lot 2.
- 3 22. In conjunction with the development of Phase 2 of Lot 2, Developer shall be
4 required to comply with Section 3 of the Option Agreement, regarding entering into
5 an ADL for Lot 2 similar to the ADL for Lot 1.
- 6 23. An additional ten (10) foot-wide public utility easement, or width as otherwise
7 approved by the City Engineer, in recordable form acceptable to the City, shall be
8 provided by the owner of Lot 2 and recorded against the property over and across
9 the interior boundary line of Lot 2. Such easement shall be recorded prior to
10 issuance of a building permit for Lot 2.
- 11 24. Any additional utility or storm drain easements required by the City Engineer shall
12 be provided by the owner of Lot 2 and recorded against the property over and
13 across certain portions of Lot 2. Such easement shall be recorded prior to issuance
14 of a building permit for Lot 2.
- 15 25. Development of Lot 2 shall comply with the Governing Documents, including, as
16 recorded against the property, and as may be amended from time-to-time, including,
17 but not limited to the Parrish Lane Gateway Neighborhood Development Plan dated
18 August 1, 1989, the Grant of Easements and Restrictions for the Centerville
19 Corporate Park Subdivision dated June 23, 2000, the Development Agreement
20 dated May 24, 2000, the Agreement for Disposition of Land for Private
21 Development dated April 19, 2000, and the Agreement and Option Agreement
22 dated October 11, 2006, and related subsequent amendments with the RDA.
- 23 26. The final site plan approval for Lot 2 shall be specifically conditioned upon and
24 subject to the construction of an auditorium on Lot 3. In the event an auditorium is
25 not constructed on Lot 3 within three (3) years from the date of final site plan
26 approval for Lot 2, the Parking Modification for the Planned Center and the final
27 site plan approval for Lot 2 shall be deemed null and void.

28
29 ***Reasons for Action (Findings):***

- 30
- 31 a. Section 12-21-110 authorizes the Planning Commission to approve a final site plan
32 that is subject to specific conditions for compliance with the established zoning
33 regulations. Thus, the Commission finds that the development of Lot 2 will comply
34 or can be conditioned to comply with the applicable regulations, as referenced in
35 the conditions listed with this approval.
- 36 b. Section 12-21-110(f) authorizes the Planning Commission to approve a phased
37 development plan and establish the timing and sequencing of improvements to be
38 completed with each phase. Thus, the Commission finds that the phasing plan for
39 the development of Lot 2, with the conditions imposed ensures proper timing and
40 sequencing of the needed improvements for all of Lot 2.
- 41 c. The use and development of property is required to conform to applicable
42 regulations of Section 12-34-060 of the Zoning Ordinance. Thus, the Commission
43 finds that the development of Lot 2 will comply or can be conditioned to comply
44 with the applicable regulations, as referenced in the conditions listed with this
45 approval.

- d. Section 12-63-020 requires all property, as defined, to comply with the standards and regulations of the Parrish Lane Gateway Design Standards. Thus, the Commission finds that Lot 2 is part of the Centerville Corporate Park Subdivision, which does have a significant presence to Parrish Lane. Therefore, the Commission finds that the development of Lot 2 will comply or can be conditioned to comply with the applicable regulations, as referenced in the conditions listed with this approval.
- e. The proposed development of Lot 2 complies with the Parrish Lane Gateway Neighborhood Development Plan as contained in the original development agreement for the planned center.

The motion was seconded by Commissioner Pedersen and passed by unanimous roll-call vote (7-0).

Commissioner Fillmore made a **motion** for the Planning Commission to approve the final site plan for Lot #3 of the Centerville Corporate Park Subdivision (aka: Cultural Arts Center), subject to the following conditions:

Conditions:

1. The final site plan shall be approved for the construction of a Cultural Arts Center, as submitted in the documents arranged and compiled by the Planning Staff, dated April 8, 2009 (*see Section 12-21-110(c)(2) for requirement*).
2. The final site plan approval shall be subject to the approval a conditional use permit for the "Auditorium Land Use" and "Increased Building Height" and the approval of a "Parking Modification" by the Planning Commission (*see 12-36-Table of Uses & Section 12-52-110 for requirements*).
3. Onsite parking shall consist of a minimum of 63 parking stalls, including all required handicapped parking stalls and the internal landscaped islands, as depicted on the final site plan documents (*see Chapter 12-52-Off-street Parking & Loading for requirements*).
4. A western pedestrian connection shall be provided connecting the Cultural Arts Center to Lot 2 of the Corporate Park Subdivision. This walkway shall be five (5) feet in width and lined with decorative borders within drive isles, and centered within landscaped isles with bollard lighting marking the pathway, as depicted on the final site plan documents (*see Section 12-63-040 for requirements*).
5. The 400 West Street frontage shall be subject to the installation of the required Parrish Lane Design Guidelines streetscape improvements, consisting of street trees, decorative street lamps, an undulating berm, and the pedestrian crossings of the access drives with compliance reviewed and approved by the Zoning Administrator (*see Section 12-63-070 for requirements*).
6. The use of parking lot lighting and pedestrian pathway lighting shall be the same fixture style utilized for Lot 2. No lighting fixtures shall exceed a maximum height of 25 feet.
7. The required 30-foot architectural buffer shall be installed along the north boundary, consisting of six (6) foot solid fencing, tree plantings, and the depicted

- 1 pedestrian trail. The pedestrian trail shall connect, with the crossing enhancements,
2 to the Cultural Arts Center, as depicted on the final site plan documents (*see Section*
3 *12-51-070(b) & Section 12-63-050 for requirements*).
- 4 8. The perimeter pedestrian pathway around the main building shall provide the
5 associated decorative street lamps and/or bollard lighting, benches, trash
6 receptacles, as depicted on the final site plan documents (*see Section 12-63-040(b)*
7 *& Section 12-63-050 for requirements*).
- 8 9. Art and furnishings shall be provided and shall consist of the decorative rock
9 planting bed with landscaping lighting, the connecting drop-off special paving, the
10 decoratively designed free-standing sign along 400 West, and the pedestrian
11 pathway system's way-finding signs, as depicted final site plan documents (*see*
12 *Section 12-63-050(a) & Section 12-63-050(g) for requirements*).
- 13 10. The building architectural design, materials, and colors shall comply with the
14 submitted storyboard, or as amended by the City (*see Section 12-63-040(c) for*
15 *requirement*).
- 16 11. The appearance of the eastern building elevation shall be enhanced with trees and
17 the plantings, as depicted on the final site plan illustrations (*see Section 12-63-*
18 *040(a) & Section 12-63-040(c)(2) for requirements*).
- 19 12. The building elevation appearance, specifically the south and east sides, shall be
20 enhanced with attached building fixture lighting and with landscaping lighting, as
21 depicted on the final site plan illustrations (*see Section 12-63-050(g)(2) & Section*
22 *12-63-070(b) for requirements*).
- 23 13. All mechanical equipment, ground mounded utilities, dumpster areas, and roof-top
24 equipment shall be screened from direct view from a public street with compliance
25 review by the Zoning Administrator (*see Section 12-51-110 for requirements*).
- 26 14. During the construction activities, any needed minor construction changes to the
27 grading plan, utilities, landscaping, or other site improvement plans shall be subject
28 to review and approval of the City staff (*see Section 12-21-110(i) for allowances*).
- 29 15. The development of Lot 3 shall comply with the Parrish Lane Gateway
30 Neighborhood Development Plan and all applicable federal, state and local laws,
31 ordinances, standards and regulations.
- 32 16. The development of Lot 3 shall comply with the conditional use permit issued for
33 the Planned Commercial Center, and recorded against the property.
- 34 17. Development of Lot 3 shall comply with the Governing Documents, including, as
35 recorded against the property, and as may be amended from time-to-time, including,
36 but not limited to the Parrish Lane Gateway Neighborhood Development Plan dated
37 August 1, 1989, the Grant of Easements and Restrictions for the Centerville
38 Corporate Park Subdivision dated June 23, 2000, the Development Agreement
39 dated May 24, 2000, the Agreement for Disposition of Land for Private
40 Development dated April 19, 2000, and the Agreement and Option Agreement
41 dated October 11, 2006.
- 42 18. An additional ten (10) foot wide public utility easement, or width as otherwise
43 approved by the City Engineer, in recordable form acceptable to the City, shall be
44 provided by the owner of Lot 3 and recorded against the property over and across
45 the interior boundary line of Lot 3. Such easement shall be recorded prior to
46 issuance of a building permit for Lot 3.

Reasons for Action (Findings):

- a. Section 12-21-110 authorizes the Planning Commission to approve a final site plan that is subject to specific conditions for compliance with the established Zoning regulations. Thus, the Commission finds that the development of Lot 2 will comply or can be conditioned to comply with the applicable regulations, as referenced in the conditions listed with this approval.
- b. Section 12-21-110(f) requires all property to be developed at one time. Thus, the Commission finds that the final site plan, with the conditions imposed ensures proper development for all of Lot 3.
- c. The use and development of property is required to conform to applicable regulations of Section 12-33-060 of the Zoning Ordinance. Thus, the Commission finds that the development of Lot 2 will comply or can be conditioned to comply with the applicable regulations, as referenced in the conditions listed with this approval.
- d. Section 12-63-020 requires all property, as defined, to comply with the standards and regulations of the Parrish Lane Gateway Design Standards. Thus, the Commission finds that Lot 3 is part of the Centerville Corporate Park Subdivision, which does have a significant presence to Parrish Lane. Therefore, the Commission finds that the development of Lot 3 will comply or can be conditioned to comply with the applicable regulations, as referenced in the conditions listed with this approval.
- e. The proposed development of Lot 3 complies with the Parrish Lane Gateway Neighborhood Development Plan as contained in the original Development Agreement for the planned center.

The motion was seconded by Commissioner Walton and passed by unanimous roll-call vote (7-0).

Commissioner Pederson made a **motion** for the Planning Commission to approve the following conditional use permit for the Planned Center for the Centerville Corporate Park Planned Center subject to the following development guidelines, sequencing and conditions:

Conditions:

1. Any proposed development within the Planned Center shall comply with the Parrish Lane Gateway Neighborhood Development Plan and all applicable federal, state and local laws, ordinances, standards and regulations (*see Condition 10 for reference to past agreements*).
2. All buildings within the Planned Center shall be substantially compatible in terms of exterior materials and architectural style with the building on Lot 1 (*see Condition 10 for reference to past agreements*).
3. Building height for buildings within the Planned Center shall be subject to applicable City ordinances, including the right to obtain a conditional use permit for additional height under Section 12-55-120.

4. Overall landscaping for Lots 1-2 shall meet applicable City ordinances, including the Parrish Lane Gateway Design Standards, as more particularly set forth in Chapter 12-63 of the Centerville City Zoning Ordinance.
5. Parking within the Planned Center shall meet applicable City ordinances, including, but not limited to Chapter 12-52 of the Centerville City Zoning Ordinance, including the right to seek a parking modification under Section 12-52-110.
6. Uses within the Planned Center shall be limited to the following: (1) Class A office space and other amenities on Lots 1 and 2; (2) a performing arts center and related amenities on Lot 3, and (3) any other use approved in writing by the City and the RDA, subject to compliance with use restrictions for the subject zone (*see Section 12-21-110(f)(2) and Section 12-21-110(f)(5) and Condition 10 for reference to past agreements*).
7. Each lot within the Planned Center shall be developed in accordance with all applicable City ordinances, rules, standards and regulations (*see Section 12-21-110 for requirements*).
8. Any development or amendment, alteration or change to the development of any lot within the Planned Center shall comply with the City Site Plan Ordinance as set forth in Section 12-21-110 of the Centerville City Zoning Ordinances, as amended.
9. Recorded easements and restrictions shall be provided and maintained for the maintenance of the easements and common areas within the Planned Center, including the creation and maintenance of an ownership association regarding the same (*see Condition 10 for reference to past agreements*).
10. Development within the Planned Center shall comply with the Governing Documents as recorded against the property, and as may be amended from time-to-time, including, but not limited to the Parrish Lane Gateway Neighborhood Development Plan dated August 1, 1989, the Grant of Easements and Restrictions for the Centerville Corporate Park Subdivision dated June 23, 2000, the Development Agreement dated May 24, 2000, the Agreement for Disposition of Land for Private Development dated April 19, 2000, and the Agreement and Option Agreement dated October 11, 2006.
11. Development with the Planned Center shall be subject to the following sequencing for project development:
 - a. **Lot 1** – Class A Office Building of 80,000 square feet, development completed, no other sequencing needed (*see Section 12-22-080(b) for requirement*).
 - b. **Lot 2, Phase 1** – Development of shared or common parking area and access road (from Frontage Road) for 76 shared parking stalls. Construction shall commence within 180 days of the conditional use permit and final site plan approvals and be completed within two (2) years of these approvals (*see Section 12-21-100(j) and Section 12-21-110(f)(2) & 12-21-110(f)(5)(viii) for requirements*).
 - c. **Lot 2, Phase 2** – This final site plan approval for the Future Class A Office Building, either 40,000, 60,000 or 80,000 square feet, and remaining improvements shall be effective for ten (10) years from the conditional use permit and final site plan approvals. Once construction of Phase 2 begins, in accordance with this approval, it is to be substantially completed within two

(2) years from the commencement of construction activities related to the Phase 2 approval (*see Section 12-21-100(j) and Section 12-21-110(f)(2) & 12-21-110(f)(5)(viii) for requirements*).

- d. **Lot 3** – Development of proposed Auditorium or Theatre Building. Construction shall commence for the entire lot and shall begin within 180 days of the conditional use permit and final site plan approvals and shall be substantially completed within two (2) years from the issuance of these approvals (*see Section 12-21-100(j) and Section 12-21-110(f)(2) & 12-21-110(f)(5)(viii) for requirements*).

12. The conditional use permit for the Planned Center as approved herein is intended and shall be deemed to supersede and replace the original conditional use permit for a planned commercial development issued in May of 2000.

Reasons for Action (findings):

- a. Section 12-33-080 and Section 12-34-080 require that all development greater than 10,000 sq. ft. shall only be approved as a “planned center.” Thus, the Commission finds that the proposed buildings of the Centerville Corporate Park exceed 10,000 sq. ft. and require a planned center approval to be developed.
- b. Section 12-21-100 authorizes the Planning Commission to approve a conditional use permit for a “planned center.” Thus, the Commission finds that the final site plan approvals with the conditions imposed satisfies Section 12-21-110(e)(5) of the Zoning Ordinance.
- c. The Commission finds that the development of the planned center will comply or can be conditioned to comply with the applicable previous approvals and the Zoning regulations, as referenced in the conditions listed with the final site plan and conditional use permit approvals.
- d. The Commission finds that the conditions imposed for the development of the planned center and the related site plan approvals will comply or be conditioned to comply with approval standards of Section 12-21-100(e) of the Zoning Ordinance, as referenced in the conditions listed in final site plan and conditional use permit approvals.

The motion was seconded by Commissioner Rasmussen and passed by unanimous roll-call vote (7-0).

Commissioner Pedersen made a **motion** for the Planning Commission to approve the following conditional use permit for increased building height for Lot 2 of the Centerville Corporate Park Subdivision is subject to the following conditions:

Conditions:

1. The extra height allowance of 56 feet shall be approved for Lot 2 and that the building construction for Phase 2 shall be subject to the development sequence approved for the planned center (*see Section 12-21-100.j and Section 12-55-120 for requirements*).

Reasons for Action (findings):

- a. Section 12-34-080 authorizes the Planning Commission to approve a conditional use permit for an "Increased Height." Thus, the Commission finds that the increased height of 56 feet can be approved by issuance of a conditional use permit approval.
- b. The Commission finds that the development of Lot 2 will comply or can be conditioned to comply with the applicable previous approvals and the Zoning regulations, as referenced in the conditions listed with the final site plan and conditional use permit approvals.
- c. The Commission finds that the conditions imposed limiting the height to 56 feet and the related site plan approval will comply or is conditioned to comply with approval standards of Section 12-21-100(e) of the Zoning Ordinance, as referenced in the conditions listed in the final site plan and conditional use permit approvals.

The motion was seconded by Commissioner Markham and passed by unanimous roll-call vote (7-0).

Commissioner Walton made a **motion** for the Planning Commission to approve the following conditional use permit for an auditorium use and increased building height for Lot 3 of the Centerville Corporate Park Subdivision subject to the following conditions:

Conditions:

1. An "Auditorium" land use shall be approved for Lot 3 of the Corporate Park Subdivision, also known as the Cultural Arts Center (*see 12-36- Table of Uses Allowed for requirement*).
2. An increased building height of shall be approved up to a maximum of 48 feet for the Main Assembly area of the Cultural Arts Center. All other related building heights shall not exceed 35 feet, or as may be exempted by Section 12-55-120 of the Zoning Ordinance (*see Section 12-55-120 for requirement*).
3. All current and future property owner(s) shall secure, by written agreement, additional off-site parking spaces using Lot 1 of the Corporate Park Subdivision, Zion's, Colonial Lumber, or Kinder Care sites to establish a peak available demand use of 398 parking stalls for the Cultural Arts Center (*see Parking Study & A-Trans Reports submitted with the applications and Section 12-21-100(e)(2) and Section 12-21-100(e)(H) for requirements*).
4. The approved conditional use permit shall be subject to the terms and conditions of the associated site plan & parking modification approvals (*see Parking Study & A-Trans Reports submitted with the applications*).
5. The facility hours of use shall be as follows (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*):
 - a. Monday – Thursday, 8:00 a.m. to 10:30 p.m.
 - b. Friday & Saturday, 8:00 a.m. to Midnight.
 - c. Outside Amphitheater, Monday-Saturday, 8:00 a.m. to 10:30 p.m.

6. The outside use areas of the facility shall be subject to compliance with the City's Municipal Code Noise Ordinance, particularly with any set construction, demolition, outside performances, set-ups and/or take down type activities (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).
7. All set construction, demolition, storage, or other similar activities shall be accomplished or performed inside (i.e., indoors) the facility (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).
8. All deliveries and pick-ups for the loading dock area, trash pickup and other similar services shall be performed between the hours of 6:00 a.m. and 9:00 p.m. for both weekdays and weekends (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).
9. The use of the outside amphitheater, dock and service area, and the parking stalls along the north boundary shall be subject to an annual Planning Commission review for the first two (2) years of operation and be subject to any additional appropriate mitigation measures if deemed necessary by Centerville City (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).
10. All outside lighting shall be arranged and directed to reflect light away from the adjacent residential properties. The intensity of light as adjoining residential property lines shall not exceed 0.1 foot candles (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).
11. In conjunction with the Planning Commission annual review over a two (2) year period, the City shall maintain the option and/or right, during this time, to require a taller a solid fence up to 10 feet in height or if deemed necessary a precast concrete wall (i.e., fence) along the northern property line. Such fence or wall may need to extend at least the same or equal distance matching the location of the north wall of the main building to mitigate any identified noise or visual impacts, along with any additional landscaping (i.e., trees) to assist with such mitigation needs (*see Section 12-21-100(e)(2) & Section 12-21-100(e)(3)(H-K) for requirements*).

Reasons for Action (findings):

- a. Section 12-36-Tabled of Uses Allowed authorizes the Planning Commission to approve a CUP for an "Auditorium Use" in the Public Facility-High Zone. Thus, the Commission finds that the required use can be approved by issuance of a conditional use permit approval.
- b. Section 12-33-080 authorizes the Planning Commission to approve a conditional use permit for a "Increased Height." Thus, the Commission finds that the increased height of 48 feet can be approved by issuance of a conditional use permit approval.
- c. The Commission finds that the development of Lot 3 will comply or can be conditioned to comply with the applicable previous approvals and the Zoning regulations, as referenced in the conditions listed with the final site plan and conditional use permit approvals.
- d. The Commission finds that the conditions imposed limiting the height to 48 feet and the related site plan approval will comply or is conditioned to comply with approval standards of Section 12-21-100(e) of the Zoning Ordinance, as referenced in the conditions listed in these approvals.

1 The motion was seconded by Commissioner Nichols and passed by unanimous roll-call vote
2 (7-0).
3

4 **COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**
5

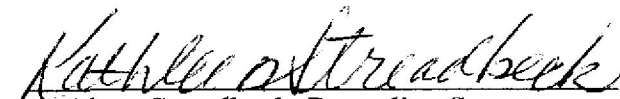
- 6 a. Next regularly scheduled Planning Commission meeting will be held on April 22,
7 2009 at 7:00 p.m.
8 b. Upcoming Agenda Items
9 * Johnson Small Subdivision Waiver
10 * Chase Lane Subdivision plat amendment and conditional use permit
11 * Shorelands District & Design Guidelines
12 * Use of Artificial Landscaping elements
13

14 The meeting was adjourned at 9:22 p.m.
15
16

17 
18
19 Jim Palmer, Chair

4-8-09

Date Approved

20
21
22 
23 Kathleen Streadbeck, Recording Secretary
24





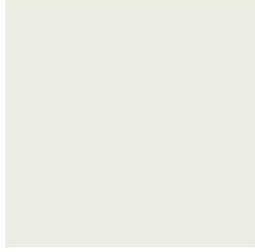
STOREFRONT
DARK BRONZE ANODIZED



METAL PANELING
ARCHITECTURAL FABRICATION
"RUSTIC TEXTURE" COLOR



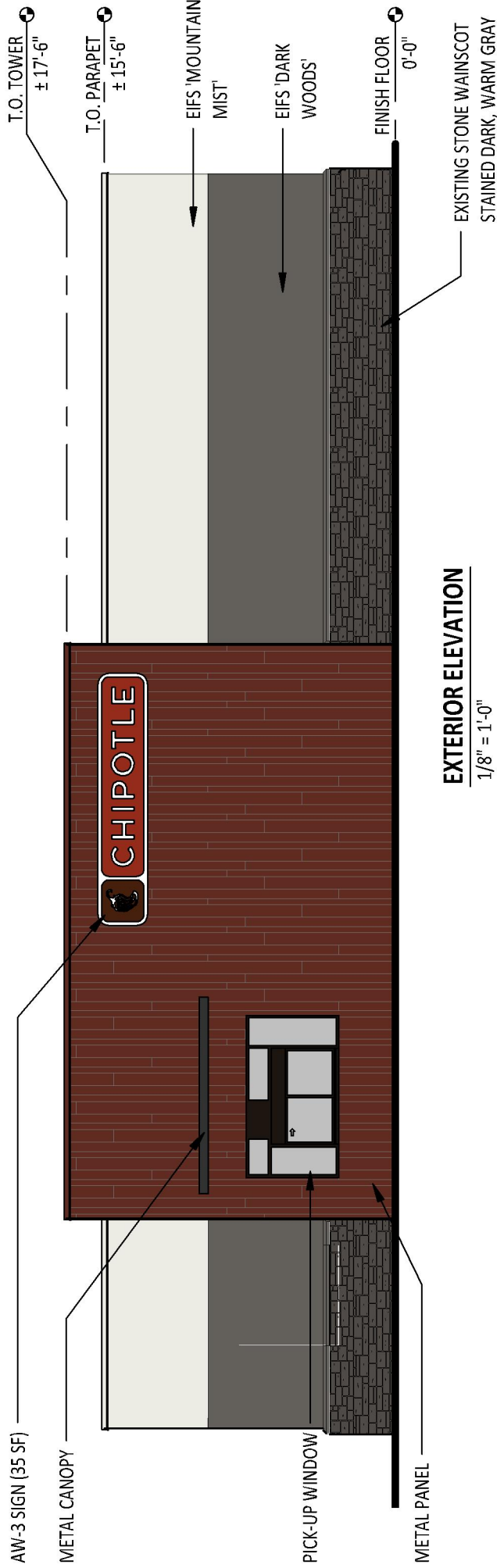
EXISTING STONE
STAINED DARK, WARM GRAY



EIFS
COLOR TO MATCH
PPG 'MOUNTAIN MIST'
FINE/MEDIUM TEXTURE



EIFS
COLOR TO MATCH
PPG 'DARK WOODS'
FINE/MEDIUM TEXTURE



EXTERIOR ELEVATION

1/8" = 1'-0"

FHA

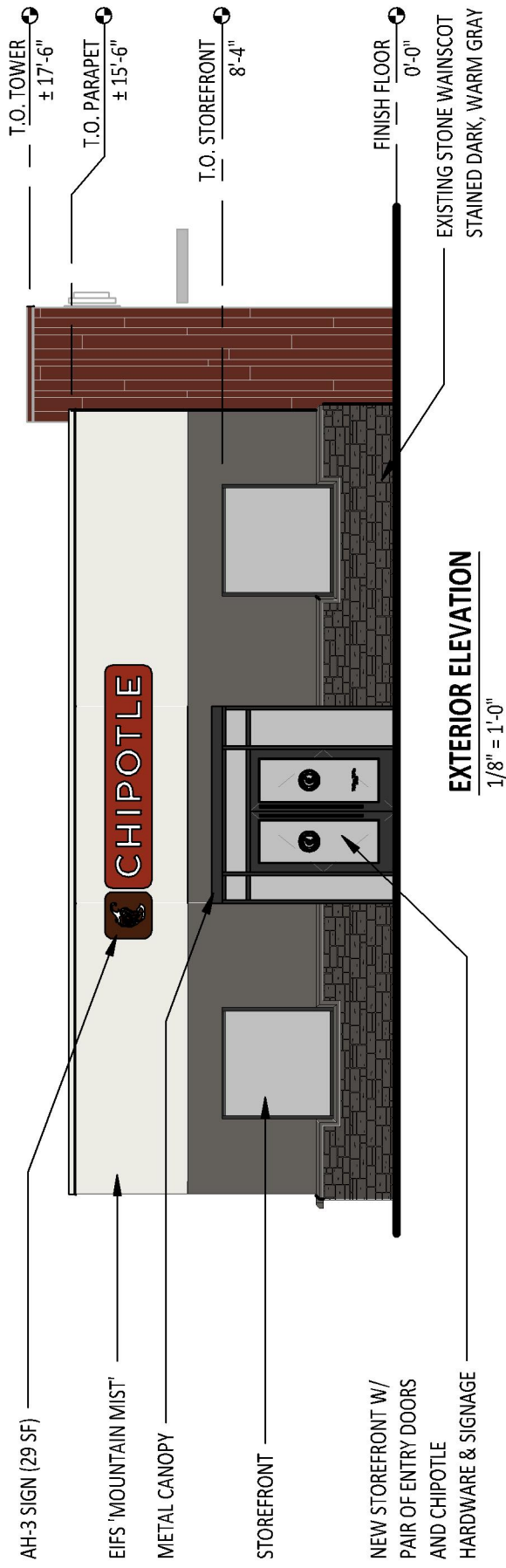
ARCHITECTS

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370 W 400 NORTH
CENTERVILLE, UT 84014
01/11/2022



SOUTH



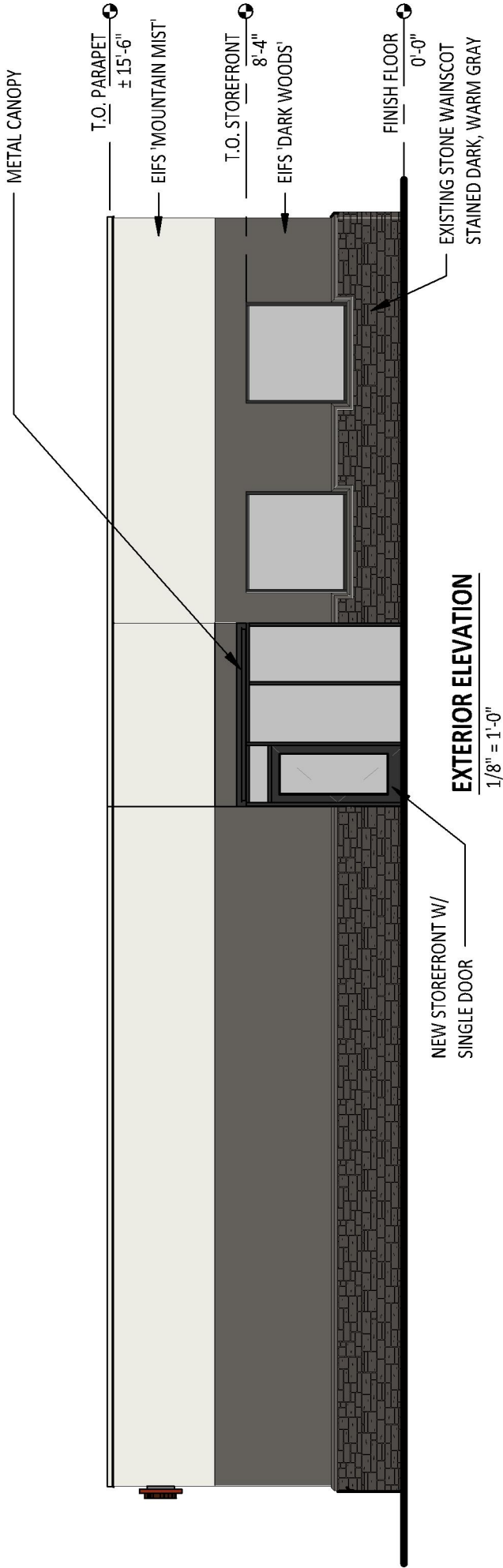
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WEST



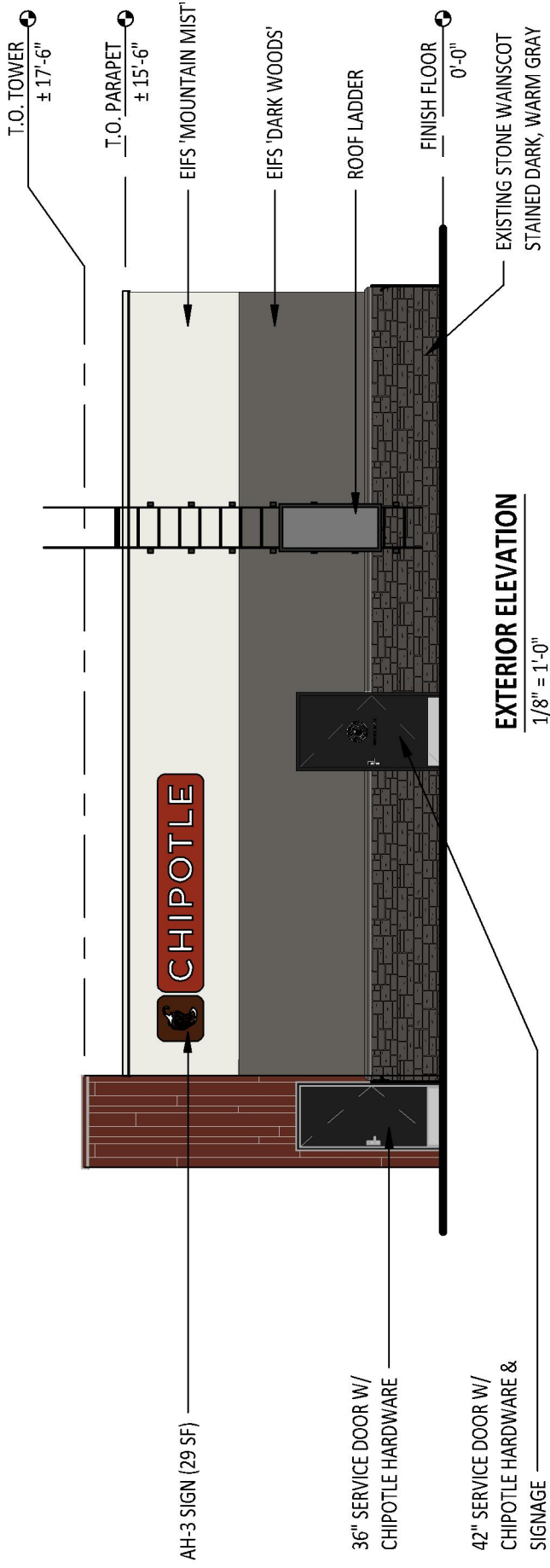
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NORTH



EXTERIOR ELEVATION

1/8" = 1'-0"

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CENTERVILLE, UT 84014
01/11/2022

EAST



CENTERVILLE

Staff Backup Report 1/12/2022

Item No.

Short Title: December 8, 2021

Initiated By:

Staff Representative:

SUBJECT

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

▣ 12-08-21 Draft Minutes

dPLANNING COMMISSION MINUTES OF MEETING
Wednesday, December 8, 2021
7:00 p.m.

A quorum being present at City Hall, 250 North Main Street, Centerville, Utah, the meeting of the Centerville City Planning Commission was called to order at 7:00 p.m.

MEMBERS PRESENT

Kevin Daly, Chair
Mason Kjar
Matt Larsen
Heidi Shegrud
Spencer Summerhays
Christina Wilcox
Becki Wright

STAFF PRESENT

Cory Snyder, Community Development Director
Lisa Romney, City Attorney
Mackenzie Wood, Assistant Planner

VISITORS

Chad Morris
Ron Hale, Center Point Construction
Steve Peterson, Young Automotive Group
Cody Peterson, ESI Engineering, Inc.

PLEDGE OF ALLEGIANCE

OPENING COMMENTS/LEGISLATIVE PRAYER Chair Daly

PUBLIC HEARING – ZONE TEXT AMENDMENT – RESIDENTIAL DEVELOPMENT REQUIREMENTS

Community Development Director Cory Snyder explained that the applicant, Chad Morris, requested the following amendments to the Zoning Code for Residential Zoning District:

- Increase R-M Permitted Density from 6 units per acre to 8 units per acre.
- Reduction in private lane width from 27 feet to 26 feet.
- Alter internal sidewalk rules to allow an exception.

Prior to 2017, R-M density was four units per acre permitted, and up to eight units per acre conditional. In 2017, the City Council modified the R-M density to six units per acre permitted, with no conditional. Mr. Snyder explained the following General Plan density classifications for Centerville's residential areas.

<u>Dwelling Units/Acre</u>	<u>Class</u>
0-4	Low
5-8	Medium
9-12	High

Mr. Snyder explained the applicant had a R-M project in the application process. He shared the opinion that conditional use densities were difficult to manage and impact triggers for mitigation were difficult to define. Mr. Snyder said staff believed implementation of densities

1 should be wholly “permitted”, and suggested it may not be the right time to move to 8 units per
2 acre permitted in R-M.

3
4 Regarding the request to reduce the private lane width, Mr. Snyder said staff believed
5 the current 27-foot pavement requirement ensured that on-street parking could be
6 accommodated along one side of the street, and still keep the 20-foot emergency access viable.
7 He said staff were not comfortable narrowing the width to 26 feet. With the road width reduced
8 by 12 inches, curb and gutter specifications would need to be changed to hold the necessary
9 tonnage for emergency access. Regarding the request to allow an exception for internal
10 sidewalks, Mr. Snyder said Mr. Morris’ own development project was already conceptually
11 accepted with an alternate sidewalk design, and said the need to specify an exemption seemed
12 a bit unnecessary. He stated staff recommended the Planning Commission forward a
13 recommendation to deny the request to the City Council.

14
15 Mr. Snyder answered questions from the Planning Commission. He explained that any
16 Centerville citizen could petition the City to change an ordinance. The requested amendment
17 would affect the entire City, not just the one development.

18
19 Chad Morris, applicant, said he was a big proponent of affordable housing. He said
20 housing in Centerville was not affordable, and he believed minor adjustments to development
21 standards would help ease the cost of construction and ultimately the cost of new housing. He
22 asked the Planning Commission if they could think of any project constructed prior to 2017 at
23 the conditional 8 units per acre that had tarnished Centerville’s image or caused any problems.
24 Mr. Morris said he could not. He said the Fire Code specified 26 feet of drivable surface, and
25 spoke in favor of modified, drivable curb/gutter. He argued in favor of less concrete and asphalt
26 both environmentally and aesthetically. Mr. Morris spoke in favor of not requiring sidewalks on
27 land without homes.

28
29 Chair Daly opened a public hearing at 7:44 p.m. He read aloud a letter from a group of
30 citizens requesting that the Planning Commission deny the proposal to increase R-M permitted
31 density to 8 units per acre.

32
33 Heather Strausser, Centerville resident, commented that the Porter-Walton Townhomes
34 development was built at 8 units per acre when 8 units per acre was a conditional use. She said
35 concerns were expressed by many citizens at the time, resulting in a cap at six units per acre for
36 the R-M Zone. Ms. Strausser asked the Planning Commission to remember lessons learned
37 with the Porter-Walton Townhomes development and not increase the R-M density. She
38 commented that street widths were set for public safety, and asked that the Planning
39 Commission not reduce the required street width. Ms. Strausser said there was a big difference
40 taking a walk on a street with sidewalk versus a street without sidewalk, and asked the Planning
41 Commission to consider safety when considering the request to allow exceptions to the
42 requirement for sidewalks. She thanked the Planning Commission for their service and said it
43 was a blessing to live in Centerville.

44
45 Wendy Bangerter expressed appreciation for the work City planners did to try to comply
46 with the State mandate to have affordable housing in the community. She said she lived directly
47 west of the planned Canyon Point development, and said the previously approved plan for
48 Canyon Point seemed to be fairly compatible with the area. She acknowledged that rising
49 construction costs made development more difficult, but said she did not believe that a sufficient
50 reason to approve zone text amendments for one developer. Ms. Bangerter commented that
51 approving the requested increase to 8 units per acre would set a precedent for future
52 development. She said she appreciated the desire to provide affordable housing, but requested
53 the City keep the 6 units per acre maximum for that area.

1 Marti Money, Centerville resident, said her experiences advocating for neighborhoods in
2 Centerville had led her to believe that 6 units per acre with no conditional use in R-M was
3 appropriate for Centerville. She requested the Planning Commission keep the 6 units per acre
4 maximum in R-M. Ms. Money stated a single proposed project should not be allowed to
5 determine the zoning for an entire city, and commented that the effects would trickle over to
6 future developments that would have greater negative impacts. She requested the Planning
7 Commission not recommend approval.

8
9 Jeremy Greer, Centerville resident, said he lived in a R-L neighborhood near the
10 proposed development, with R-M adjoining his back property line and all around his property.
11 He expressed concern with the proposed increase in density. He questioned whether the units
12 in Canyon Point would be significantly more affordable at 8 units per acre versus 6 units per
13 acre. Mr. Greer stated the proposal was from a developer who happened to live in Centerville.
14 He said street widths and sidewalks were important to public safety.

15
16 Chair Daly closed the public hearing at 7:58 p.m. Mr. Morris clarified that his request was
17 to have sidewalks in front of homes, but not where sidewalks were not needed. He commented
18 that narrower roads naturally slowed traffic, and emphasized that the streets would be private
19 right of ways. Mr. Morris stated that, in general, the more units on a property, the smaller they
20 tended to be. He pointed out that the City placed a limit on the height of residential buildings.
21 Mr. Morris commented that affordable housing usually went along with higher density. He said it
22 would be difficult to build a truly affordable home in Centerville because of the cost of land.

23
24 Responding to a question from Commissioner Kjar, Mr. Snyder said City Code did not
25 distinguish between a city road and a city lane. He said the City had been asked in the past to
26 take over ownership of private roads from HOAs, but the requests had not been accepted. Mr.
27 Snyder briefly described the history of R-M in the City Center area around City Hall.

28
29 Commissioner Larsen commented that road width in City Code was well above and
30 beyond the need for fire access, perhaps unnecessarily. He suggested excessive pavement and
31 less landscaping was not necessarily a good thing, and said people typically did drive faster
32 when roads were wider. Commissioner Larsen said he was open to the idea of a small
33 adjustment to roadway width. Mr. Snyder said the intention of the road width in City Code was to
34 provide a public street designed with right-of-way dedication. Mr. Snyder said he was not aware
35 of any significant safety concerns reported to the City regarding the Porter-Walton Townhomes
36 project.

37
38 Responding to a question from Commissioner Shegrud, Mr. Snyder said the City had
39 committed to an update of the General Plan. The City expected to receive word regarding
40 whether or not a grant was awarded to help fund the General Plan update in March of 2022. He
41 explained where utilities were placed in the absence of a park strip.

42
43 Chair Daly **moved** for the Planning Commission to recommend denial to the City Council
44 regarding various R-M Zone amendments, as presented by the applicant with the following
45 reasons for action. He said he recommended denial because he did not see it as the right time
46 for the actions requested, and referred to the upcoming General Plan update. He said he
47 believed the City had already found the right minimum road widths. Chair Daly said he felt the
48 flow of sidewalks was good. Commissioner Kjar seconded the motion.

49
50 Commissioner Kjar commented that Centerville was bounded on every side, with future
51 development most likely from infill. He expressed the opinion that, regardless of who brought
52 the proposal, the proposed amendments were not a panacea for the attainable housing
53 problem. Commissioner Kjar suggested it was misguided to oppose the proposed change on
54 the basis of liking the way things were at that time because change would happen and it was

important to stay ahead of the change. He stated he opposed the proposed amendments because he was uncomfortable with conditional densities. He commented the reduction in road width would be significantly more than a foot in some situations, and pointed out that problems with private roads due to insufficient funds inevitably became the City's problem. Commissioner Summerhays said he agreed with Commissioner Kjar's comments.

Commissioner Wright said she agreed with the staff recommendation, and agreed that the General Plan update would be a more appropriate time to consider changes. She said she appreciated and respected the need for different densities within the City, but did not believe it was the time to make the requested change in density. Commissioner Wright said she did not believe private roads needed to look like public roads. She expressed the opinion it would be poor judgement to make the decision based on the possibility of a request in the future for the City to take on responsibility of the private roads, when the City had never actually accepted such a request. She said she would not be comfortable moving from a 27-foot to a 21-foot road width, but believed there was room for discussion. Commissioner Wright said she would always advocate in favor of sidewalks.

The motion to recommend denial passed by unanimous vote (7-0).

HAFOKA – FINAL SITE PLAN

Assistant City Planner Mackenzie Wood said the applicants received conceptual site plan approval on May 26, 2021. Ms. Wood explained the applicants intended to demolish the existing home on the property once the proposed dwelling was built. She explained that because the property was larger than one acre, State mandated drainage restrictions would come into play if existing impervious surface were not removed. Ms. Wood said the plans met geotechnical requirements, and staff recommended approval. She answered questions from the Planning Commission regarding demolition bonds to ensure demolition of the existing home.

Responding to a question from Commissioner Wright, Mr. Snyder explained that either the existing home would need to be demolished, or the property would need to be reevaluated for two homes. Mr. Snyder emphasized the staff recommendation would accommodate the applicants living in the existing home during construction of the new home.

Lisa Hafoka, applicant, said she did not have anything to add to what staff had explained. She stated she and her husband intended to demolish the existing home after construction of the new home. Mr. Snyder emphasized that the proposed seven-foot crawl space was one foot short of being a full basement, and asked Ms. Hafoka if she was sure the space would only be used as crawl space. Ms. Hafoka responded she understood, and did not plan to use the crawl space as livable space.

Chair Daly **moved** to approve the Final Site Plan for the Hafoka Residence at approximately 522 West 400 South, parcel 03-001-029 with the following conditions and reason for action: Commissioner Summerhays seconded the motion.

Conditions:

1. Lowest floor elevation shall be two feet above the design water table.
2. If existing structures are not demolished or a demolition bond and accompanying agreement are not entered into prior to building issuance of a building permit, the applicant shall begin the Site Plan process over to ensure State drainage requirements are met.

Reason for Action:

- a. The Planning Commission finds that the conceptual site plan Submittal, with the conditions imposed, complies or will comply with the applicable regulations of the City's Zoning Ordinances as detailed in the Staff Report.

Commissioner Kjar made a **motion to amend** the motion to approve the Final Site Plan with the following three conditions and previously stated reason for action. Commissioner Wright seconded the motion to amend, which passed by unanimous vote (7-0).

Conditions:

1. Lowest floor elevation shall be two feet above the design water table.
2. Enter into a demolition bond and any accompanying agreement as determined by the City to ensure demolition of existing house, garage, and driveway.
3. If existing structures are not demolished and bond is not entered into prior to building issuance of a building permit, the applicant shall begin the Site Plan process over to ensure State drainage requirements are met.

The amended motion passed by unanimous vote (7-0).

THE PASTURE – PARKING MODIFICATION & FINAL SITE PLAN

On October 27, 2021, the applicant presented the Final Site Plan application for the Pasture Business Park. The Planning Commission tabled the item with the following directives:

1. Provide accurate parking stall counts for current uses in accordance with CZC 12.52.300, and request Parking Modification.
2. Provide a landscape plan in accordance with CZC 12.51.040.
3. Provide a temporary irrigation plan to maintain plantings.
4. Provide a letter from the Army Corps of Engineers clearing the property for wetlands, or a valid delineation of the wetlands.

Ms. Wood said the applicant requested a parking modification for the site. The parking modification request stated that the uses on each business license listed in the table previously prepared did not accurately reflect the parking needs of each tenant. They requested a modification be made to only require 117 stalls. Ms. Wood said she found some discrepancies in the square footage counts on the table, and provided another table (The Pasture Phase 3 Parking Modification Tabulation) to more accurately reflect the situation, with a required estimate of 284.1 parking stalls. The applicant proposed considering the Personal Instruction Services of Kona Karate and Project Move as Family Child Care Group Facilities, which required fewer parking spaces.

Ms. Wood said a landscaping plan, including planting schedule, irrigation notes and drawings, and landscaping versus hardscaping percentages was submitted. The applicant provided a Wetland Delineation prepared by Todd Sherman, SPWS with Wetland Resources. Per Mr. Sherman, if there were no wetlands impacted by development, the delineation did not require coordination with the Army Corps of Engineers. She said City Code did not explicitly require Army Corps of Engineers approval for projects not seeking to impact or alter wetlands; however, precedent had been to require Army Corps of Engineers approval for projects in areas where wetlands were present, including the initial phases of the current project. Mr. Snyder said Mr. Sherman confirmed the proposed development would not encroach on the wetlands present on the property.

1 Responding to a question from the Commission, Ms. Wood said enforcement of the
2 proposed parking modification would be tricky since tenants might come and go without the City
3 being aware.
4

5 Troy Salmon, applicant, commented that classifications represented estimates of parking
6 needed. He said they proposed using the Family Child Care Group Facilities classification for
7 Kona Karate and Project Move because the required parking most closely matched the needs of
8 the tenants. He said the average number of vehicles on the site was 40, with 60 vehicles during
9 peak hours. Mr. Salmon said he believed a requirement of 117 parking stalls was sufficient. He
10 commented that, with the delineation provided, he did not see any risk to the City in not
11 requiring approval from the Army Corps of Engineers.
12

13 Commissioner Wright pointed out the highest parking count listed in the Parking
14 Modification Request was 71. Mr. Salmon clarified that the highest count of 71 vehicles was with
15 the current two buildings, and expressed confidence that the requested 117 parking stalls would
16 be sufficient with the addition of the proposed new building.
17

18 Responding to a question from Commissioner Kjar, Mr. Salmon stated no changes
19 would be made to the existing rock retaining wall. Commissioner Kjar commented that it was the
20 applicant's fault that they had spent time pushing back on the City regarding approval from the
21 Army Corps of Engineers rather than simply obtaining Army Corps of Engineers approval.
22 Commissioner Kjar said he was much more comfortable with the situation with the delineation
23 from Mr. Sherman. Commissioner Shegrud said she agreed with Commissioner Kjar.
24

25 Commissioner Wright said she had personal experience with Project Move, and said she
26 agreed it was a drop-off/pick-up situation with not a lot of parking needed. The Planning
27 Commission discussed the fact that hours of operation and parking needs would change over
28 time with different uses. Commissioner Wright said she would be more comfortable with a
29 parking modification tied to use. Ms. Romney suggested the applicant should be required, for
30 any significant change in uses and/or hours of operation for any uses, to come back to the
31 Planning Commission for an amendment to the parking modification. The Planning Commission
32 discussed what would constitute a significant change in use. Ms. Wood emphasized it had
33 already proven difficult for the City to track tenants and uses in the project. Mr. Snyder
34 suggested using a 20% increase in demand for parking over the entire project as a trigger for
35 parking modification review and amendment.
36

37 Ms. Wood clarified that the required number of parking stalls calculated with the uses
38 requested by the applicant would be 126. Commissioner Larsen commented that if the Planning
39 Commission approved the requested 117 parking stalls as sufficient, the applicant may at some
40 point become trapped and unable to welcome a tenant that would require more than the 20%
41 increase in demand for parking allowed by the trigger suggested by Mr. Snyder. Ms. Romney
42 suggested the parking modification should expire if the needs exceeded 20% of the parking
43 modification assumptions. The existing 117 parking stalls were calculated using requirements
44 for Office/Warehouse use during a previous phase. Commissioner Kjar stated a clear
45 calculation needed to be established for use in the future when uses and needs changed. He
46 spoke of potential backlash to the City in the future. Commissioner Wright said she cautioned
47 against using a remote, obscure hypothetical as a basis for decision making. Commissioner Kjar
48 said he did not think the hypothetical was remote or obscure.
49

50 Commissioner Larsen suggested using the factors in the table presented by Ms. Wood
51 showing 126 parking stalls needed, with clarification that the Planning Commission was willing
52 to accept 117 at the applicant's request, as the baseline. Commissioner Kjar said he was
53 reluctant to make decisions based on future hypotheticals. He said he would be more in favor of
54 an expiration to trigger reassessment. Ms. Romney suggested using a 20% increase on the 126

1 calculation. Commissioner Kjar suggested requiring that the parking modification be evaluated
2 every five years.

3
4 Commissioner Wright commented that the Family Child Care Group Facilities use the
5 applicant wanted to use was very different from the Personal Instruction Services use under
6 which dance studios were listed in the Zoning Code. Commissioner Wright emphasized that
7 parking modifications were granted based on use.

8
9 Commissioner Summerhays suggested using a 10% increase on the 126 calculation.
10 Chair Daly **moved** to approve the Parking Modification for the Pasture Business Park
11 development at approximately 1230 North 1300 West, parcel 06-003-0056, subject to the
12 following conditions and with the following reason for action. Commissioner Wilcox seconded
13 the motion, which passed by unanimous vote (7-0).

14
15 Conditions:

- 16
17 1. This modification is for the property owned by Pasture LLC at 1230 North 1300 West,
18 and is not transferrable to another location.
19 2. The striped parking stalls shall be no less than 117 on site.
20 3. If there are any changes in uses and/or hours of operation for any uses in the project
21 that cause the parking demand for the project to exceed 20% of the 126 parking
22 modification assumptions and criteria, as determined by the Zoning Administrator,
23 this parking modification shall expire and the applicant shall be required to obtain a
24 new parking modification with supporting documentation. Any appeal or challenge to
25 the Zoning Administrator's determination regarding the 20% calculation shall be
26 referred to the Planning Commission.

27
28 Reason for Action:

- 29
30 a. The Planning Commission finds that the hours of operation and peak operating times
31 provides ample trade-off in parking demand per CZC 12.52.110(c).

32
33 Chair Daly **moved** to approve the Final Site Plan for the Pasture Phase 3 development
34 at approximately 1230 North 1300 West, parcel 06-003-0056, subject to the following conditions
35 and with the following reasons for action. Commissioner Summerhays seconded the motion,
36 which passed by unanimous vote (7-0). Commissioner Kjar said he had found the delineation
37 report very persuasive.

38
39 Conditions:

- 40
41 1. The Planning Commission approved the Parking Modification that allows a minimum
42 of 117 parking stalls to be on site.
43 2. Landscaping and irrigation shall be installed as indicated on the Landscaping Plan
44 dated September 16, 2021.

45
46 Reasons for Action:

- 47
48 a. The Planning Commission finds that the Final Site Plan submittal is substantially
49 consistent with the Conceptual Site Plan Acceptance and its related directives.
50 b. The Planning Commission finds that the Final Site Plan submittal complies with the
51 parking modification that was granted.
52 c. The Planning Commission finds that conditions may be imposed with a Final Site
53 Plan approval, as necessary to achieve compliance with applicable code
54 requirements.

- 1 d. The Planning Commission finds that, subject also to the conditions of approval; the
2 proposal complies with the requirements found in the Zoning Ordinance with
3 regards to development standards in the CV-H Zone and Final Site Plan Approval
4 Standards.

5
6 The Planning Commission took a break at 10:02 p.m., and returned at 10:06 p.m.

7
8 **FINAL SITE PLAN – YOUNG POWERSPORTS**
9

10 Mr. Snyder explained the request for Final Site Plan approval for Young Powersports,
11 and said staff recommended approval. Steve Peterson, representing the applicant, and Ron
12 Hale with Center Point Construction answered questions about building and elevation plans,
13 and the combination of parcels.

14
15 Commissioner Kjar expressed discomfort with the number and scope of conditions
16 attached to the proposed Final Site Plan approval. Mr. Snyder explained the timeframe and
17 logistics involved, and said he did not anticipate that any of the conditions would be problematic.
18 Chair Daly said he believed the applicant was motivated to follow through, and expressed
19 confidence that staff would ensure the conditions were met.

20
21 Chair Daly **moved** to approve the Final Site Plan for the redevelopment of property
22 located at 695 West 400 South, subject to the following conditions and with the following
23 reasons for action. Commissioner Wilcox seconded the motion, which passed by majority vote
24 (5-1-1), with Commissioner Kjar dissenting and an abstention from Commissioner Wright.

25
26 **Conditions:**
27

- 28 1. The Final Site Plan approval is limited to the proposed expansion/redevelopment and
29 site improvements, as depicted in the Final Site Plan submittal to the Commission on
30 December 8, 2021, or as amended by the City.
31 2. The development shall comply with the related rezone approval by combining all of
32 the separate parcels into a single development parcel.
33 3. The proposed recreational vehicle sales use and service related to this Final Site
34 Plan Approval shall obtain a Conditional Use Approval from the City.
35 4. The Final Site Plan shall be adjusted to meet the "internal parking lot landscaping"
36 requirement of 7%, which may also reduce the depicted parking stall count, so long
37 as the stall count meets the approved parking modification requirements.
38 5. All roof or ground mounted utility equipment shall be screened from public view (i.e.,
39 as viewed from a public street).
40 6. All outdoor lighting shall be fully shielded using cut-off type fixtures that will not allow
41 light dispersion or direct glare to shine above a 90-degree horizontal plane from the
42 base of the light fixture.
43 7. The applicant shall obtain secondary water service from the applicable third-party
44 company and construct all necessary improvements and payment of any related
45 fees.
46 8. All Final Site Plan needed alteration/modified approval conditions shall be reviewed
47 deemed in compliance by the Zoning Administrator, as part of the issuance of any
48 related construction permits.
49 9. Any dispute that arises regarding compliance with the Final Site Plan approval by the
50 Zoning Administrator shall be re-submitted to the Planning Commission for further
51 review and decision.
52

Reasons for Action:

- a. The Planning Commission finds that the Final Site Plan submittal is substantially consistent with the Conceptual Site Plan Acceptance and its related directives.
- b. The Planning Commission finds that the Final Site Plan submittal complies with the parking modification that was previously granted.
- c. The Planning Commission finds that conditions may be imposed with a Final Site Plan approval, as necessary to achieve compliance with applicable code requirements.
- d. The Planning Commission finds that, subject also to the conditions of approval, the proposal complies with the requirements found in the Zoning Ordinance with regards to development standards in the C-VH Zone and Final Site Plan Approval Standards.

PUBLIC HEARING – CONDITIONAL USE PERMIT – YOUNG POWERSPORTS

Mr. Snyder described uses on properties neighboring the Young Powersports property, and spoke of a concern expressed by a resident regarding the potential for loud vehicle revving. Mr. Snyder said the noise ordinance would control the potential for loud noises during off hours. He explained the need to ensure the applicant had legal right to use an access on the north side of the property (Porter Lane).

Mr. Hale said the applicant was going through the process to make sure an access easement was in place for access on Porter Lane. He described improvements that would be made to the access, and answered questions from the Commission. Mr. Hale stated the applicant would agree to the hours of operation listed as a proposed condition of approval.

Chair Daly opened a public hearing at 10:46 p.m., and closed the public hearing seeing that no one wished to comment. Chair Daly expressed the opinion that noise was not something that needed to be mitigated with the Conditional Use Permit (CUP) in that situation, and said he would be in favor of removing the hours of operation restriction. Commissioner Summerhays said he viewed the hours of operation restriction as an added buffer of protection for nearby residents, to which the applicant was acceptable. Chair Daly said on principle he would prefer to rely on the noise ordinance. Commissioner Kjar commented that powersports vehicles were generally loud.

Commissioner Summerhays **moved** to approve a CUP for the Young Powersports Complex located at 695 West 400 South, subject to the following conditions and with the following reasons for action. Commissioner Shegrud seconded the motion.

Conditions:

1. The Approved Land Use for the site is for Vehicle Rental or Sale, New Limited and/or Used Limited, and any typical accessory uses associated with the operation of a recreational vehicle sales dealership, as allowed by the regulations of the Zoning Ordinance.
2. The use of the site is also subject to the associated Final Site Plan approval, as approved by the City.
3. The Business Hours of Operation for vehicle sales and the associated accessory use of repairs shall be limited 8:00 a.m. to 9:00 p.m.
4. All outdoor lighting shall be fully shielded using cut-off type fixtures that will not allow light dispersion or direct glare to shine above a 90-degree horizontal plane from the base of the light fixture.
5. The Applicant shall submit sufficient evidence establishing a legal access easement from Porter Lane, to be deemed acceptable by the City Attorney.

- 1 6. Any future amendments to the CUP and/or Final Site Plan shall be subject to the
2 applicable amendment procedures defined by the Zoning Ordinance.

3
4 Reasons for Action:

- 5
6 a. The Planning Commission finds that both Vehicle Sales, New or Used are
7 conditional uses in the C-VH Zone, as listed in Table of Uses, 12-36-Commercial
8 Uses.
9 b. The Planning Commission finds that in reviewing factors of CZC 12.21.100(e)(5) (A-
10 C, F), there is evidence to support the conditional use suitability and harmony with
11 the proposed site and adjacent property.
12 c. The Planning Commission finds that in reviewing factors of CZC 12.21.100(e)(5) (D-
13 E, G, I-K), there is evidence to support a minimized impact on the community and the
14 conditions imposed provide any needed safeguards.
15 d. The Planning Commission finds that in reviewing factors of CZC 12.21.100(e)(5) (H)
16 that the associated Final Site Plan approval provides adequate access, parking,
17 lighting, fire protection and vehicular circulation.
18 e. The Planning Commission finds that in reviewing factors of CZC 12.21.100(e)(5) (H, I
19 and J) regarding the other possible related specific matters reviewed in the staff
20 report, the conditions imposed minimize the impact of the development on the
21 surrounding area.
22 f. Therefore, the Planning Commission finds that with the conditions imposed and the
23 findings made, the requirements of CZC 12.21.100(e) have been met and the
24 request for a CUP shall then be approved.

25
26 Chair Daly **moved to amend** the motion to strike Condition 3 from the CUP approval
27 and renumber accordingly. Commissioner Kjar seconded the motion to amend, which failed (2-
28 3-1), with Commissioners Daly and Kjar in favor, Commissioners Shegrud, Wilcox, and Larsen
29 against, and an abstention from Commissioner Wright.

30
31 The original motion passed (6-0-1), with an abstention from Commissioner Wright.

32
33 **PARKING STUDY**

34
35 Mr. Snyder stated an off-street parking study was on the list of Planning Commission
36 goals for the year. ESI Engineering, Inc. was contracted to perform an off-street parking study.
37 Cody Peterson, Transportation Engineer with ESI Engineering, said he was asked to look at
38 different land uses in Centerville and compare them to the national ITE Parking Generation
39 Manual. Mr. Peterson presented an Off-Street Parking Comparison Summary. He showed
40 current Centerville Code requirements for off-street parking and explained proposed parking
41 rates for different use types. Commissioner Shegrud said she thought the study was well done,
42 and thanked Mr. Peterson for the information.

43
44 The Planning Commission discussed a desire to look closely at industrial wholesale and
45 warehousing/flex-space parking requirements. Mr. Snyder suggested scheduling a work session
46 for further discussion. Commissioner Kjar said he would want to include a discussion of drive-
47 thru queueing at fast-food establishments.

48
49 **2022 ANNUAL MEETING SCHEDULE**

50
51 The Planning Commission reviewed a proposed 2022 annual meeting schedule.
52 Commissioner Wright **moved** to accept the 2022 Planning Commission Meeting Schedule.
53 Commissioner Kjar seconded the motion. Commissioner Shegrud asked if more than two
54 meetings could be scheduled in November/December to avoid lengthy meetings like that

evening. Assistant Planner Mackenzie Wood commented the City Council scheduled second meetings in November and December to be held as needed. Chair Daly commented that such long meetings were not usual. The motion passed by unanimous vote (7-0).

COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

The Planning Commission was scheduled to meet next on January 12, 2022. Mr. Snyder updated the Commission regarding recent actions by the City Council.

MINUTES REVIEW AND ACCEPTANCE

Minutes of the November 10, 2021 meeting were reviewed. Commissioner Wright **moved** to accept the minutes. Commissioner Summerhays seconded the motion, which passed by unanimous vote (7-0). Commissioner Summerhays commented that it had been a pleasure serving on the Planning Commission.

ADJOURNMENT

At 11:21 p.m., Chair Daly **moved** to adjourn the meeting. Commissioner Kjar seconded the motion which passed by unanimous vote (7-0).

Jennifer Hansen, City Recorder

Date Approved

Katie Rust, Recording Secretary