

13118450
11/7/2019 11:55:00 AM \$40.00
Book - 10857 Pg - 674-696
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 23 P.

WHEN RECORDED RETURN TO:

Herriman City
5355 West Herriman Main Street
Herriman, UT 84096
113018-CAF
TAX ID 26-25-400-067

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made and entered into as of this 9th day of October, 2019 (“**Effective Date**”), by and between **Game Pointe Properties, LLC**, a Utah limited liability company (the “**Developer**”), and **Herriman City**, a Utah municipality (the “**City**”).

RECITALS:

A. Developer is the owner of approximately 6 acres of real property located at or near Herriman Main Street and Miller Crossing Drive, Herriman, Salt Lake County, Utah, that has been platted as the Game Pointe Subdivision and consists of two lots. A copy of the recorded plat (“**Plat**”) is attached hereto as exhibit “A” and the legal description of the real property is more particularly described in exhibit “B” (the “**Property**”).

B. The Developer proposes to develop and construct a use that is allowed by applicable zoning limitations on Lot 1 of the Plat and a family entertainment center on Lot 2 of the Plat (“**Project**”).

C. The Property has been zoned Community Commercial (C-2) with various zoning conditions.

D. Developer hereby represents to the City that it is voluntarily entering into this Agreement.

E. The City and Developer desire to enter into this Agreement to further memorialize the development rights, terms, requirements and conditions for the development of the Project, as more fully described herein.

F. The City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, Utah Code Ann. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City hereby agree to as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries to which this Agreement applies is attached and specifically described in exhibit "B." No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Specific Design Conditions.** The Project shall be developed and constructed substantially as set forth in the site plan ("**Site Plan**") and the specific design conditions/criteria (the "**Design Criteria**") set forth in exhibits "C" and "D."

3. **Vested Rights.** This Agreement shall vest the Developer with the right to develop the Project in accordance with the ordinances, policies, and standards in effect as of the date of this Agreement. Provided, however, Developer shall not be vested to develop the Project in accordance with the ordinances, policies, and standards in effect as of the date of this Agreement in the event Developer does not obtain a building permit issued by the City in its government capacity ("**Building Permit**") to construct a family entertainment center on Lot 2 within two (2) years from the date hereof and/or in the event Developer does not obtain a certificate of occupancy for family entertainment center on Lot 2 within two (2) years from the date of that the Building Permit was issued. The issuance of the Building Permit and the certificate of occupancy shall not be unreasonably withheld. Construction of Miller Crossing Drive will not be a condition for issuance of the certificate of occupancy.

4. **Main Street.** On or before December 31, 2019, the City shall construct Main Street extending from its terminus at Herriman Boulevard to the future location of Miller Crossing Drive as shown on Plat.

5. **Miller Crossing Drive.** On or before March 15, 2020 Developer shall pay to the City the amount of \$100,000 for Miller Crossing Drive property acquisition costs. Neither the City nor Developer shall have any obligation to construct Miller Crossing Drive, provided, however, the Developer may in its sole and absolute discretion choose to construct Miller Crossing Drive subject to the terms, conditions, and repayment obligations acceptable to the parties. Developer shall be reimbursed for the Miller Crossing property acquisition costs pursuant to the terms and conditions of the reimbursement agreement attached as exhibit "E" and that certain Participation Agreement between the Developer and the Community Development and Renewal Agency of Herriman City.

6. **Street Amenities.** Developer shall install or cause to be installed street amenities along and adjacent to Auto Mall Drive, Miller Crossing Drive, and Main Street. For purposes of

this paragraph the term street amenities means sidewalks (specifically excluding curb and gutter) landscape and irrigation in the park strips, street lights, landscape and irrigation in the approximately 15 feet strip behind the sidewalk adjacent to Main Street, and landscape and irrigation to any open space corridors within the Auto Mall Drive, Miller Crossing Drive, and Main Street right of ways consistent with the Site Plan and Design Criteria. After expiration of the warranty period the City shall maintain, or cause to be maintained, the street amenities.

7. **Estimate of Applicable Impact Fees.** For non-binding illustration purposes only impact fees imposed by the City for a Forty Thousand square foot entertainment facility are currently estimated to be: (i) Storm Water - \$18,000; (ii) Culinary Water - \$30,000 - \$40,000 and (iii) Roads - \$25,000. These amounts may not include all applicable impact fees and may substantially changes when imposed.

8. **Development of Lot 1 and 2.** Developer may only develop and construct a uses that are allowed by applicable zoning on Lot 1 of the Plat and a family entertainment center on Lot 2 of the Plat. For purposes of this paragraph, family entertainment center means at least a 40,000 square foot indoor amusement facility that offers a broad selection of attractions, including, but not limited to, miniature golf, outdoor ropes course, bowling, laser tag, escape rooms, virtual sports bays, redemption arcade games, food establishment that stores, prepares, packages, serves, or otherwise provides food for human consumption where consumption is on or off the premises all of which is marketed towards families with small children to teenagers substantially as depicted in exhibit "D."

9. **Reserved Legislative Powers.** Notwithstanding any other provision of this Agreement to the contrary, the Developer acknowledges that the City is restricted in its authority to limit its police powers by contract and the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Developer as follows:

- (a) Changes that City and Developer agrees in writing to the application thereof to the Project.
- (b) Changes in City's laws and ordinances which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project.
- (c) Changes in City's laws and ordinances that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AASHTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized

construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare

- (d) Taxes or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
- (e) Changes to the amounts of fees for the processing of development applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule).
- (f) Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(i) (2016).

Nothing contained in the foregoing subparagraphs (a)-(f) shall alter or limit any future approvals, permits or other action(s) by the City concerning the Project (e.g. issuance of conditional use permit or building permit) that would give rise to separate vested rights under applicable law.

10. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, and shall encumber the same; and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property. This Agreement supersedes any and all development agreements that have been executed concerning the Property.

11. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without the consent of the other party, which consent shall not be unreasonably withheld or delayed. Any successors and assigns shall be deemed to be the Developer for all purposes under this Agreement with respect to that portion of the Property transferred, and the transferring Developer shall not be released from any further obligations with respect to this Agreement as to the parcel so transferred. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

12. **No Joint Venture, Partnership or Third-Party Rights.** This Development Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to third parties, except as expressly provided herein.

13. **Integration.** This Development Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

14. **Notices.**

Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer: Game Pointe Properties, LLC
 290 N FLINT ST STE A
 Kaysville, UT 84037

To City: Herriman
 City Manager
 5355 West Herriman Main Street
 Herriman, UT 84096

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

15. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

16. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

17. **Term of Agreement.** The term of this Agreement shall be for a period of two (2) years or until fulfillment of the obligations of the parties unless earlier terminated or modified by a written amendment agreed to and approved by the parties. If this Agreement is not recorded Office of the Salt Lake County Recorder within thirty (30) days of the Effective Date, the City may terminate this Agreement and Developer irrevocable consents that the Property be rezone to AMSD Auto Mall Special District .

18. **Default.** Any failure by either party to perform any term or provision of this Agreement default in that certain repurchase option between the parties dated October 9, 2019, which failure continues uncured for a period of fifteen (15) calendar days following written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot

reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Subject to paragraph 17 upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to pursue a remedy.

19. **Limitation on Recovery for Default – No Damages.** Anything in this Agreement notwithstanding no Party shall be entitled to any claim for any monetary damages as a result of any breach of this Agreement and each Party waives any claims thereto except that the City may unilaterally withhold all further reviews, inspections, approvals, licenses, building permits, certificate of occupancy and/or other permits for development of the Project in the case of a default by Developer. The sole and exclusive remedy available to Developer or assignees or successors shall be that of specific performance.

20. **Termination.** If City elects to consider terminating this Agreement due to a default of Developer, then City shall give Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines using its legislative discretion that a default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail. Notwithstanding the specific performance limitation described above the City may thereafter pursue any and all remedies at law or equity.

21. **Force Majeure.** Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

22. **Exhibits and Recitals.** The Recitals at the beginning of this Agreement and exhibits attached hereto are hereby incorporated herein by this reference.

23. **No Waiver.** Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise such right at some future time said right or any other right it may have hereunder.

24. **Execution of Agreement.** This Agreement may be executed in multiple counterparts or originals.

25. **Titles and Captions.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation hereof.

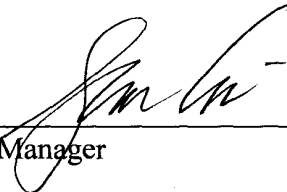
26. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

27. **Further Acts.** In addition to the acts recited in this Agreement to be performed by the parties hereto, the parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby and to carry out the terms and provisions, spirit and intent of this Agreement.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

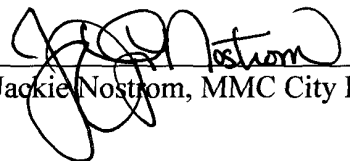
Game Pointe Properties, LLC

By: 
Its: Manager

Herriman City


Brett Geo Wood, City Manager

Attest:


Jackie Nostrom, MMC City Recorder

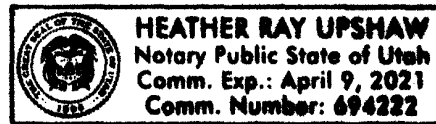


STATE OF UTAH)
)
) ss.:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 15 day of October, 2019 by Brett geo Wood, the City Manager of Herriman, State of Utah.

Heather Upshaw
Notary Public

[Notarial Seal]



STATE OF UTAH)
)
) : ss.
COUNTRY SALT LAKE)
CITY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 6th day of November, 2019 by Sharon Kilpatrick, the Manager of Game Pointe Properties, LLC.

Michael Paul Chabries
Notary Public

[Notarial Seal]

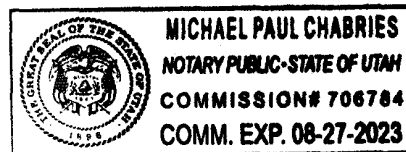
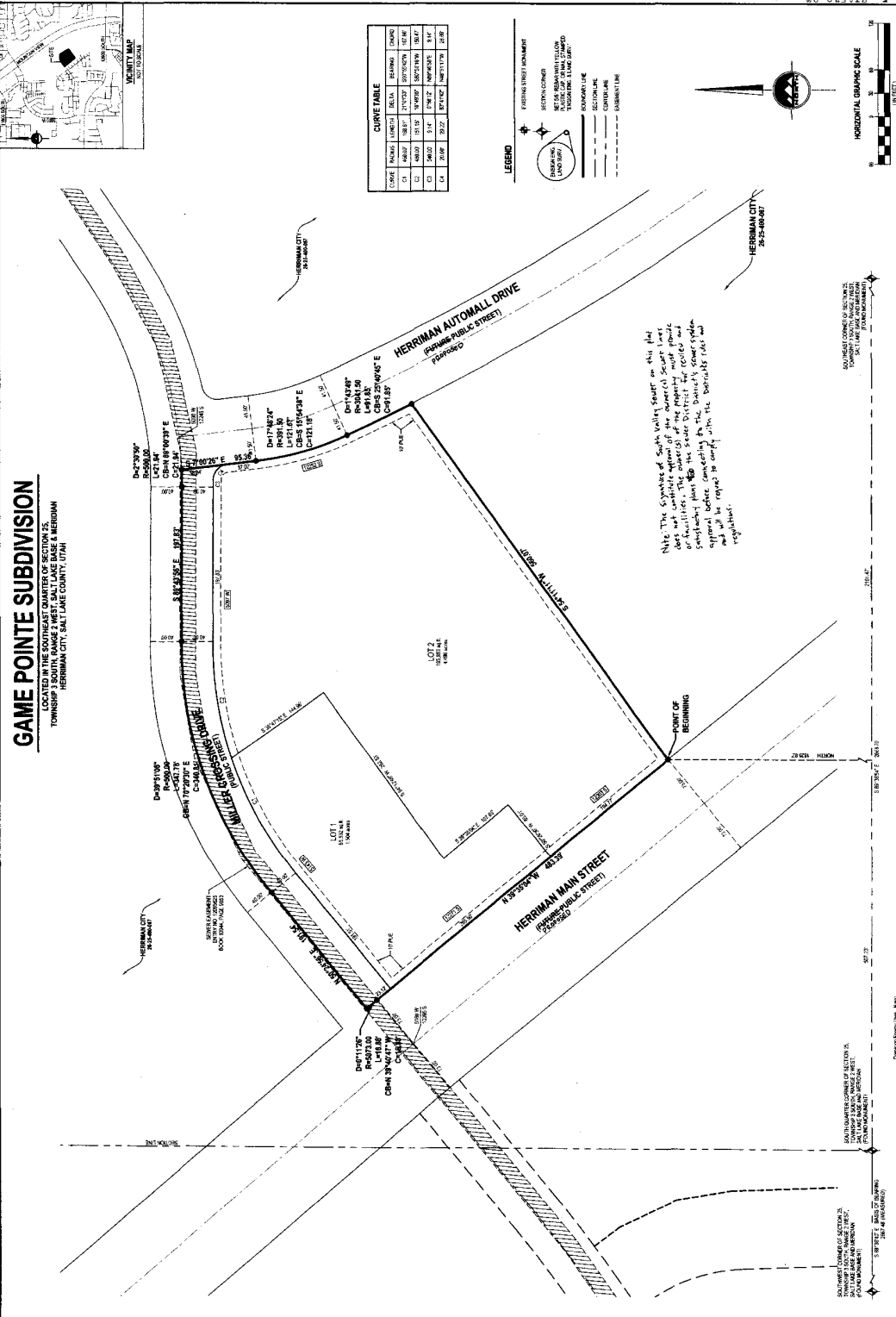


EXHIBIT A

Plat

GAME POINTE SUBDIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23,
TOWNSHIP 35 NORTH, RANGE 11 EAST,
HERRIMAN CITY, SALT LAKE COUNTY, UTAH



BOUNDARY DESCRIPTION

Section 23, Township 35 North, Range 11 East, Salt Lake County, Utah, contains 360 acres more or less. The southeast quarter of Section 23 contains 90 acres more or less. The subdivision is situated on the southeast quarter of Section 23, containing 90 acres more or less. The subdivision consists of 10 lots, 5 lots on the east side and 5 lots on the west side. The subdivision is bounded on the north by the east line of Section 23, on the south by the south line of Section 23, on the east by the east line of Section 23, and on the west by the west line of Section 23.

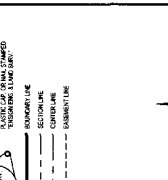
SURVEYOR'S CERTIFICATE

I, the undersigned, being duly qualified and sworn, and being the owner of the land described herein, do hereby certify that the foregoing is a true and correct copy of the original survey record and that the same has been filed in the public office of the county clerk of Salt Lake County, Utah, and that the same is a true and correct copy of the original survey record and that the same has been filed in the public office of the county clerk of Salt Lake County, Utah.

CHORD	BEARING	DELTA	CHORD BEARING
15	223°58'50"	151°03'16"	223°58'50"
24	212°16'00"	173°43'52"	212°16'00"
32	198°00'00"	135°00'00"	198°00'00"
40	180°00'00"	90°00'00"	180°00'00"
48	158°43'52"	41°56'48"	158°43'52"

LEGEND

- EXISTING STREETS
- SECTION CORNER
- BOUNDARY LINE
- SECTION LINE
- CONTRAST LINE
- COMMENT LINE



OWNERS DEDICATION

I, the undersigned, being duly qualified and sworn, and being the owner of the land described herein, do hereby dedicate the same to the public use of the State of Utah, to be known as the _____.

ENDORSEMENTS

ROCKY MOUNTAIN POWER
APPROVED BY _____ ON _____

DOMINION ENERGY UTAH
APPROVED BY _____ ON _____

HERMION CITY MUNICIPAL WATER
APPROVED BY _____ ON _____

COMCAST
APPROVED BY _____ ON _____

PLANNING COMMISSION APPROVAL
APPROVED BY _____ ON _____

CERTIFICATE OF COMMUNICATIONS
APPROVED BY _____ ON _____

CHECKED FOR ZONING
APPROVED BY _____ ON _____

HEALTH DEPARTMENT APPROVAL
APPROVED BY _____ ON _____

SOUTH VALLEY SEWER DISTRICT
APPROVED BY _____ ON _____

TITLE BLOCK

GAME POINTE SUBDIVISION
TOWNSHIP 35 NORTH, RANGE 11 EAST, SALT LAKE COUNTY, UTAH

DATE _____

APPROVALS TO ADD

EN SIGN
APPROVED BY _____ ON _____

APPROVALS TO REMOVE

APPROVED BY _____ ON _____

PLANNING COMMISSION APPROVAL
APPROVED BY _____ ON _____

CERTIFICATE OF COMMUNICATIONS
APPROVED BY _____ ON _____

CHECKED FOR ZONING
APPROVED BY _____ ON _____

HEALTH DEPARTMENT APPROVAL
APPROVED BY _____ ON _____

SOUTH VALLEY SEWER DISTRICT
APPROVED BY _____ ON _____

TABULATIONS

TOTAL ACRES	90.00
TOTAL ACRES LESS EXCEPT	0.00
TOTAL ACRES TO BE SAVED	90.00

EXHIBIT B

Legal Description of the Property

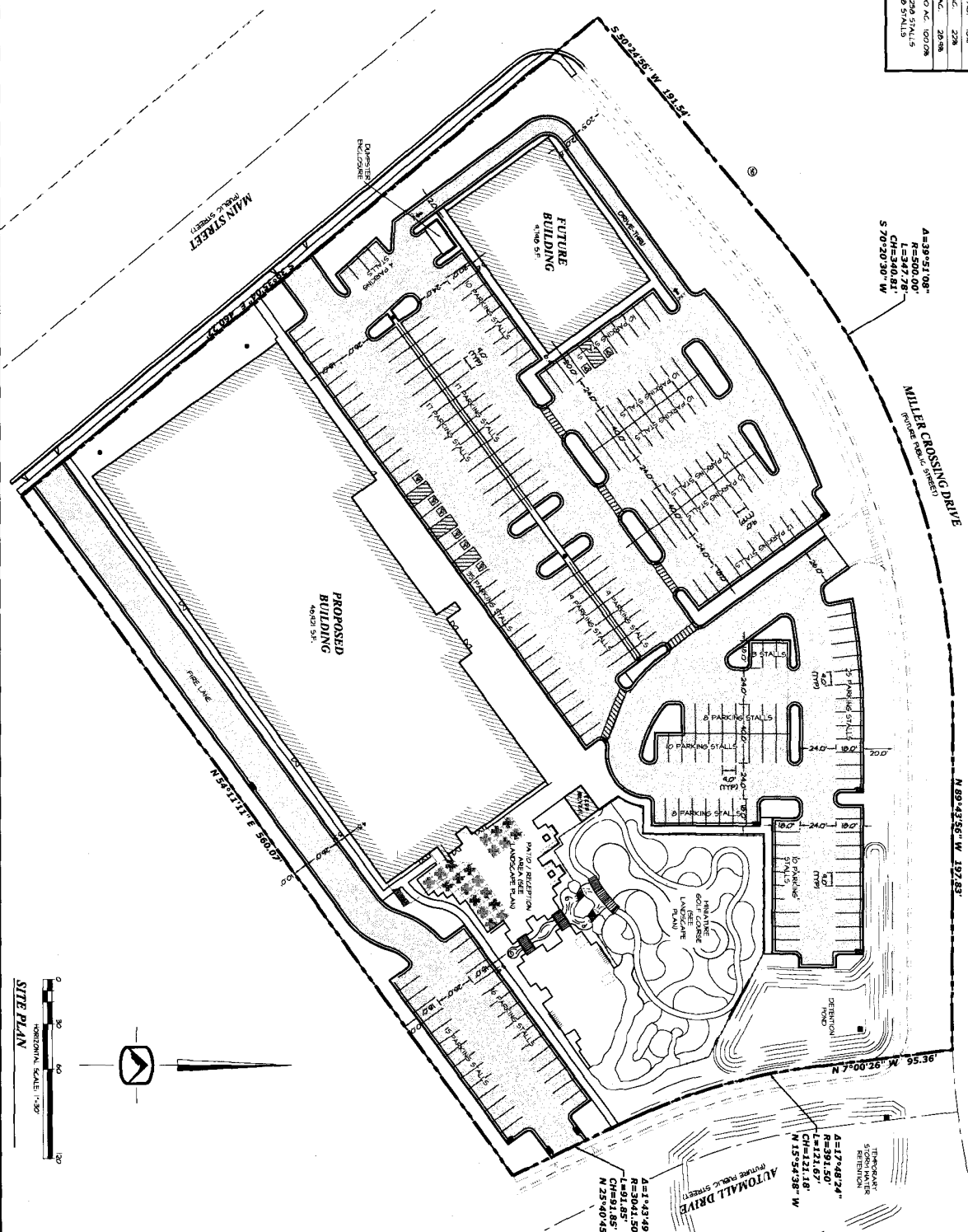
Lots 1 and 2, GAME POINTE SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder, recorded on October 14, 2019 as Entry No. 13098578 in Book 2019P at Page 277.

EXHIBIT C

Site Plan

[Attach Site Plan]

SITE AREA TABULATION	
ASPHALT AREA	10,888 SQ FT. 2.51 AC. 39%
OTHER HARDSCAPE	29,000 SQ FT. 6.61 AC. 10%
BUILDINGS	36,899 SQ FT. 8.41 AC. 23%
LANDSCAPE	7,748 SQ FT. 1.78 AC. 28%
TOTAL SITE	26,385 SQ FT. 6,000 AC. 100.0%
TOTAL PARKING PROVIDED	298 STALLS
CON. PARKING PROVIDED	8 STALLS



PROJECT CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.

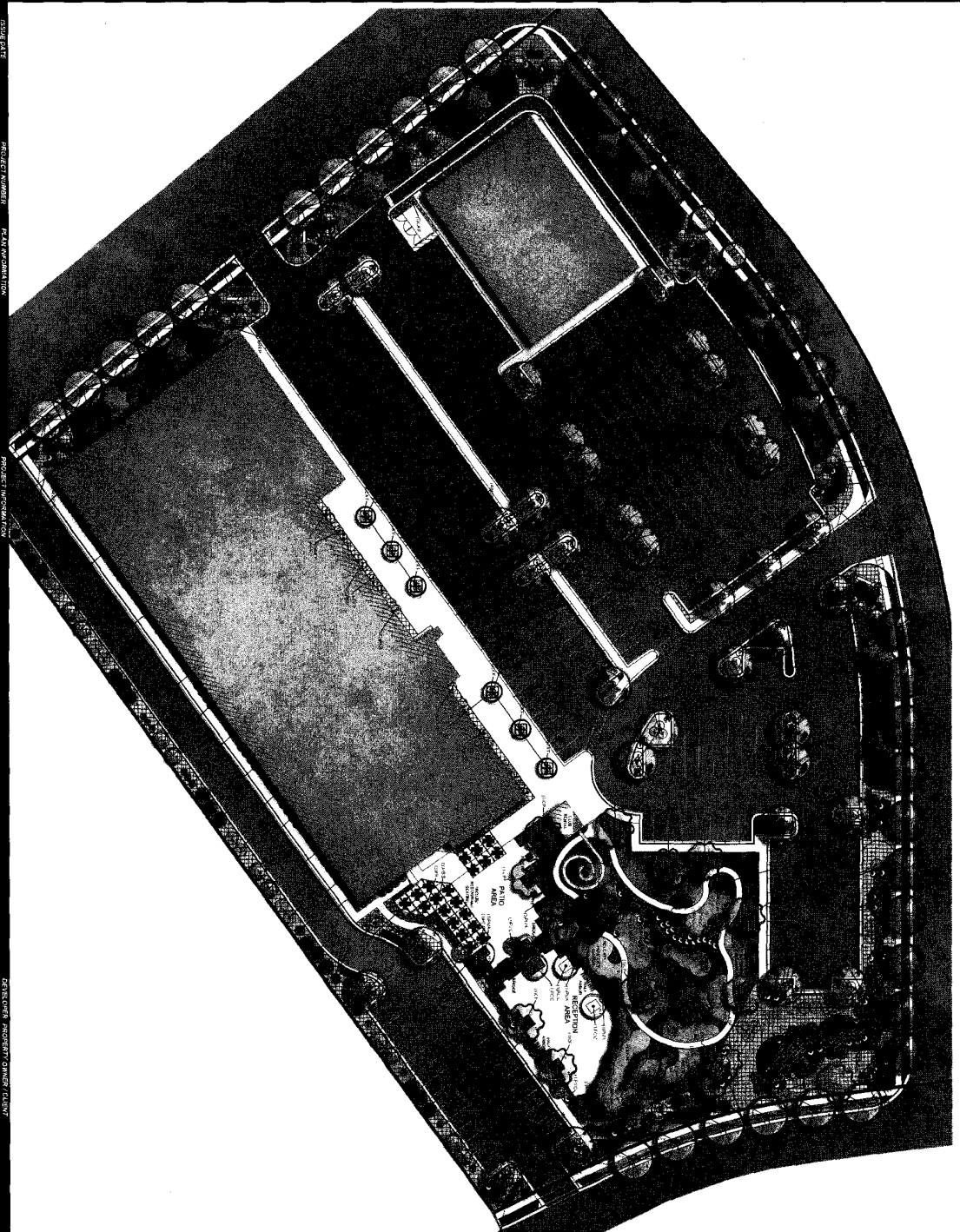
DATE: 09-22-2019
 PROJECT: 18112
 DRAWN BY: JBL
 REVISIONS:

GAME POINTE
MILLER CROSSING DR. & HERRIMAN MAIN ST.
HERRIMAN, UTAH

SILVERPEAK ENGINEERING


177 E. ANTELOPE DR. STE. B
 LAYTON, UT 84041
 PHONE: (801) 499-5054
 WWW.SILVERPEAKENG.COM

SHEET NUMBER:
C200



PROJECT NUMBER: UT19063
 DATE: 09-17-2019

PROJECT ADDRESS: MILLER CROSSING DR. HERRIMAN, UTAH

811
 BLUE STAVES OF UTAH
 1-800-452-4111
 www.811utah.com

811
 BLUE STAVES OF UTAH
 1-800-452-4111
 www.811utah.com

GAME POINTE

MILLER CROSSING DR.
 HERRIMAN, UTAH

AARON OSKOND
 ASSOCIATE ARCHITECT

SILVERPEAK ENGINEERING
 1775 E. AVENUE, SUITE 301
 HERRIMAN, UT 84401
 801-499-5054

LARGE DECIDUOUS REFERENCE TOTAL COUNT

SYMBOL	ITEM NAME	QUANTITY	HEIGHT	SPACING
22	ZELKOVIA SEROTINA	18	7' 0" - 10' 0"	LOW
23	TILO CORUPTA	15	7' 0" - 10' 0"	LOW
24	FRAXINUS AMERINCENSIS	37	7' 0" - 10' 0"	LOW
25	QUERCUS BACCATA	4	7' 0" - 10' 0"	LOW
26	QUERCUS ALBA	4	7' 0" - 10' 0"	LOW
27	FRAXINUS AMERINCENSIS	54	8' 0" - 11' 0"	LOW
28	FRAXINUS AMERINCENSIS	42	8' 0" - 11' 0"	LOW
29	FRAXINUS AMERINCENSIS	29	7' 0" - 10' 0"	MEDIUM
30	FRAXINUS AMERINCENSIS	8	7' 0" - 10' 0"	LOW
31	FRAXINUS AMERINCENSIS	17	7' 0" - 10' 0"	MEDIUM

PERENNIALS / GRASSES LEGEND

SYMBOL	ITEM NAME	QUANTITY	HEIGHT	SPACING
32	ZELKOVIA SEROTINA	7	5' 0" - 7' 0"	HIGH
33	FRAXINUS AMERINCENSIS	24	5' 0" - 7' 0"	HIGH
34	FRAXINUS AMERINCENSIS	21	1' 0" - 3' 0"	HIGH
35	FRAXINUS AMERINCENSIS	23	5' 0" - 7' 0"	MEDIUM
36	FRAXINUS AMERINCENSIS	46	1' 0" - 3' 0"	HIGH
37	FRAXINUS AMERINCENSIS	47	1' 0" - 3' 0"	LOW
38	FRAXINUS AMERINCENSIS	19	1' 0" - 3' 0"	HIGH

SITE MATERIALS

QUANTITY: 165

- 3/8" SAND STONE BROADCAST
- COARSE: 1-46 3/8" (13' CUV)
- 40MESH 5/8" WASHED SAND: 28,000 LBS
- 40MESH 1/2" WASHED SAND: 28,000 LBS
- 1/4" WASHED SAND: 28,000 LBS

EXPLANATION:
 1. ALL MATERIALS TO BE INSTALLED AS SHOWN.
 2. ALL MATERIALS TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE UTAH DEPARTMENT OF TRANSPORTATION (UDOT) STANDARD SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.
 3. ALL MATERIALS TO BE INSTALLED IN ACCORDANCE WITH THE UTAH DEPARTMENT OF TRANSPORTATION (UDOT) STANDARD SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.
 4. ALL MATERIALS TO BE INSTALLED IN ACCORDANCE WITH THE UTAH DEPARTMENT OF TRANSPORTATION (UDOT) STANDARD SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.

PKJ DESIGN GROUP

380 N. TRIUMPH BLVD SUITE 102
 LEHI, UT 84043 (801) 961-2638
 www.pkjdesigngroup.com

LANDSCAPE PLAN

PRELIMINARY PLANS NOT FOR CONSTRUCTION

LP-COLOR

JTA
 SHEET 13A

EXHIBIT D

Design Criteria

[Attach Design Criteria/Drawings]

BUILDING DESIGN STANDARDS; GAME POINTE HERRIMAN, UTAH:

This section provides design standards applicable to the Game Pointe Facility.

1. **Building Massing, Form and Pedestrian Scale:** Buildings, and/or building elements shall relate to each other in their massing and forms. Any facade(s) visible from a public right of way, shall incorporate architectural features and treatments to diminish the building mass, and/or make the building interesting to the observer. Architectural design shall incorporate the combination of the following techniques. All facades visible from a public right of way, shall meet the following standards:

2. **Horizontal Articulation:** Each facade, shall incorporate architectural features such as wall plane projections, recesses, or other building material treatments, concrete joint patterns, colors and textures that visually interrupt the wall plane.

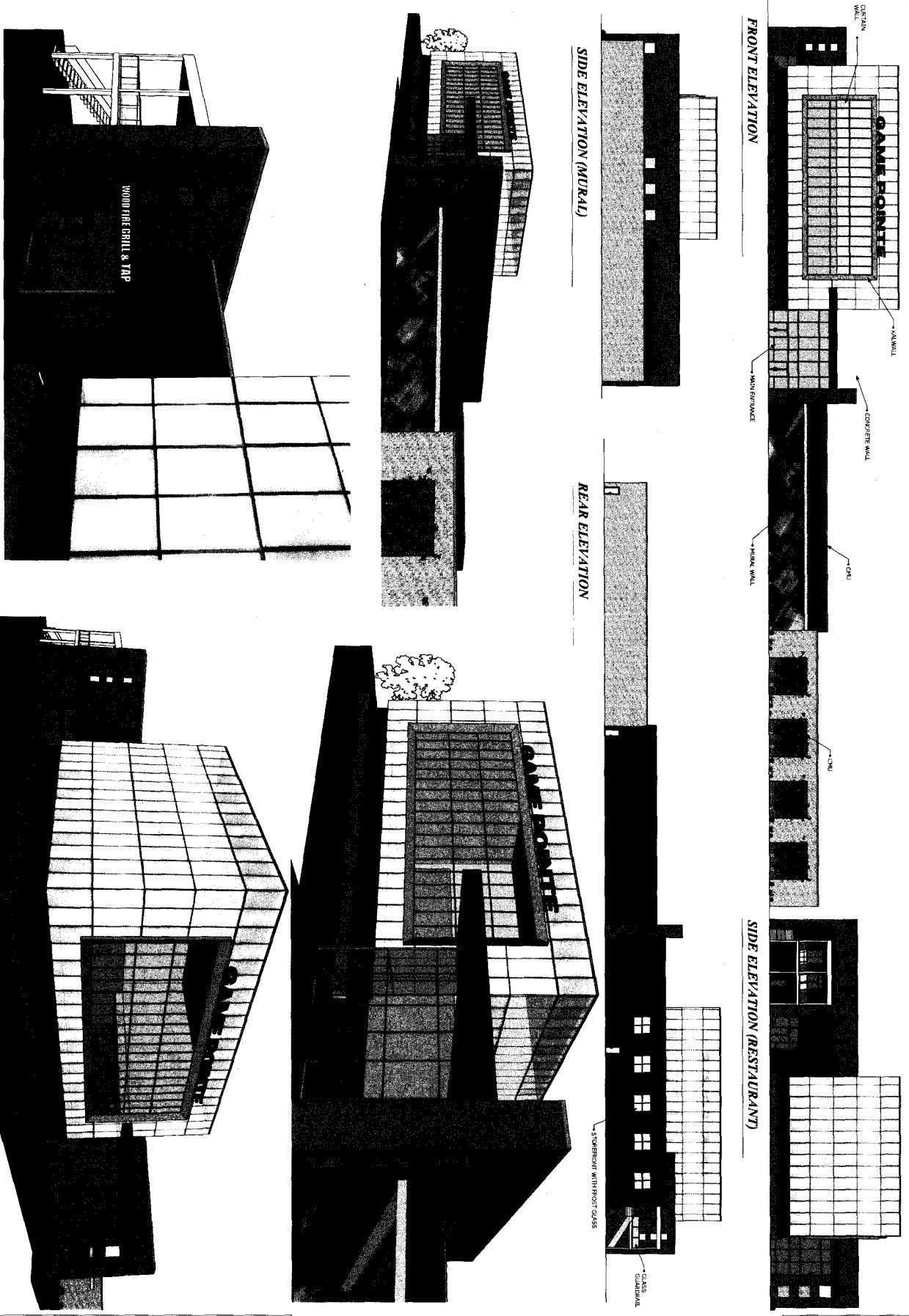
3. **Exterior Materials:** The outside surface of the structure shall be constructed of high-quality materials and shall be factory finished, stained, integrally colored, or otherwise suitably treated.

a. Approved exterior materials include the following: masonry (including CMU, brick & stone), concrete, architectural metal siding, translucent wall panels, stucco, wood, glass, and painted structural steel.

3. **Building Entrance:** The entrance and areas near the building entrance shall be designed to draw patrons in through the use of interesting and inviting architectural elements.

Exhibit D in the development agreement shows an example drawing of an acceptable arrangement of building materials, articulation and massing as describe above.

CONCEPTUAL DESIGN IS SUBJECT TO CHANGE



GAME POINTE
HERRIMAN, UTAH

SILVERPEAK ENGINEERING

177 E ANTELOPE DR #B
 LAYTON, UT 84041
 PHONE: (801) 499-5054
 FAX: (801) 499-5065

DATE: 09/04/2019
 PROJECT: 19-129
 DRAWN BY: CS

A1

SHEET NUMBER

EXHIBIT E

[Attach Reimbursement Agreement]

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 9th day of October, 2019, by and between Herriman, a Utah municipality ("City"), and Game Pointe Properties, LLC, a Utah Limited Liability Company ("Developer") (collectively, the "Parties").

RECITALS:

- A. Developer developed and/or plans to develop a food establishment and an entertainment facility that is located at Lot 1 and Lot 2 of the Game Pointe Subdivision.
- B. As part of such development, Developer paid a right of way purchase fee in the amount of \$100,000 ("Miller Crossing Fee") for acquisition of real property with respect to Miller Crossing Drive.
- C. Miller Crossing Drive is system improvement and as such the Developer is entitled to reimbursement of the Miller Crossing Fee.
- D. City intends to reimburse Developer for the Miller Crossing Fee.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, mutual covenants, and undertakings, the Parties hereby agree as follows:

Section 1. **Impact Fee.** The Developer hereby acknowledges that it voluntarily paid the Miller Crossing Fee.

Section 2. **Indemnification and Warranty.** To the fullest extent allowed by law, Developer shall indemnify, defend, and hold harmless the City, its affiliates, agents, employees, and elected and appointed officials from and against any and all actions, claims, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or connected in any way to Developer's acts or omissions in connection with the Miller Crossing Fee. If any claim is made against the City to which the City's claims right of indemnification from Developer, the City shall have the right, but not the obligation, to assume the entire control of the defense and/or settlement of the claim, through attorneys selected by the City, and Developer shall cooperate fully with the City in connection with the same. If the City elects to assume control of the defense and/or settlement of the claim, Developer shall be liable for all City's related costs and expenses, including, without limitation, reasonable attorneys' fees, all judgments or verdicts, and all monies paid in settlement.

Section 3. **Reimbursement.** Miller Crossing Drive is a system improvement as that term is defined by the City and Utah Code Ann. § 11-36-101, *et seq.* and as such the Miller

Crossing Fee is subject to reimbursement. As full and complete reimbursement of the Miller Crossing Fee from the transportation impact fee fund, the City will pay to the Developer one hundred percent (100%) of the transportation impact fees generated and collected from within the area of Lot 1 and Lot 2 of the Game Pointe Subdivision. All amounts so collected shall be paid to the Developer without interest within thirty (30) days after the end of the quarter in which the referenced impact fees were received by the City.

Section 4. **Offset Rights.** Developer agrees that, in addition to any other rights and remedies available under this Agreement, at law, or in equity, the City may set off against any payments otherwise due and owing to Developer under Section 3 of this Agreement any amount that City may be entitled pursuant to indemnification under Section 2 of this Agreement or otherwise. Neither the exercise nor the failure to exercise such right of setoff will constitute an election of remedies or limit any of City's indemnifications pursuant to Section 2 of this Agreement.

Section 5. **Impact Fees.** The Developer acknowledges and agrees that development of the Miller Crossing Drive was subject to certain impact fees imposed by the City. Developer acknowledges and agrees and as an essential element of consideration for this Agreement, that the impact fees imposed on the Developer by The City meet all requirements of law, is valid and binding, and does not violate any constitutional provisions.

Section 6. **Miscellaneous Provisions.**

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah. This Agreement shall be interpreted in an absolutely neutral fashion, and ambiguities herein shall not be construed against any party as the "drafter" of this Agreement.

(i) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(j) Notice. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Assignment. Applicant may not assign its rights, or delegate its duties, hereunder without City's prior written consent. City may freely assign its rights and delegate its duties under this Agreement, whereupon the assignee shall succeed to, and City shall be correspondingly released from, all of City's rights, duties, and liabilities hereunder.

(m) Exhibits and Recitals. The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Agreement on the day and year last below written.

HERRIMAN

By _____
Brett geo Wood, City Manager

ATTEST:

Jackie Nostrom, City Recorder

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by **Brett geo. Wood** and **Jackie Nostrom**, as the City Manager and City Recorder, respectively, of **HERRIMAN**, a Utah municipality.

Notary Public
Residing at: _____

DEVELOPER

By _____
Its: _____ Manager _____
Dated: _____

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, as the _____ of the _____.

Notary Public
Residing at: _____