

11490166
10/12/2012 08:43 AM \$0.00
Book - 10065 Pg - 5376-5396
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
MIDVALE CITY
655 W CENTER STREET
MIDVALE UT 84047
BY: SAM, DEPUTY - WI 21 P.

When recorded, return to:
Midvale City
655 W. Center St.
Midvale, UT 84047

**RESTATED DEVELOPMENT AGREEMENT FOR
VIEW 72 RETAIL PROJECT
MIDVALE CITY, UTAH**

THIS RESTATED DEVELOPMENT AGREEMENT ("Development Agreement") is entered into as of this 27th day of June, 2012 by and among Arbor Gardner Bingham Junction Retail, L.C., a Utah limited liability company, its successors and assigns ("Developer") and Midvale City Corporation, a Utah municipal corporation ("Midvale" or "City") for the View 72 Retail Project, which is a portion of that certain sub area of the Bingham Junction Project known as The Junction at Midvale located in Midvale City, Utah. This Development Agreement restates and replaces the Development Agreement for View 72 Retail Project agreed upon by the City on March 20, 2012 through Resolution No. 2012-15 and signed by the Developer on April 3, 2012.

A. Master Development Agreement. Developer and Midvale both acknowledge the existence and continuing applicability of that certain Master Development Agreement for the Bingham Junction Project dated April 6, 2005 (the "Master Development Agreement"), and that certain Development Agreement for The Junction at Midvale Sub Area of the Bingham Junction Project dated November 14, 2007 (the "Junction Agreement"), both of which are binding upon and inure to the benefit of the Developer in the ownership and development of this portion of the Bingham Junction Project. Developer and Midvale desire to enter into this Development Agreement in order to address various issues specific to this portion of the Bingham Junction Project while recognizing that the remaining provisions of the Master Development Agreement and the Junction Agreement continue to be applicable and remain in full force and effect.

B. View 72 Retail Project. Developer is the owner of a certain portion of the property which is subject to the Master Development Agreement and the Junction Agreement. This portion of the property is located between 700 West and Bingham Junction Boulevard and Jordan River Boulevard and the MidJordan Rail Line, which is specifically described in Exhibit A attached hereto (the "Property"). Developer intends to develop the View 72 Retail Property into a commercial project to be known as the View 72 Retail Project (the "Project").

C. Amended Large Scale Master Plan Approval. Midvale has approved an Amended Large Scale Master Plan for the Project. This approval is subject to the specific conditions of approval from the City Planning Commission on June 13, 2012, attached hereto as Exhibit B. This is set forth in Section 17-7-9.2 of the Midvale City Code ("Amended BJ Zone").

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

Article 1 The Project

1.1 Adoption of Recitals; Legal Description of Property. The recitals set forth above in paragraphs A through C are hereby adopted by the City and Developer as true and correct, and any promises, agreements, or obligations set forth therein are hereby incorporated into this Development Agreement and enforceable provisions hereof. The Property covered by this Development Agreement consists of approximately 42.3 acres of land located between 700 West and Bingham Junction Boulevard and Jordan River Boulevard and the MidJordan Rail Line. The Property is more fully described in Exhibit A attached hereto.

1.2 Project Description. The Project covered by this Development Agreement consists of commercial building space within ten buildings/pad sites, associated parking and landscaped areas, including perpetual public open space use areas, and specified access points on 700 West and Jordan River Boulevard on the east portion of the property, as well as an east/west public road connection between 700 West and Bingham Junction Boulevard aligning with the existing Junction View Drive to the west on the west portion of the property. This road connection creates two "Future Buildings" areas to be more fully defined through subsequent Large Scale Master Plan Amendments in the future. This Project is illustrated by the approved Amended Large Scale Master Plan shown in Exhibit B attached hereto.

1.3 Project Approval. Pursuant to the Midvale City Zoning and Subdivision Ordinance, the View 72 Retail Amended Large Scale Master Plan has been approved under the Amended BJ Zone provisions (Chapter 17-7-9) and the Junction at Midvale Overlay Zone provisions (Chapter 17-7-9.12.2) and the Subdivision Ordinance (Title 16). The review and approval process included a lawfully advertised public hearing before the City Planning Commission on June 13, 2012. The City acknowledges and agrees that Developer has the vested right to develop and construct the View 72 Retail Project in accordance with the provisions of the Amended BJ Zone, the Junction at Midvale Overlay Zone, the Master Development Agreement, the Junction Agreement, this Development Agreement, the Amended Large Scale Master Plan, and other presently existing ordinances and regulations of the City.

Article 2 Site Improvements and Performance Bond

2.1 Security for Off and On Site Public Improvements. The Developer agrees to complete all required off and on site public improvements in accordance with approved Construction Plans. Developer shall guarantee such improvements through one or more Performance Bonds consistent with the City's Subdivision Ordinance, which provides the

financial security for the public improvements, including, but not limited to, water, sewer, curb and gutter, sidewalk and street improvements, surface drainage, street trees, fiber optic conduit, street lighting, and other public improvements.

2.2 Declaration of Covenants, Conditions and Restrictions (CC&R's). All development shall be subject to covenants, conditions and restrictions establishing responsibilities for the short term and long term maintenance of commonly used areas, parking lots, access drives, landscaping, lighting, etc.

Article 3 Specific Conditions of Master Planned Development

3.1 Agreement to Comply with Specific Conditions of Approval. The Developer agrees to the following conditions of approval:

3.1.1 All development shall comply with the Development Standards in Section 17-7-9.12.2.6 of the Zoning Ordinance.

3.1.2 All development shall comply with the Landscape Standards in Section 17-7-9.12.2.8 of the Zoning Ordinance. Landscaping plans shall incorporate some of the plant materials and landscape design elements of the existing landscaping of the Junction at Midvale commercial areas.

3.1.3 All development shall comply with the Architectural Standards in Section 17-7-9.12.2.7 of the Zoning Ordinance, including but not limited to drive aisles located between the building and street being minimized as much as possible with berming and landscaping.

3.1.4 In order to achieve a consistency and theme between the individual buildings as they are developed over time and in addition to condition 3.1.3 above, all buildings shall incorporate into their design some of the exterior materials, colors and architectural elements included in Exhibit C, Exterior Building Palette. This defines an appropriate range of exterior materials, colors and architectural elements within the parameters of the general Architectural Standards in the Junction at Midvale Overlay Zone. The intent of this condition is to set the tone and theme for the View 72 Retail Project to ensure a cohesive, master planned development, while still allowing some variation in colors, materials and architectural elements. The "Future Buildings" areas may include their own Exterior Building Palette as part of the Large Scale Master Plan Amendment review process, provided the exterior materials, colors and architectural elements fall within the parameters of the general Architectural Standards in the Junction at Midvale Overlay Zone and are compatible with the existing and future buildings in the larger Junction at Midvale area.

3.1.5 All development shall comply with Sections 17-7-9.5 Common Development Standards and 17-7-9.6 Parking of the Zoning Ordinance.

3.1.6 All development shall comply with the approved View 72 Thematic Design Elements and specific commercial retail thematic design elements included in Exhibit D, Thematic Design Elements.

3.1.7 The Developer shall comply with all approvals from UDOT for the access onto Jordan River Boulevard.

3.1.7.5 East-West Public Road Connection. In order to provide adequate traffic flow through the View 72 retail and office developments, the continuation of Junction View Drive between Bingham Junction Boulevard and 700 West shall be improved and dedicated to Midvale City as a public right-of-way by the Developer. Said right-of-way shall extend, uninterrupted, from the current intersection at Bingham Junction Boulevard east to 700 West at the location depicted on the Amended Large Scale Master Plan shown in Exhibit B attached hereto. The exact alignment of Junction View Drive through the Project will be specifically defined and approved through the subsequent Large Scale Master Plan Amendments for the “Future Buildings” areas.

3.1.8 Perpetual Open Space Public Use Areas. The open space areas required for the Junction at Midvale shown on Exhibit E that are within the Project shall be improved by the property owner at the time of individual building pad/lot development in accordance with the Junction at Midvale Project Development Agreement. These areas shall be conveyed for public use for the public’s enjoyment of the linear trails and amenities through a perpetual easement.

3.1.9 Small Scale Master Plan and Final Site Plan Approvals for Building Pads/Lots. Small Scale Master Plans and Final Site Plans must be reviewed and approved for each building pad/lot within the Project prior to any development occurring beyond the main infrastructure improvements on the overall Property. These plans shall be consistent with the Amended Large Scale Master Plan approval included in Exhibit B and shall follow the review process outlined in Sections 17-3-6 and 17-7-3 E of the Zoning Ordinance.

3.1.10 Large Scale Master Plan Amendment(s) for “Future Buildings” Areas. Proposed development within the “Future Buildings” areas illustrated on the Amended Large Scale Master Plan shown in Exhibit B attached hereto shall first be reviewed under the Large Scale Master Plan process, and approved as an amendment to the Amended Large Scale Master Plan before applications for Small Scale Master Plans and Final Site Plans shall be accepted by the City. This Restated Development Agreement anticipates these future amendments, and will not need to be amended as a result.

Article 4 General Terms and Conditions

4.1 Construction of Agreement. This Development Agreement shall be constructed and interpreted to ensure that the Developer complies with the requirements and

conditions of the Large Scale Master Plan and Zoning Ordinance. The rights granted to Developer for the Project are vested upon the execution of this Development Agreement, and the promulgation or enactment by the City of any new law, ordinance, rule or regulation (or amendment thereto) shall not affect or alter the rights granted to Developer pursuant to this Development Agreement. Developer acknowledges that the City is restricted in its authority to limit its police power by contract. The retained power of the City to enact new legislation under the police powers of the City, however, shall affect the vested rights of Developer only to the extent there is a clear showing of facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Under no circumstances shall any such new legislation limit Developer's remedies at law with regard to this Development Agreement. In addition, any proposed legislative changes affecting the vested rights of Developer hereunder or the conditions applicable to the Project must be of general application to all development activity in the City; and Developer shall be entitled to prior written notice and an opportunity to be heard with respect any such proposed legislative change applicable to the Project.

4.2 Laws of General Applicability. Where this Development Agreement refers to laws of general applicability to the Project, that language shall be deemed to refer to laws which apply to all other similarly situated, subdivided properties within Midvale City.

4.3 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns as described in 4.4 below.

4.4 Binding Effect. This Development Agreement shall be binding on any and all successors and assigns of the Developer in the ownership or development of any portion of the Project or Property.

4.5 Assignment and Transfer of Project. Any transfer or assignment of this Development Agreement shall comply with the provisions of Section 11.2 of the Master Development Agreement.

4.6 Duration. The term of this Development Agreement shall commence on the date the Development Agreement is executed by both parties. The term of this Development Agreement shall extend for the period of time the Developer or its successors owns any portion of the property, but in no event longer than the term of the Master Development Agreement as set forth in Section 12.2 thereof.

4.7 Notices. Any notice, confirmation or other communication hereunder shall be given in writing by mail or facsimile at the following addresses or numbers:

Midvale City:

Midvale City Manager
Midvale City Corporation
655 W. Center St.
Midvale, UT 84047
FAX: (801) 567-0518

Midvale City Community & Economic Development Director
Midvale City Corporation
655 W. Center St.
Midvale, UT 84047
FAX: (801) 567-0518

Midvale City Attorney
Midvale City Corporation
655 W. Center St.
Midvale, UT 84047
FAX: (801) 567-0518

Developer:

Arbor Commercial Real Estate L.L.C.
126 West Sege Lily Drive, Suite 275
Sandy, UT 84070
FAX: (801) 561-8594
ATTN: John Gust

with a copy required for notice to:
K.C. Gardner Company, L.C.
90 South 400 West, Suite 360
Salt Lake City, UT 84101
FAX: (801) 366-7194
ATTN: Christian Gardner

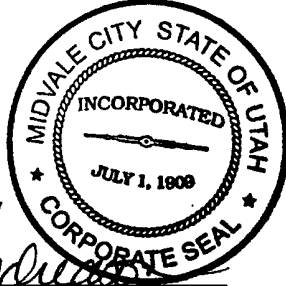
Any of the above parties may change its address by notice given to the other parties in the manner required for other notices above.

4.8 Savings Clause. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of the Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid.

4.9 Continuation of Terms of Master Development Agreement and Junction Agreement. All of the other provisions of the Master Development Agreement and Junction Agreement which apply to the Property, except as specifically modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of Arbor Gardner Bingham Junction Retail, L.C., as of the above stated date.

CITY:



MIDVALE CITY CORPORATION

By: John B. Seghini
John B. Seghini, Mayor

ATTEST:

Ron L. Andreason
Ron L. Andreason, MMC
City Recorder

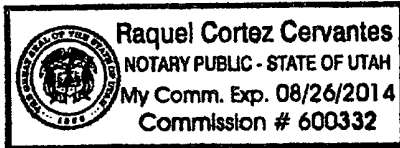
DEVELOPER:

ARBOR GARDNER BINGHAM
JUNCTION RETAIL, L.C., a Utah limited
liability company, by its managers

ARBOR COMMERCIAL REAL ESTATE,
L.L.C., a Utah limited liability company

By: [Signature]
Name:
Title: Manager

Subscribed and sworn to me this 18th day of June, 2012

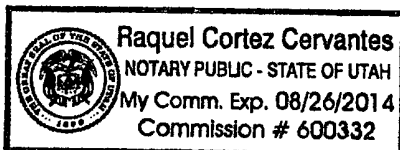


Raquel Cortez Cervantes
(Notary)
Residing in Salt Lake County, Utah
My commission expires: 08/26/2014

KC GARDNER COMPANY, L.C., a Utah
limited liability company

By: [Signature]
Name:
Title: Manager

Subscribed and sworn to me this 18th day of June, 2012



Raquel Cortez Cervantes
(Notary)
Residing in Salt Lake County, Utah
My commission expires: 08/26/2012

7 View 72 Retail Project
Restated Development Agreement

EXHIBIT A

LEGAL DESCRIPTION

Beginning at a point on the Westerly Right-of-Way Line of 700 West Street said point being South 00°17'30" West 1308.64 feet along the Section Line and North 89°42'30" West 53.00 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 00°17'30" West 1,133.01 feet along the Westerly Right-of-Way Line of 700 West Street to the North Line of the Utah Transit Authority Corridor;

thence South 86°33'00" West 312.68 feet along the North Line of said Utah Transit Authority Corridor to the Easterly Right-of-Way Line of Bingham Junction Boulevard;

thence Southwesterly 137.35 feet along the arc of a 2,914.79 foot radius curve to the left (center bears South 03°27'00" East and the chord bears South 85°12'00" West 137.34 feet with a central angle of 02°42'00") along the North Line of said Utah Transit Authority Corridor;

thence South 83°51'00" West 1131.18 feet along the North Line of said Utah Transit Authority Corridor to the Easterly Right-of-Way Line of Bingham Junction Boulevard;

thence North 06°11'37" West 169.67 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;

thence Northeasterly 912.01 feet along the arc of a 1,327.00 foot radius curve to the right (center bears North 83°48'23" East and the chord bears North 13°29'43" East 894.17 feet with a central angle of 39°22'41") along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;

thence North 33°11'04" East 524.28 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;

thence North 76°55'32" East 37.21 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard to the Southerly Right-of-Way Line of 7200 South Street;

thence Southeasterly 687.62 feet along the arc of a 1,335.74 feet radius curve to the left (center bears North 29°38'34" East and the chord bears South 75°06'17" East 680.05 feet with a central angle of 29°29'42") along the Southerly Right-of-Way Line of said 7200 South Street;

thence South 89°51'08" East 383.77 feet along the Southerly Right-of-Way Line of said 7200 South Street;

thence South 44°46'48" East 35.31 feet along the Southerly Right-of-Way Line of said 7200 South Street to the point of beginning.

Contains 1,885,089 Square Feet or 43.276 Acres

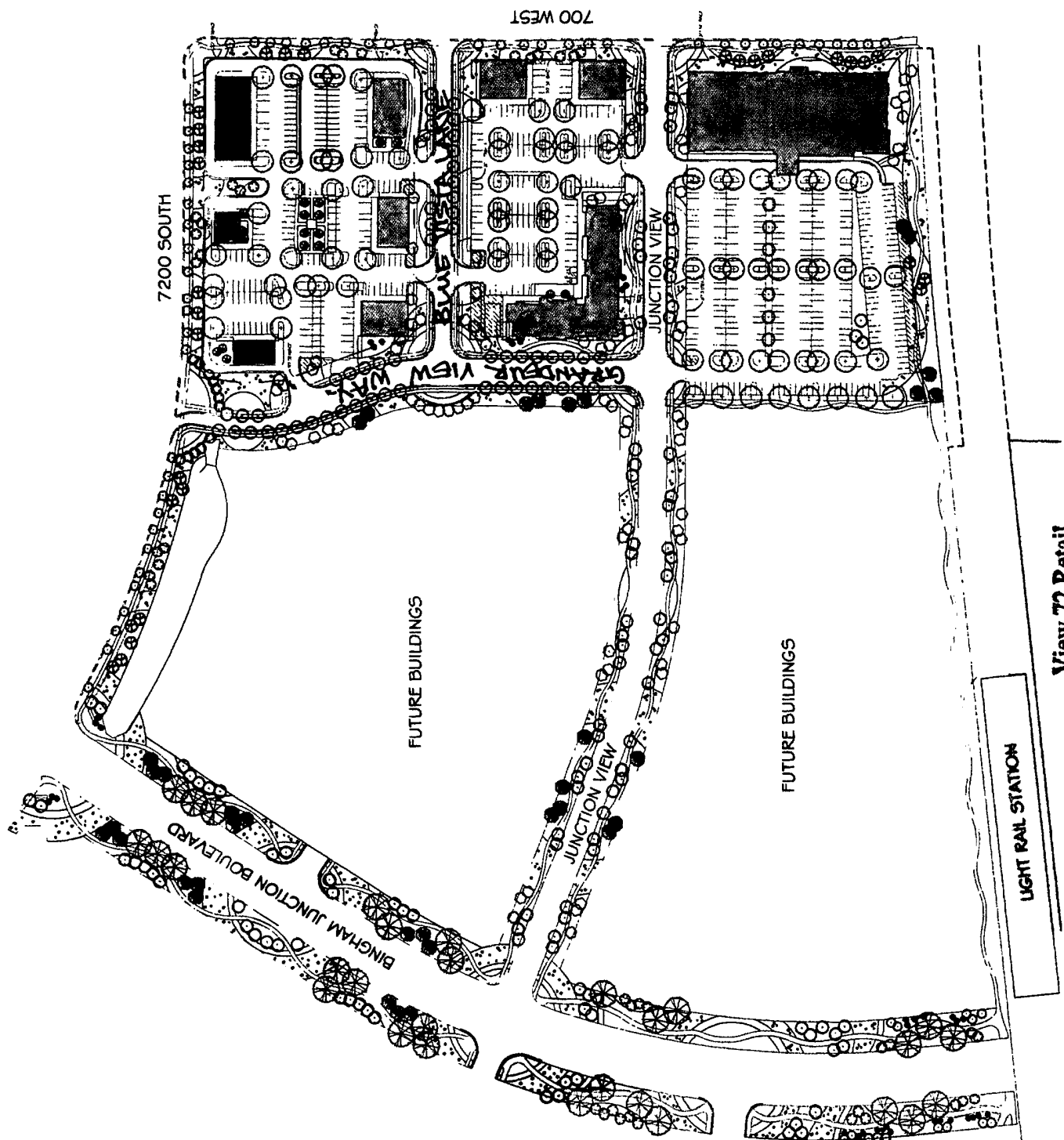


EXHIBIT B

APPROVED AMENDED LARGE SCALE MASTER PLAN & CONDITIONS

BK 10065 PG 5384

View 72 Retail
Preliminary Site Plan





655 West Center Street
Midvale, UT 84047
Phone (801) 567-7200
Fax (801) 567-0518

June 15, 2012

Mr. Mark Murdock
Gardner Company
400 W. 90 S. #360
Salt Lake City, UT 84108

Subject: Amendment to the Large Scale Master Plan for View 72 Retail Project @ SW
Corner 700 West and 7200 South

Dear Mark:

This letter is to confirm action taken by the Midvale City Planning Commission at its meeting held on June 13, 2012 with regard to the above request. Based on the proposed Amendment to the Large Scale Master Plan layout complying with the intent and general development standards for the Bingham Junction Zone and The Junction at Midvale Overlay, providing adequate and appropriate public access with the extension of Junction View Drive, and providing a solid foundation for more detailed development plans to be submitted under the Small Scale Master Plan provision in the future, the Planning Commission approved the Amended Large Scale Master Plan layout for the View 72 Retail Project as attached with the following conditions:

1. The applicant shall comply with the approval from UDOT for the new access on 7200 South.
2. The River View Lane [*name change to Blue Vista Lane on amended plan*] access onto 700 West shall be right-in/right-out only and shall comply with all requirements of the City Engineer.
3. All development within the Amended Large Scale Master Plan shall comply with the Development Standards in Section 17-7-9.12.2.6 of the Zoning Ordinance.
4. All development within the Amended Large Scale Master Plan shall comply with the Architectural Standards in Section 17-7-9.12.2.7 of the Zoning Ordinance, including but not limited to drive aisles located between the building and the street being minimized as much as possible with berming and landscaping.
5. All development within the Amended Large Scale Master Plan shall comply with the Landscaping Standards in Section 17-7-9.12.2.8 of the Zoning Ordinance.

6. All development within the Amended Large Scale Master Plan shall comply with Sections 17-7-9.5 Common Development Standards and 17-7-9.6 Parking of the Zoning Ordinance.
7. All development within the Amended Large Scale Master Plan shall comply with the approved Junction at Midvale Thematic Design Elements, i.e. lighting, benches, etc.
8. Further refinement of the "future building" areas shall be done through a Large Scale Master Plan Amendment before specific development will be approved in these areas.
9. The approved Development Agreement and Subdivision Plat for this area shall be amended to reflect the Amended Large Scale Master Plan. The Development Agreement shall be approved and signed by all parties before any specific development approvals can be granted within the View 72 Retail Project area.
10. If the applicant can gain approval from UDOT for improved ingress or egress for View Center Way [*renamed Grandeur View Way on amended plan*], such changes can be approved by the Planning Staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Lesley Burns", with a long, sweeping flourish extending to the right.

Lesley Burns
City Planner

/lb

Attachment

EXHIBIT C

EXTERIOR BUILDING PALETTE

In order to ensure each building within the View 72 Retail Project fits within a cohesive, master planned framework with regard to building design, an exterior building palette for this area has been created. This exterior building palette refines the general architectural requirements of the Junction Overlay by creating a range of acceptable building forms, materials and colors that will help establish consistency between the individual projects and buildings within the project area.

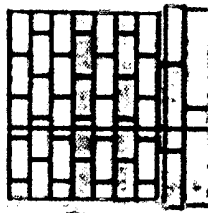
In addition to complying with the Architectural Standards in Section 17-7-9.12-2.7 of the Zoning Ordinance, it will be expected that developments within the View 72 Retail Project utilize some of the building forms, materials and colors contained herein.



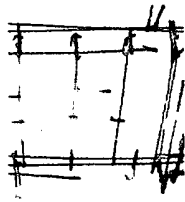
ARCHITECTURAL LIGHTING



SIGNAGE RACK



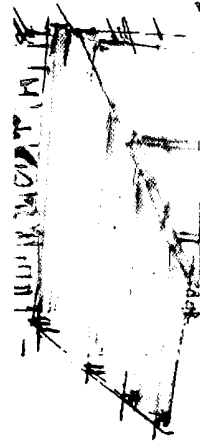
ACCENT BRICK



PRAIRIE STONE



HARDIE SHIP-LAP SIDING



PAINTED METAL CANOPY



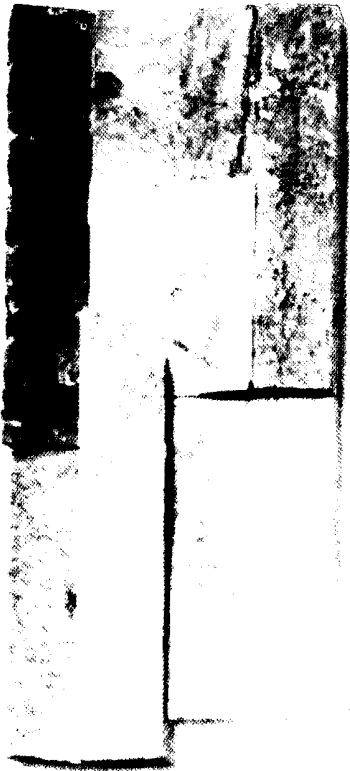
PRECAST CONCRETE PANELS



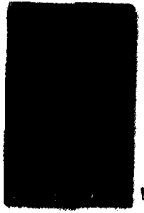
VERTICAL RIBBED METAL PANEL

VIEW 72 MASTER PLAN

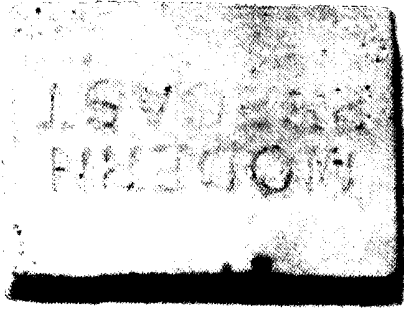
Design Group
midvo ut



Y



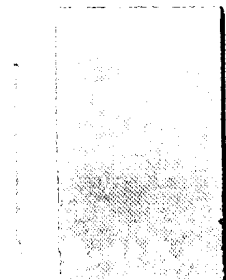
T



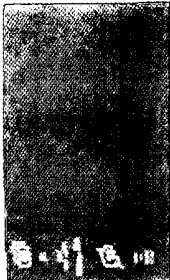
X



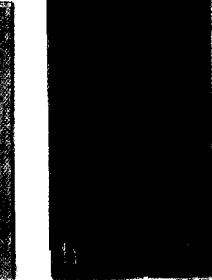
W



I



J



K

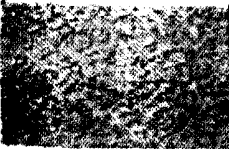
L



D



H



C



G



B



F



A



E



N

O

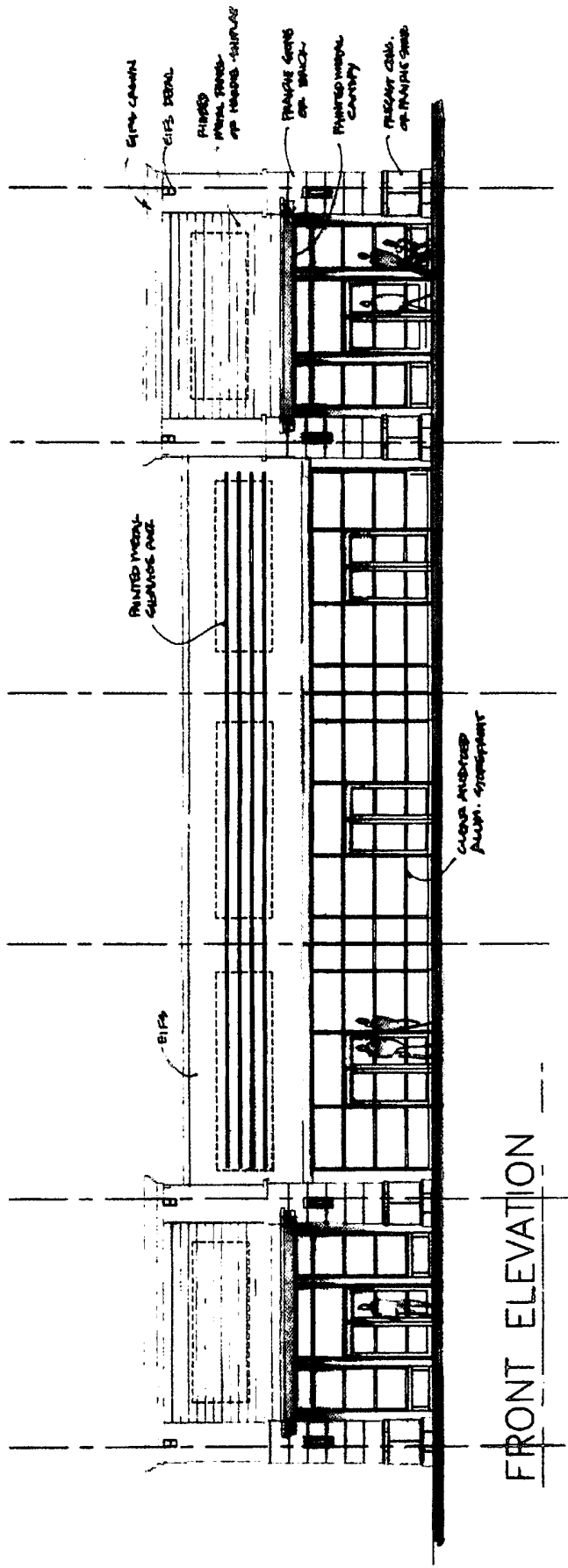


K

view 72 - exterior finish materials

VIEW 72 EXTERIOR FINISH MATERIALS 3.13.2012

- A. EIFS - SENERGY #1125 SANDALWOOD BEIGE - SANDPEBBLE FINISH - TYPICAL
- B. EIFS - DRYVIT #117 COLONIAL TAN "
- C. EIFS - TO MATCH KH #7755 TANNERY "
- D. EIFS - SENERGY #3052 CARDAMON MOJAVE "
- E. EIFS - DRYVIT KH #825D BRUSHBOX "
- F. EIFS - DRYVIT #454 STONE GREY "
- G. EIFS - DRYVIT SW CANYON CLAY "
- H. EIFS - DRYVIT KH #8715D MOOSE POINT "
- I. HARDIE SIDING - PAINT TO MATCH SENERGY #1125 SANDALWOOD BEIGE OR OTHER EIFS COLOR
- J. PAINT - ICI #20YY22/129 HALE VILLAGE
- K. PAINT - ICI #10YY 14/080 MONTEREY CLIFFS
- L. PAINT - BENJAMIN MOORE #8776N BLACKSMITH
- M. STOREFRONT - CLEAR ANODIZED ALUMINUM
- N. CANOPIES - POWDER COAT PAINT FINISH ON STEEL - DARK BRONZE
- O. RIBBED METAL PANEL - BRUSHED ALUMINUM FINISH
- P. PRAIRIE STONE - TRENWYTH - MIDNIGHT, CHISEL FACE
- Q. PRAIRIE STONE - TRENWYTH - LIMESTONE, GROUND FACE
- R. PRAIRIE STONE - TRENWYTH - BUFF, GROUND FACE
- S. PRAIRIE STONE - TRENWYTH - BUFF, CHISEL FACE
- T. BRICK - INTERSTATE, IRONSTONE
- U. BRICK - INTERSTATE, SMOKEY MOUNTAIN
- V. BRICK - INTERSTATE, MOUNTAIN RED
- W. PRECAST CONCRETE PANEL - HONEY SLATE
- X. PRECAST CONCRETE PANEL - REGULAR
- Y. LEDGE STONE - QUARTZITE OR SIMILAR

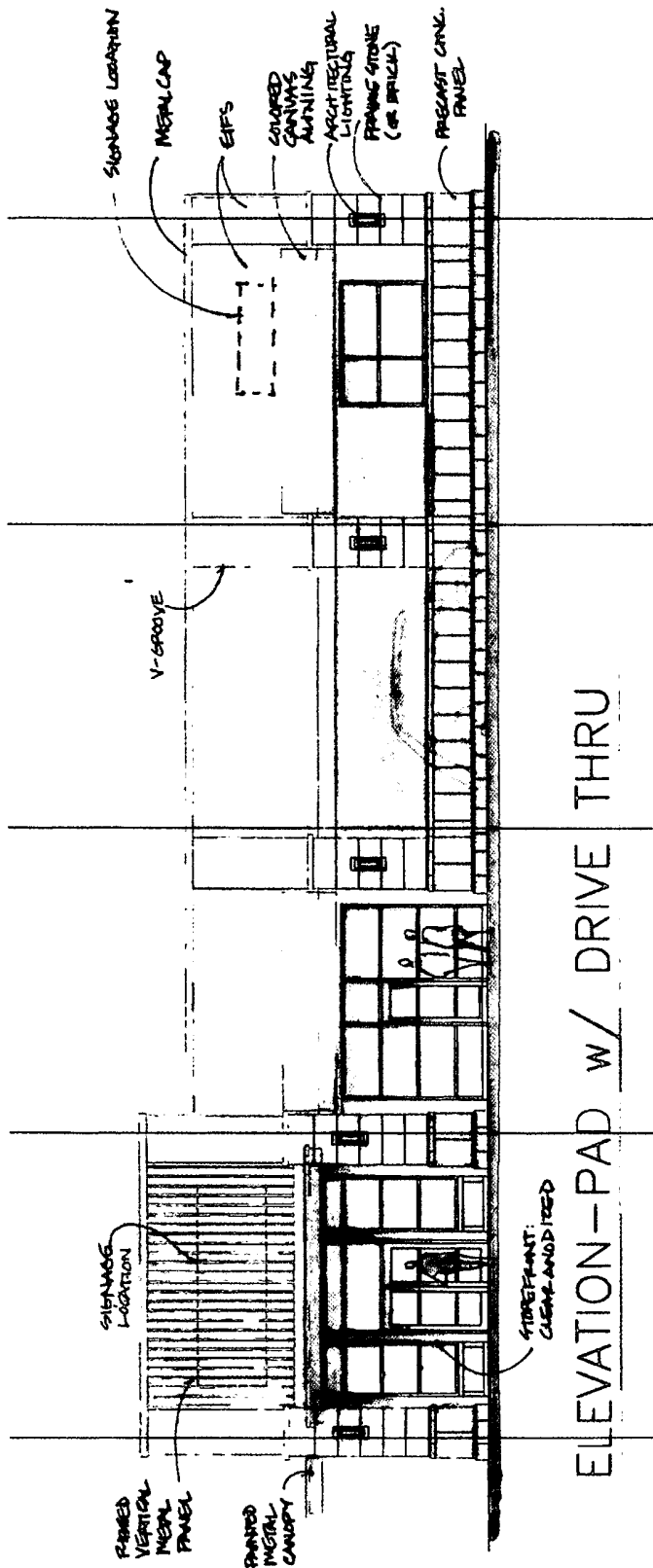


FRONT ELEVATION

VIEW 72 MASTER PLAN

Engineering

m.d.d. '04



ELEVATION - PAD W/ DRIVE THRU

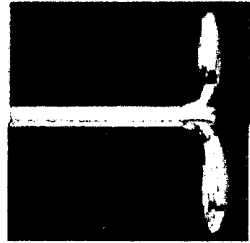
VIEW 72 MASTER PLAN

DATE: 10/20/2010 11:00 AM

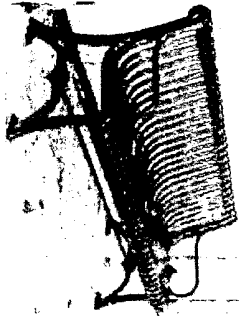


VIEW 72 MASTER PLAN

DATE: 08/11/01 11:54 AM
DRAWN BY: [illegible]
CHECKED BY: [illegible]
SCALE: 1/8" = 1'-0"



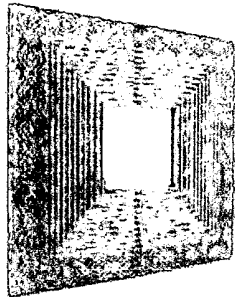
PARKING LOT LIGHT
GARDOCO
GULLWING - DOUBLE



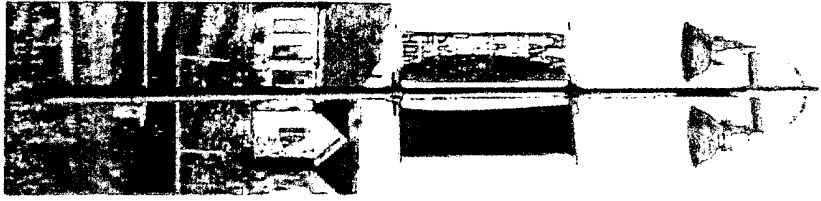
BENCH
DUMOR
BENCH 58



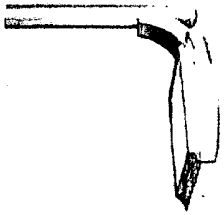
BIKE RACK:
DUMOR
MULTI-LOOP BIKE RACK 130



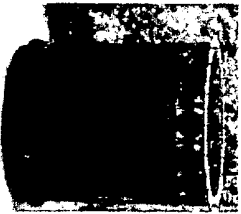
TREE GRATE
URBAN ACCESSORIES
CHINOOK 2000



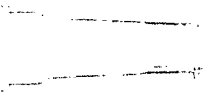
STREET LAMP
WHATLEY INC



PARKING LOT LIGHT
GARDOCO
GULLWING - SINGLE



TRASH:
DUMOR
RECEPTACLE 102



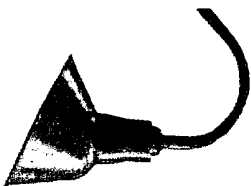
BOLLARD:
ANTIQUÉ STREET LAMPS
NAVAL ACADEMY SERIES



PLANTER
IAP
88 - SUNSET



PLANTER:
IAP
52 - SULTAN



SIGN LIGHTS:
LS/ABOLITE LIGHTING
ANGLED REFLECTOR

VIEW 2

street furn shirgs

EXHIBIT D

SCHEMATIC ELEMENTS

