

[This document corrects and supersedes the document recorded with Salt Lake County Recorder Entry No. 14108347]

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR MOUNTAINVIEW PLAZA**

This Amended and Restated Development Agreement (“Agreement”) is between Herriman City, a Utah municipal corporation (“City”), and Mountainview Plaza, LLC, a Utah corporation (“Applicant”). This Agreement is effective on the date the last party executes this Agreement as indicated by the date stated under that party’s signature line (the “Effective Date”).

Recitals

A. Applicant has rights to certain real property identified as Salt Lake County Assessor Parcel Number(s):26-25-402-001-0000 and 26-25-402-002-0000, which is specifically described in attached **Exhibit A** (“Property”). The Property is approximately located at the intersection of Herriman Main Street and Miller Crossing Drive in Herriman, Utah.

B. The Property is subject to the planning and land use ordinances of Herriman City.

C. The parties entered into a prior development agreement dated October 9, 2019 (“Prior Agreement,” attached as **Exhibit B**).

D. Due to various factors, Applicant extended its obligations under the Prior Agreement to later dates. *See* 4th Repurchase Option, attached as **Exhibit C**.

E. Applicant recently approached the Herriman City Council (“City Council”) and requested to change the use of the Property to include additional uses.

F. Applicant seeks to develop and use the Property in accordance with the concept plan shown in **Exhibit D** (“Concept Plan”) and the design guidelines shown in **Exhibit E** (“Design Guidelines”) (collectively may be referred to as “Project”).

G. The parties understand that the and intend of this Agreement is to be treated as a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code §10-9a-101, *et seq.*

H. Attached as **Exhibit F** is the City’s current applicable ordinances (“Vested City Code”).

14133872 B: 11434 P: 5883 Total Pages: 56
07/27/2023 02:32 PM By: adavis Fees: \$40.00
Rashed, Je Hobbs, Recorder, Salt Lake County, Utah
Return To: HERRIMAN CITY RECORDER
5355 W HERRIMAN MAIN ST HERRIMAN, UT 84096

I. The Herriman City Council, acting pursuant to its authority under Utah Code § 10-9a-102(2) *et seq.*, and Herriman City Code (“City Code”), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has elected to exercise its legislative discretion to enter into this Agreement for the purpose of regulating the development the Property pursuant to the terms contained herein and the underlying rezone regulations.

J. This Agreement shall only be valid upon approval of such by the City Council and pursuant to Resolution No. _____, a copy of which is attached as **Exhibit G** and recordation of this Agreement with the Salt Lake County Recorder’s Office within 90 days of the City Council passing said resolution.

The parties agree to revoke the all prior agreements and enter into this Agreement as follows:

Amendment

1. **Incorporation of Recitals; Definitions.** The recitals set forth above are incorporated herein by this reference. Any capitalized term used but not otherwise defined in this Agreement shall have the meaning ascribed to such term in the City Code.

2. **Revocation of Prior Agreements.** All prior agreements entered into by the parties are hereby revoked as of the Effective Date.

3. **Vested Rights and Legislative Authority.**

a. Vested Rights. Consistent with the terms and conditions of this Agreement, the City agrees the Applicant has the vested right, as defined by Utah Code § 10-9a-509, to develop and construct the Property during the term of this Agreement in accordance with: (i) the terms of this Agreement, (ii) the Design Guidelines, (iii) the Concept Plan, and (iv) the Vested City Code. In the event of a conflicting terms, the order listed in this section shall be the order of control (i.e. this Agreement controls, then the Design Guidelines, etc.).

b. Reserved Legislative Powers. The Applicant acknowledges that the City is restricted in its authority to limit its police power by contract and that 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 Applicant under this Agreement and with respect to use under the zoning designations as referenced in this Agreement based upon the policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Applicant under this Agreement shall be of general application to all development

activity in the City and, unless the City declares an emergency, the Applicant shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

c. Exceptions to Vested Rights. Vested rights, as specified in Section (2)(a), are subject to the following exceptions:

i. *Future City Code*. Future changes to City Code (“Future City Code”) that the parties agree in writing to the application thereof to the Project.

ii. *State and Federal Compliance*. Future City Code that 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.

iii. *Codes*. Future City Code that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, fire or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual on Uniform Traffic Control Devices, or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by state or federal entities addressing legitimate concerns related to public health, safety, or welfare.

iv. *Taxes*. 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.

v. *Fees*. 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) and which are adopted pursuant to State law.

vi. *Impact Fees*. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City and which meet all requirements of the U. S. Constitution, Utah Constitution, law and applicable statutes, including but not limited to Utah Code § 11-36a-101 *et seq.*

vii. *Generally Applicable Laws*. The City regulations, ordinances, resolutions, or policies adopted after the date of this Agreement that are not in conflict with the terms and conditions for development of the Property established by this Agreement, which are generally applicable throughout the City and which do not materially increase the cost of developing the Project. In the event the City Council or Planning Commission changes any laws,

standards, or other regulations that addresses legitimate concerns related to public health, safety, or welfare shall be enforced upon the Project.

viii. *Planning and Zoning Modification.* Changes by the City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as such changes are generally applicable across the entire City and do not materially and unreasonably increase the costs of the Project.

d. Enforceability; Condition of Approval. The City and the Applicant acknowledge that the terms of this Agreement shall be enforceable, and the rights of the Applicant relative to the Property shall vest, only if the City Council, in its sole legislative discretion, rezones the Property and both parties sign this Agreement. This Agreement must be executed by both parties and recorded in the official records of the Salt Lake County Recorders Office within 90 calendar days of the City Council approving this Agreement.

4. **Applicant Obligations.**

a. *Development Standards.* Developer shall develop the Project in accordance with the attached Concept Plan, Design Guidelines, and Vested City Code.

b. *Uses.* The permitted uses allowed in the Project shall be as follows:

Recreation and Entertainment, Indoor

Office, Professional

Retail, General.

Restaurant, Fast food

Restaurant, General

(Thirty-five percent of the total floor area for the Project (approximately 50,000 sq. ft.) shall be dedicated to Indoor Recreation and Entertainment or General Restaurant uses.)

c. *Height.* The maximum building height shall be forty-five feet (45') for buildings dedicated to Office, Professional. The maximum building height for all other buildings shall be thirty-five feet (35').

d. *Landscaping.* Landscaping must comply with the City's landscaping regulations, including any water wise landscaping. All landscaping must be complete

before the City may issue a Certificate of Occupancy for any of the buildings or units unless the Applicant bonds for any outstanding landscaping obligations.

5. **Minor Changes.** The Community Development Director, after conferring with the City Manager and making a written finding, may approve minor modifications to the Applicant Obligations in Section 4 which are necessary or advantageous in facilitating more desirable function and aesthetics of the Property.

6. **Term.** This Agreement shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the parties mutually agree to extend the term, this Agreement shall not extend further than a period of fifteen (15) years from the Effective Date.

7. **Option to Repurchase.** The Applicant grants the City the exclusive right and privilege (referred to as the "Option") of exercising an option to purchase the Property for One Million Six Hundred Ninety-Eight Thousand Eight Hundred Forty Dollars (\$1,698,840.00) if the Applicant does not complete all of the following tasks by its associated date:

- a. Receive a land disturbance permit no later than July 15, 2023;
- b. Receive an approved building permit for at least one building by August 30, 2023; and
- c. Pass footing and foundation inspections for the building by October 15, 2023.

8. **Default.**

a. Notice. If the Applicant fails to perform their respective obligations under this Agreement, the party believing that a default has occurred shall provide notice to the other party.

b. Contents of Notice of Default. The notice of default shall: (i) specify the claimed event of default; (ii) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default; (iii) identify why the default is claimed to be material; and (iv) if the City chooses, in its discretion, it may propose a method and time for curing the default which shall be of no less than thirty (30) calendar days duration.

c. Meet and Confer. If any party gives a notice of default the parties shall meet within twenty-one (21) calendar days of the notice and make good faith effort to resolve the issues specified in the notice.

d. Mediation. If the parties are unable to resolve the notice of default after the Meet and Confer provision of Section (6)(c), the parties shall attempt within fifteen (15) calendar days to appoint a mutually acceptable mediator with knowledge of the issue in dispute. If the parties are unable to agree on a single acceptable mediator, they shall each, within fifteen (15) calendar days, appoint their own representative. These two representatives shall, between them, choose the single mediator. The parties shall split the fees of the chosen mediator, each party paying 50% of the fees. The chosen mediator shall within fifteen (15) calendar days, review the positions of the parties regarding the dispute and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's opinion shall not be binding on the parties.

e. Emergency Default. The requirements of Sections 6(c)-(d) shall not apply to any default that the City declares in the notice of default to be an emergency related to the fundamental purpose of this Agreement.

9. **General Provisions.**

a. Notices. All notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to the following addresses or to such other addresses as either Party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten days before the date on which the change is to become effective:

If to City: Herriman City
 Attn: City Recorder
 5355 West Herriman Main Drive
 Herriman, Utah 84096

If to Applicant: Mountainview Plaza, LLC__
 Attn: Aaron Osmond
 11466 Country Knoll Road
 South Jordan, UT 84095

b. Mailing Effective. Notices given by mail shall be deemed delivered seventy-two hours following deposit with the U.S. Postal Service in the manner set forth above.

c. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the

provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

d. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision this Agreement.

e. Authority. The parties to this Agreement represent that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Applicant represents and warrants it is fully formed and validly existing under the laws of the State of Utah, and that it is duly qualified to do business in the State of Utah and is in good standing under applicable state laws. Applicant and City warrant to each other that the individuals executing this Agreement on behalf of their respective party are authorized and empowered to bind the party on whose behalf each individual is signing. Applicant represents to the City that by entering into this Agreement, the Applicant has bound all persons and entities having a legal or equitable interest to the terms of this Agreement as of the Effective Date.

f. Entire Agreement. This Agreement, together with the Exhibits attached hereto, documents referenced herein and all regulatory approvals given by City for the Property contain the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the parties which are not contained in such agreements, regulatory approvals and related conditions.

g. Amendment. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the parties or by their successors-in-interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Salt Lake County Recorder's Office.

h. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement. This Agreement shall otherwise remain in full force and effect provided the fundamental purpose of this Agreement and Applicant's ability to complete the development of the Property as set forth in the Concept Plan is not defeated by such severance.

i. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Salt Lake County, Utah. The parties hereby expressly waive any right to object to such choice of law or venue.

j. Remedies. If either party breaches any provision of this Agreement, the

non-defaulting party shall be entitled to all remedies available both at law and in equity.

k. Attorney's Fees and Costs. If either party brings legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

l. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors in interest and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

m. No Third Party Rights. The obligations of Applicant and City set forth in this Agreement shall not create any rights in or obligations to any other persons or parties except to the extent otherwise provided herein.

n. Assignment. The rights and responsibilities of the Applicant under this Agreement may be assigned in whole or in part with the consent of the City as provided herein.

i. The selling or conveying lots in any approved subdivision or parcels to builders or end-users shall not be deemed to be an "assignment" subject to the above-referenced approval by the City.

ii. The Applicant may transfer all or any part of the Property to any entity "related" to the Applicant (as defined by regulations of the Internal Revenue Service in Section 165), the Applicant's entry into a joint venture for the development of the Project, or the Applicant's pledging of part or all of the Project as security for financing shall also not be deemed to be an "assignment" subject to the above-referenced approval by the City. The Applicant shall give the City notice of any event specified in this sub-section within fifteen (15) calendar days after the event has occurred. Such notice shall include providing the City with all necessary contact information for the newly responsible party.

o. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

To evidence the parties' agreement to this Agreement, each party has executed it on the date stated under that party's name.

[SIGNATURE PAGES FOLLOW]

HERRIMAN CITY

Approved as to form:

Signature: *Lorin Palmer*
By: *Lorin Palmer*
Its: *Mayor, Herriman City*
Date: *7-26-2023*

[Signature]
Office of the City Attorney

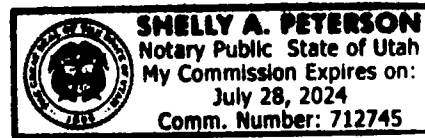
State of Utah)

:ss

County of Salt Lake)

On this *26* day of *July*, 20*23*, personally appeared before me *Lorin Palmer* (name of document signer), whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Mayor of Herriman City and that said document was signed by him/her in behalf of said city by Authority of its Bylaws or by Ordinance or Resolution, and said *Lorin Palmer* (name of document signer) acknowledged to me that said city executed the same.

Shelly A. Peterson
Notary Public



APPLICANT

Signature: *[Handwritten Signature]*

By: Aaron Osmond

Its: Manager, Mountainview Plaza, LLC

Date: 7-26-23

State of Utah)

County of Salt Lake :ss)

On this 26 day of July, 2023, personally appeared before me Aaron Osmond (name of document signer), whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is a Manager of Mountainview Plaza, LLC Utah limited liability company, the Manager of Mountainview Plaza, LLC, a Utah corporation, and that said document was signed by him/her in behalf of said corporation by authority of its Operating Agreement or by Resolution, and said Aaron Osmond (name of document signer) acknowledged to me that said corporation executed the same.

[Handwritten Signature]
Notary Public

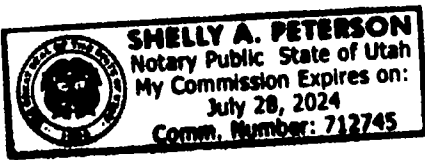


Table of Exhibits

- Exhibit A – Property
- Exhibit B – Prior Agreement
- Exhibit C – 4th Repurchase Option
- Exhibit D – Concept Plan
- Exhibit E – Design Guidelines
- Exhibit F – Vested City Code
- Exhibit G – Resolution

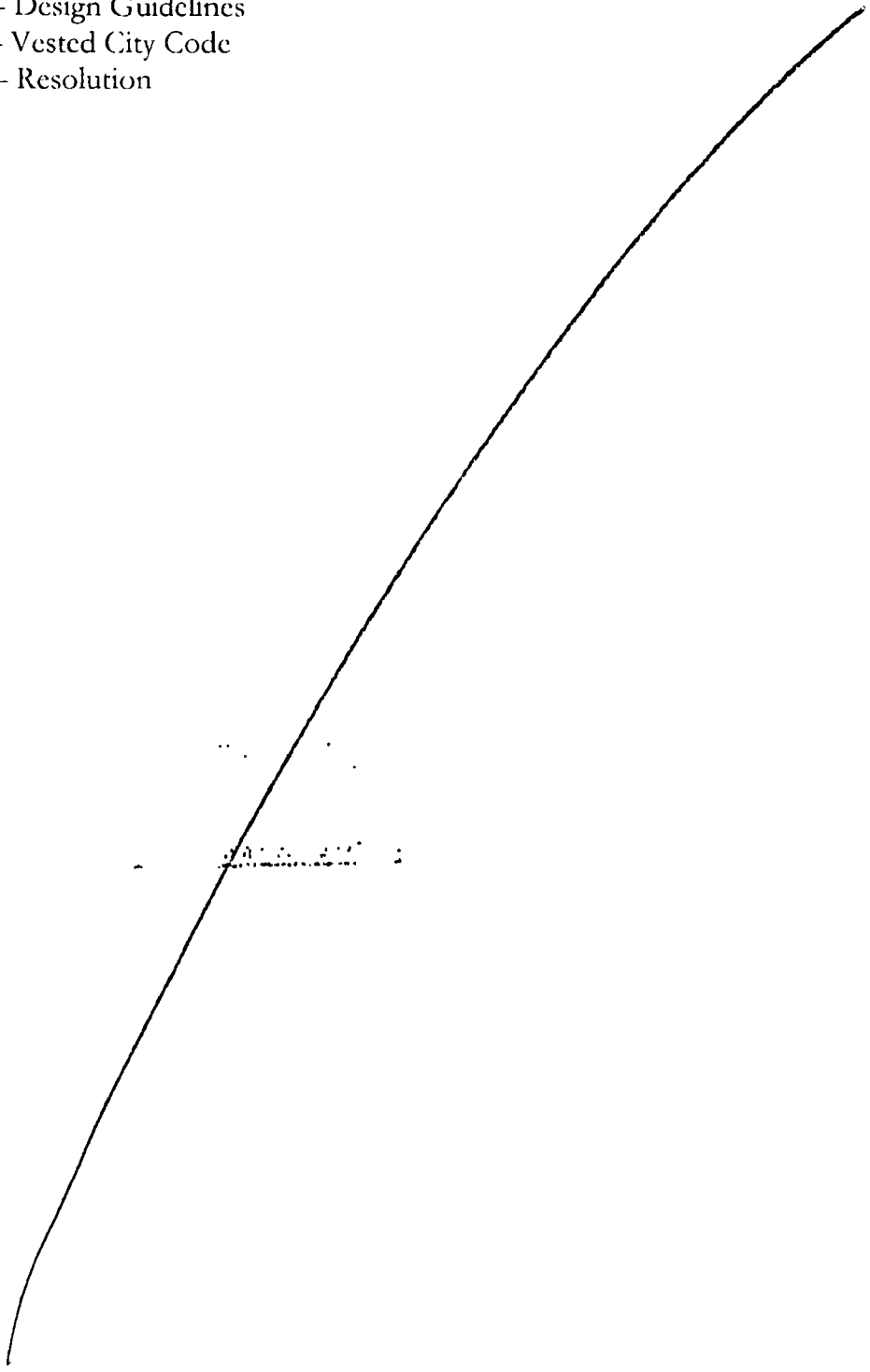
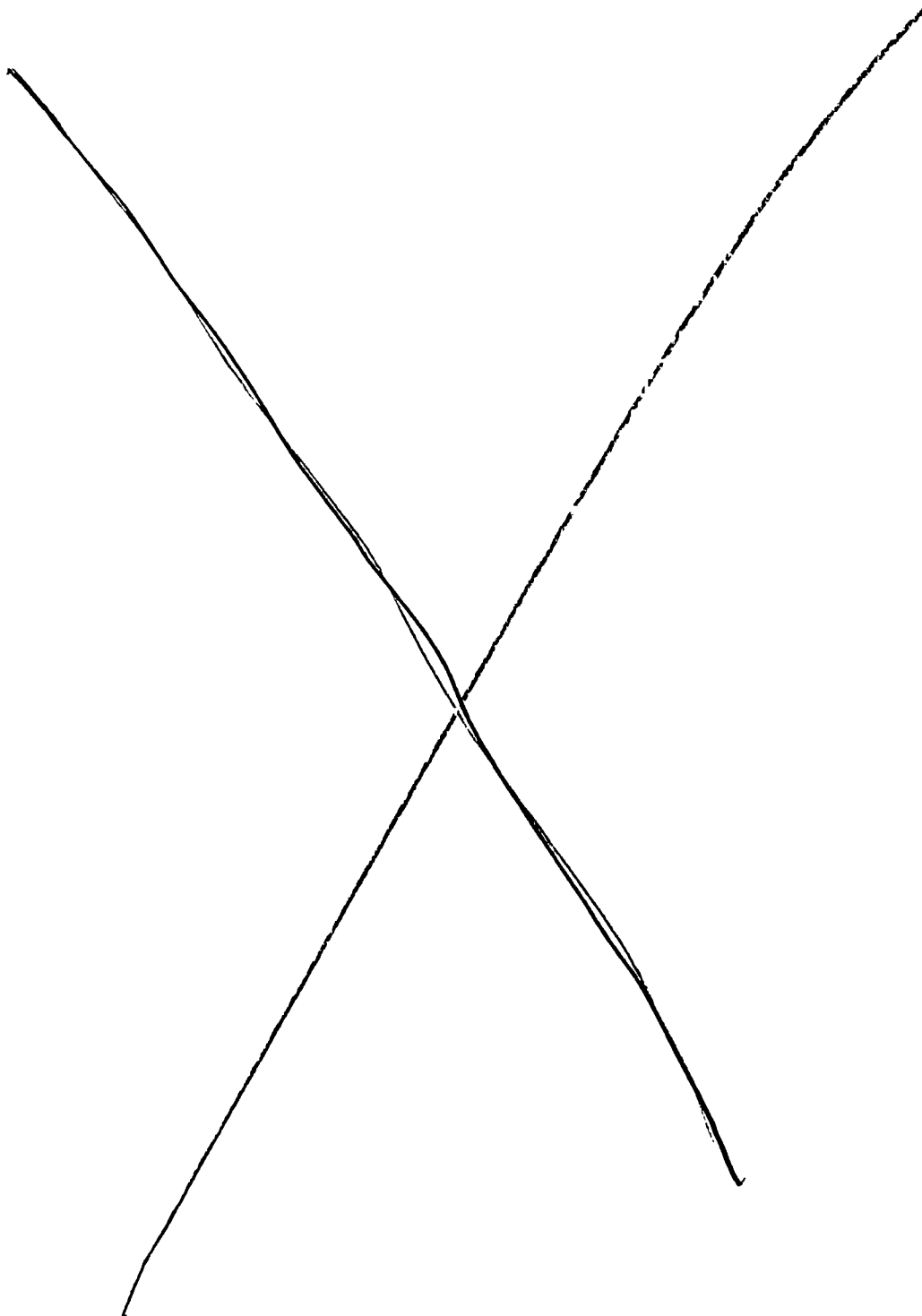


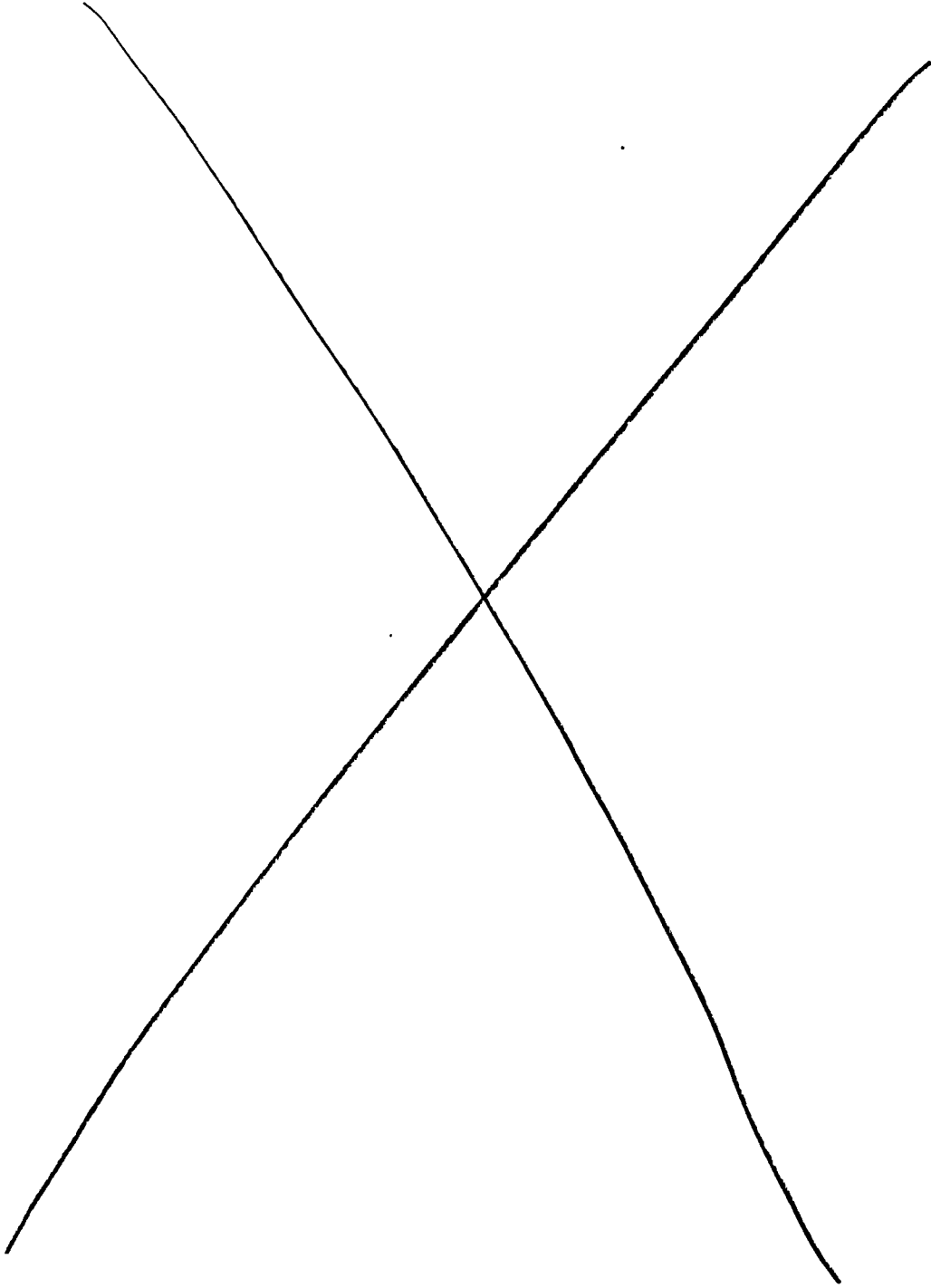
Exhibit A – Property



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 B - Prior Agreement



~~TS118450
11/7/2019 11:55:00 AM \$40.00
Book - 10857 Pg - 674-698
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.

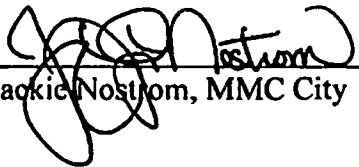
Game Pointe Properties, LLC

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 Bratt Geo Wood, the City Manager of Herriman, State of Utah.

Heather Upshaw
Notary Public

[Notarial Seal]



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

The foregoing instrument was acknowledged before me this 04th day of November, 2019 by Sandra Kulpax, the Manager of Game Pointe Properties, LLC.

Michael Paul Chabries
Notary Public

[Notarial Seal]



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.

LARGE DESIGN TREE LEGEND TOTAL COUNT

10	10' ROUND TRUNK	1	10'
11	12' ROUND TRUNK	1	12'
12	14' ROUND TRUNK	1	14'
13	16' ROUND TRUNK	1	16'
14	18' ROUND TRUNK	1	18'
15	20' ROUND TRUNK	1	20'
16	22' ROUND TRUNK	1	22'
17	24' ROUND TRUNK	1	24'
18	26' ROUND TRUNK	1	26'
19	28' ROUND TRUNK	1	28'
20	30' ROUND TRUNK	1	30'
21	32' ROUND TRUNK	1	32'
22	34' ROUND TRUNK	1	34'
23	36' ROUND TRUNK	1	36'
24	38' ROUND TRUNK	1	38'
25	40' ROUND TRUNK	1	40'
26	42' ROUND TRUNK	1	42'
27	44' ROUND TRUNK	1	44'
28	46' ROUND TRUNK	1	46'
29	48' ROUND TRUNK	1	48'
30	50' ROUND TRUNK	1	50'
31	52' ROUND TRUNK	1	52'
32	54' ROUND TRUNK	1	54'
33	56' ROUND TRUNK	1	56'
34	58' ROUND TRUNK	1	58'
35	60' ROUND TRUNK	1	60'
36	62' ROUND TRUNK	1	62'
37	64' ROUND TRUNK	1	64'
38	66' ROUND TRUNK	1	66'
39	68' ROUND TRUNK	1	68'
40	70' ROUND TRUNK	1	70'
41	72' ROUND TRUNK	1	72'
42	74' ROUND TRUNK	1	74'
43	76' ROUND TRUNK	1	76'
44	78' ROUND TRUNK	1	78'
45	80' ROUND TRUNK	1	80'
46	82' ROUND TRUNK	1	82'
47	84' ROUND TRUNK	1	84'
48	86' ROUND TRUNK	1	86'
49	88' ROUND TRUNK	1	88'
50	90' ROUND TRUNK	1	90'
51	92' ROUND TRUNK	1	92'
52	94' ROUND TRUNK	1	94'
53	96' ROUND TRUNK	1	96'
54	98' ROUND TRUNK	1	98'
55	100' ROUND TRUNK	1	100'
56	102' ROUND TRUNK	1	102'
57	104' ROUND TRUNK	1	104'
58	106' ROUND TRUNK	1	106'
59	108' ROUND TRUNK	1	108'
60	110' ROUND TRUNK	1	110'
61	112' ROUND TRUNK	1	112'
62	114' ROUND TRUNK	1	114'
63	116' ROUND TRUNK	1	116'
64	118' ROUND TRUNK	1	118'
65	120' ROUND TRUNK	1	120'
66	122' ROUND TRUNK	1	122'
67	124' ROUND TRUNK	1	124'
68	126' ROUND TRUNK	1	126'
69	128' ROUND TRUNK	1	128'
70	130' ROUND TRUNK	1	130'
71	132' ROUND TRUNK	1	132'
72	134' ROUND TRUNK	1	134'
73	136' ROUND TRUNK	1	136'
74	138' ROUND TRUNK	1	138'
75	140' ROUND TRUNK	1	140'
76	142' ROUND TRUNK	1	142'
77	144' ROUND TRUNK	1	144'
78	146' ROUND TRUNK	1	146'
79	148' ROUND TRUNK	1	148'
80	150' ROUND TRUNK	1	150'
81	152' ROUND TRUNK	1	152'
82	154' ROUND TRUNK	1	154'
83	156' ROUND TRUNK	1	156'
84	158' ROUND TRUNK	1	158'
85	160' ROUND TRUNK	1	160'
86	162' ROUND TRUNK	1	162'
87	164' ROUND TRUNK	1	164'
88	166' ROUND TRUNK	1	166'
89	168' ROUND TRUNK	1	168'
90	170' ROUND TRUNK	1	170'
91	172' ROUND TRUNK	1	172'
92	174' ROUND TRUNK	1	174'
93	176' ROUND TRUNK	1	176'
94	178' ROUND TRUNK	1	178'
95	180' ROUND TRUNK	1	180'
96	182' ROUND TRUNK	1	182'
97	184' ROUND TRUNK	1	184'
98	186' ROUND TRUNK	1	186'
99	188' ROUND TRUNK	1	188'
100	190' ROUND TRUNK	1	190'
101	192' ROUND TRUNK	1	192'
102	194' ROUND TRUNK	1	194'
103	196' ROUND TRUNK	1	196'
104	198' ROUND TRUNK	1	198'
105	200' ROUND TRUNK	1	200'
106	202' ROUND TRUNK	1	202'
107	204' ROUND TRUNK	1	204'
108	206' ROUND TRUNK	1	206'
109	208' ROUND TRUNK	1	208'
110	210' ROUND TRUNK	1	210'
111	212' ROUND TRUNK	1	212'
112	214' ROUND TRUNK	1	214'
113	216' ROUND TRUNK	1	216'
114	218' ROUND TRUNK	1	218'
115	220' ROUND TRUNK	1	220'
116	222' ROUND TRUNK	1	222'
117	224' ROUND TRUNK	1	224'
118	226' ROUND TRUNK	1	226'
119	228' ROUND TRUNK	1	228'
120	230' ROUND TRUNK	1	230'
121	232' ROUND TRUNK	1	232'
122	234' ROUND TRUNK	1	234'
123	236' ROUND TRUNK	1	236'
124	238' ROUND TRUNK	1	238'
125	240' ROUND TRUNK	1	240'
126	242' ROUND TRUNK	1	242'
127	244' ROUND TRUNK	1	244'
128	246' ROUND TRUNK	1	246'
129	248' ROUND TRUNK	1	248'
130	250' ROUND TRUNK	1	250'
131	252' ROUND TRUNK	1	252'
132	254' ROUND TRUNK	1	254'
133	256' ROUND TRUNK	1	256'
134	258' ROUND TRUNK	1	258'
135	260' ROUND TRUNK	1	260'
136	262' ROUND TRUNK	1	262'
137	264' ROUND TRUNK	1	264'
138	266' ROUND TRUNK	1	266'
139	268' ROUND TRUNK	1	268'
140	270' ROUND TRUNK	1	270'
141	272' ROUND TRUNK	1	272'
142	274' ROUND TRUNK	1	274'
143	276' ROUND TRUNK	1	276'
144	278' ROUND TRUNK	1	278'
145	280' ROUND TRUNK	1	280'
146	282' ROUND TRUNK	1	282'
147	284' ROUND TRUNK	1	284'
148	286' ROUND TRUNK	1	286'
149	288' ROUND TRUNK	1	288'
150	290' ROUND TRUNK	1	290'
151	292' ROUND TRUNK	1	292'
152	294' ROUND TRUNK	1	294'
153	296' ROUND TRUNK	1	296'
154	298' ROUND TRUNK	1	298'
155	300' ROUND TRUNK	1	300'
156	302' ROUND TRUNK	1	302'
157	304' ROUND TRUNK	1	304'
158	306' ROUND TRUNK	1	306'
159	308' ROUND TRUNK	1	308'
160	310' ROUND TRUNK	1	310'
161	312' ROUND TRUNK	1	312'
162	314' ROUND TRUNK	1	314'
163	316' ROUND TRUNK	1	316'
164	318' ROUND TRUNK	1	318'
165	320' ROUND TRUNK	1	320'
166	322' ROUND TRUNK	1	322'
167	324' ROUND TRUNK	1	324'
168	326' ROUND TRUNK	1	326'
169	328' ROUND TRUNK	1	328'
170	330' ROUND TRUNK	1	330'
171	332' ROUND TRUNK	1	332'
172	334' ROUND TRUNK	1	334'
173	336' ROUND TRUNK	1	336'
174	338' ROUND TRUNK	1	338'
175	340' ROUND TRUNK	1	340'
176	342' ROUND TRUNK	1	342'
177	344' ROUND TRUNK	1	344'
178	346' ROUND TRUNK	1	346'
179	348' ROUND TRUNK	1	348'
180	350' ROUND TRUNK	1	350'
181	352' ROUND TRUNK	1	352'
182	354' ROUND TRUNK	1	354'
183	356' ROUND TRUNK	1	356'
184	358' ROUND TRUNK	1	358'
185	360' ROUND TRUNK	1	360'
186	362' ROUND TRUNK	1	362'
187	364' ROUND TRUNK	1	364'
188	366' ROUND TRUNK	1	366'
189	368' ROUND TRUNK	1	368'
190	370' ROUND TRUNK	1	370'
191	372' ROUND TRUNK	1	372'
192	374' ROUND TRUNK	1	374'
193	376' ROUND TRUNK	1	376'
194	378' ROUND TRUNK	1	378'
195	380' ROUND TRUNK	1	380'
196	382' ROUND TRUNK	1	382'
197	384' ROUND TRUNK	1	384'
198	386' ROUND TRUNK	1	386'
199	388' ROUND TRUNK	1	388'
200	390' ROUND TRUNK	1	390'
201	392' ROUND TRUNK	1	392'
202	394' ROUND TRUNK	1	394'
203	396' ROUND TRUNK	1	396'
204	398' ROUND TRUNK	1	398'
205	400' ROUND TRUNK	1	400'
206	402' ROUND TRUNK	1	402'
207	404' ROUND TRUNK	1	404'
208	406' ROUND TRUNK	1	406'
209	408' ROUND TRUNK	1	408'
210	410' ROUND TRUNK	1	410'
211	412' ROUND TRUNK	1	412'
212	414' ROUND TRUNK	1	414'
213	416' ROUND TRUNK	1	416'
214	418' ROUND TRUNK	1	418'
215	420' ROUND TRUNK	1	420'
216	422' ROUND TRUNK	1	422'
217	424' ROUND TRUNK	1	424'
218	426' ROUND TRUNK	1	426'
219	428' ROUND TRUNK	1	428'
220	430' ROUND TRUNK	1	430'
221	432' ROUND TRUNK	1	432'
222	434' ROUND TRUNK	1	434'
223	436' ROUND TRUNK	1	436'
224	438' ROUND TRUNK	1	438'
225	440' ROUND TRUNK	1	440'
226	442' ROUND TRUNK	1	442'
227	444' ROUND TRUNK	1	444'
228	446' ROUND TRUNK	1	446'
229	448' ROUND TRUNK	1	448'
230	450' ROUND TRUNK	1	450'
231	452' ROUND TRUNK	1	452'
232	454' ROUND TRUNK	1	454'
233	456' ROUND TRUNK	1	456'
234	458' ROUND TRUNK	1	458'
235	460' ROUND TRUNK	1	460'
236	462' ROUND TRUNK	1	462'
237	464' ROUND TRUNK	1	464'
238	466' ROUND TRUNK	1	466'
239	468' ROUND TRUNK	1	468'
240	470' ROUND TRUNK	1	470'
241	472' ROUND TRUNK	1	472'
242	474' ROUND TRUNK	1	474'
243	476' ROUND TRUNK	1	476'
244	478' ROUND TRUNK	1	478'
245	480' ROUND TRUNK	1	480'
246	482' ROUND TRUNK	1	482'
247	484' ROUND TRUNK	1	484'
248	486' ROUND TRUNK	1	486'
249	488' ROUND TRUNK	1	488'
250	490' ROUND TRUNK	1	490'
251	492' ROUND TRUNK	1	492'
252	494' ROUND TRUNK	1	494'
253	496' ROUND TRUNK	1	496'
254	498' ROUND TRUNK	1	498'
255	500' ROUND TRUNK	1	500'
256	502' ROUND TRUNK	1	502'
257	504' ROUND TRUNK	1	504'
258	506' ROUND TRUNK	1	506'
259	508' ROUND TRUNK	1	508'
260	510' ROUND TRUNK	1	510'
261	512' ROUND TRUNK	1	512'
262	514' ROUND TRUNK	1	514'
263	516' ROUND TRUNK	1	516'
264	518' ROUND TRUNK	1	518'
265	520' ROUND TRUNK	1	520'
266	522' ROUND TRUNK	1	522'
267	524' ROUND TRUNK	1	524'
268	526' ROUND TRUNK	1	526'
269	528' ROUND TRUNK	1	528'
270	530' ROUND TRUNK	1	530'
271	532' ROUND TRUNK	1	532'
272	534' ROUND TRUNK	1	534'
273	536' ROUND TRUNK	1	536'
274	538' ROUND TRUNK	1	538'
275	540' ROUND TRUNK	1	540'
276	542' ROUND TRUNK	1	542'
277	544' ROUND TRUNK	1	544'
278	546' ROUND TRUNK	1	546'
279	548' ROUND TRUNK	1	548'
280	550' ROUND TRUNK	1	550'
281	552' ROUND TRUNK	1	552'
282	554' ROUND TRUNK	1	554'
283	556' ROUND TRUNK	1	556'
284	558' ROUND TRUNK	1	558'
285	560' ROUND TRUNK	1	560'
286	562' ROUND TRUNK	1	562'
287	564' ROUND TRUNK	1	564'
288	566' ROUND TRUNK	1	566'
289	568' ROUND TRUNK	1	568'
290	570' ROUND TRUNK	1	570'
291	572' ROUND TRUNK	1	572'
292	574' ROUND TRUNK	1	574'
293	576' ROUND TRUNK	1	576'
294	578' ROUND TRUNK	1	578'
295	580' ROUND TRUNK	1	580'
296	582' ROUND TRUNK	1	582'
297	584' ROUND TRUNK	1	584'
298	586' ROUND TRUNK	1	586'
299	588' ROUND TRUNK	1	588'
300	590' ROUND TRUNK	1	590'
301	592' ROUND TRUNK	1	592'
302	594' ROUND TRUNK	1	594'
303	596' ROUND TRUNK	1	596'
304	598' ROUND TRUNK	1	598'
305	600' ROUND TRUNK	1	600'
306	602' ROUND TRUNK	1	602'
307	604' ROUND TRUNK	1	604'
308	606' ROUND TRUNK	1	606'
309	608' ROUND TRUNK	1	608'
310	610' ROUND TRUNK	1	610'
311	612' ROUND TRUNK	1	612'
312	614' ROUND TRUNK	1	614'
313	616' ROUND TRUNK	1	616'
314	618' ROUND TRUNK	1	618'
315	620' ROUND TRUNK	1	620'
316	622' ROUND TRUNK	1	622'
317	624' ROUND TRUNK	1	624'
318	626' ROUND TRUNK	1	626'
319	628' ROUND TRUNK	1	628'
320	630' ROUND TRUNK	1	630'
321	632' ROUND TRUNK	1	632'
322	634' ROUND TRUNK	1	634'
323	636' ROUND TRUNK	1	636'
324	638' ROUND TRUNK	1	638'
325	640' ROUND TRUNK	1	640'
326	642' ROUND TRUNK	1	642'
327	644' ROUND TRUNK	1	644'
328	646' ROUND TRUNK	1	646'
329	648' ROUND TRUNK	1	648'
330	650' ROUND TRUNK	1	65

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.

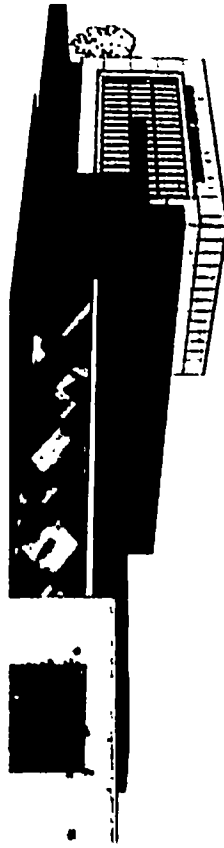
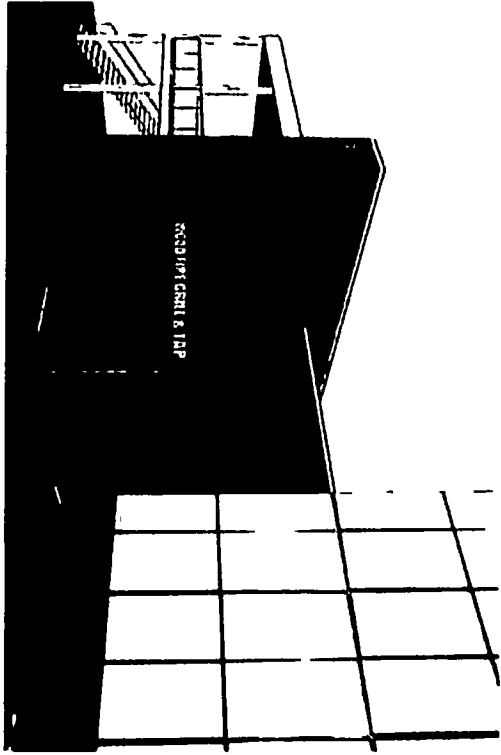
3. Exterior Materials: The outside surface of the structure shall be constructed of high-quality materials and shall be factory finished, stained, integrally colored, or otherwise suitably treated.

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.

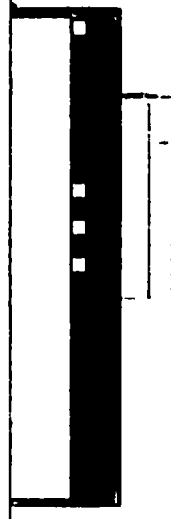
3. Building Entrance: The entrance and areas near the building entrance shall be designed to draw patrons in through the use of interesting and inviting architectural elements.

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

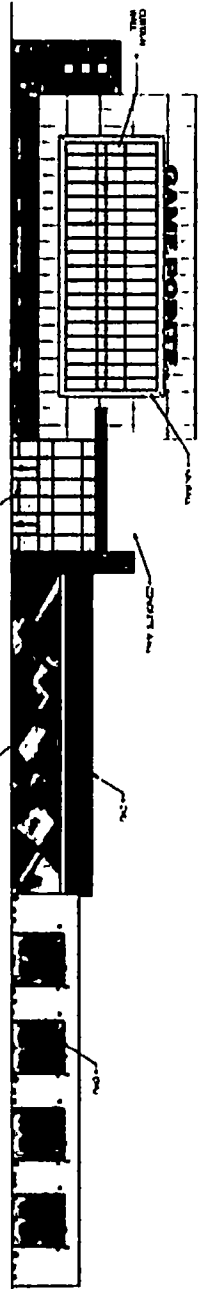
CONCEPTUAL DESIGN IS SUBJECT TO CHANGE



SIDE ELEVATION (RURAL)



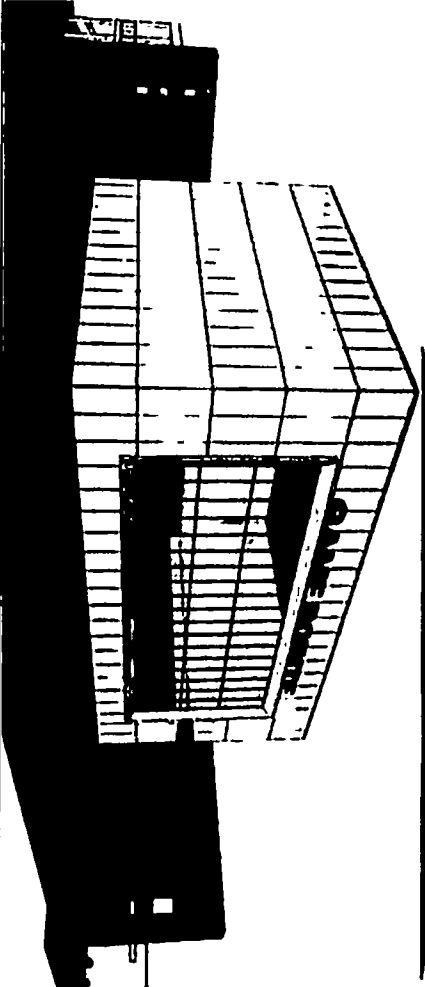
FRONT ELEVATION



SIDE ELEVATION (RESTAURANT)



REAR ELEVATION



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

AI

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

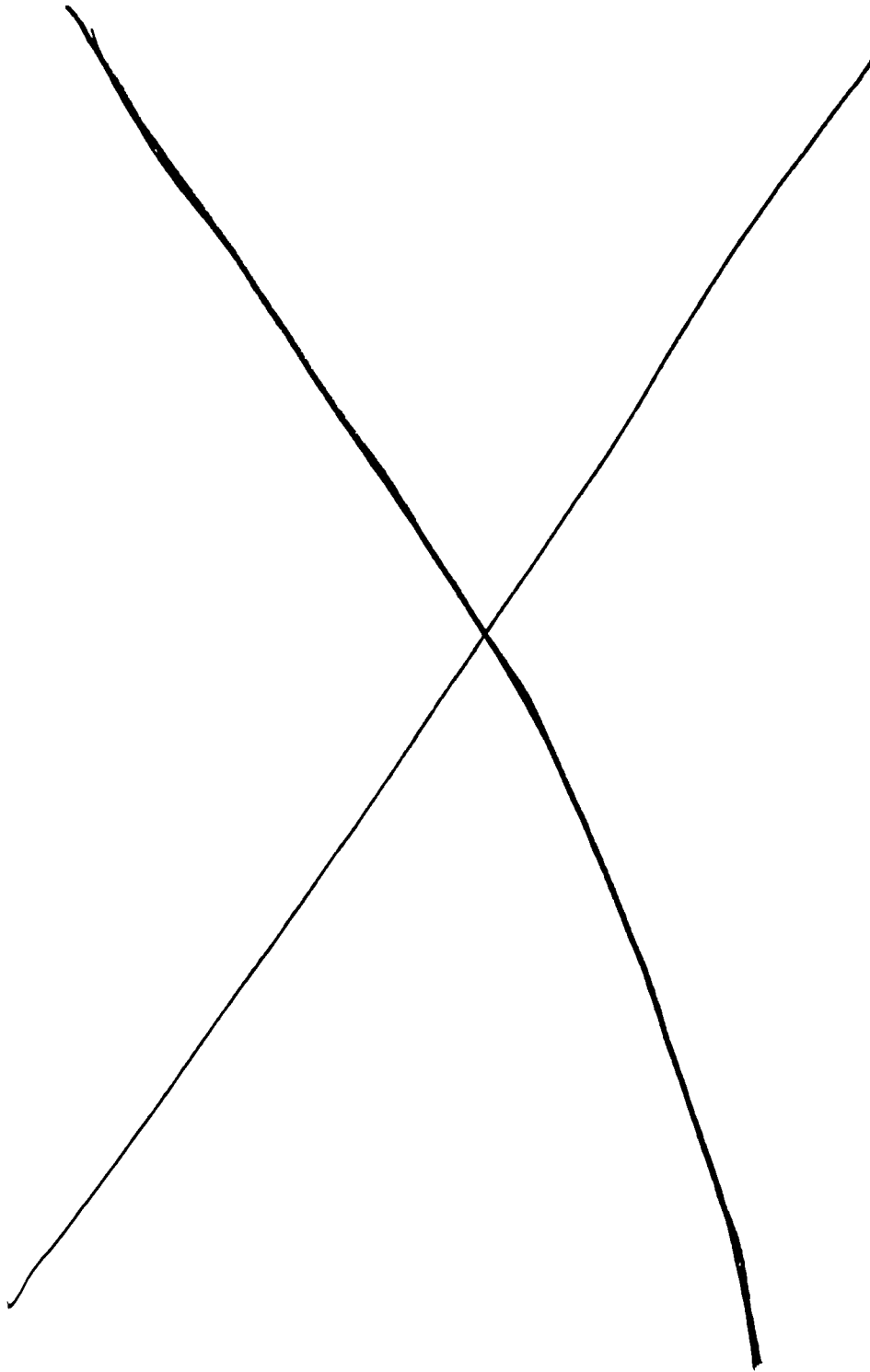
By _____
Its: _____ **Manager** _____
Dated: _____

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: _____

Exhibit C – 4th Repurchase Option



WHEN RECORDED RETURN TO:

Herriman City Recorder
5355 West Herriman Main Street
Herriman, UT 84096

14055334 B: 11392 P: 2593 Total Pages: 15
12/21/2022 11:21 AM By: csummers Fees: \$0.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: HERRIMAN
5355 W HERRIMAN MAIN ST HERRIMAN, UT 84096

Affecting Parcels: 26-25-402-0010000
26-25-402-0020000

FOURTH REPURCHASE OPTION AGREEMENT

This Fourth Repurchase Option Agreement (the "Fourth Agreement") is made effective as of the 14th day of December, 2022 (the "Effective Date"), by and between Herriman City, a Utah municipal corporation (the "City"), and Game Pointe Properties, LLC, a Utah limited liability company ("Game Pointe"). City and Game Pointe may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. On or about October 9, 2019, Game Pointe purchased approximately six acres of unimproved real property (the "Six Acres") from the City.

B. On or about October 9, 2019, the Parties executed a Repurchase Option (the "Original Agreement") wherein Game Pointe granted an exclusive option to the City to repurchase the Six Acres "if Game Pointe fail[ed] to obtain a building permit to develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years from the date Game Pointe purchased the Six Acres." A copy of the Original Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference.

C. The Original Agreement expired on October 16, 2021. However, the City exercised its repurchase option under the Original Agreement by sending a certified letter to Game Pointe on October 15, 2021.

D. The City, having exercised its repurchase option under the Original Agreement, entered into a Second Repurchase Option (the "Second Agreement") in order to allow Game Pointe to continue pursuing development of the Six Acres in a manner acceptable to City. As part of the Second Agreement, the City maintained an option to repurchase the Six Acres. That repurchase option under the Second Agreement was to expire on July 11, 2022.

E. The City, having exercised its repurchase option under the Second Agreement, entered into a Third Repurchase Option (the "Third Agreement") in order to allow Game Pointe to continue pursuing development of the Six Acres in a manner acceptable to City. As part of the Third Agreement, the City maintained an option to repurchase the Six Acres. That repurchase option under the Third Agreement was to expire on December 31, 2022.

F. On October 12 and November 9 of 2022, Game Pointe presented several alternative commercial-use concepts to the City Council for consideration in the development of the six acres. In good

faith, Game Pointe has proactively incorporated direct feedback from the City Council into these commercial-use concepts. Game Pointe has verbally committed to pursuing the immediate development of these commercial-use concepts if approved by the City Council. These alternative commercial-use concepts would require adjustments to the MDA currently governing the development of the six acres. As such, Game Pointe is asking for an extension of the repurchase agreement to allow time for the negotiation of a new MDA to govern development of the six acres and to begin the formal entitlement process

G. The City is willing to enter into an additional repurchase agreement with Game Pointe to set forth the terms and conditions of Game Pointe's rights and obligations with respect to the Six Acres while also preserving for the City a right to repurchase the Six Acres.

H. The Parties have also entered in a Development Agreement (the "MDA") on or about October 9, 2019 governing the development and improvement of the Six Acres. The MDA has been recorded against the Six Acres and a copy thereof is available in the offices of the Salt Lake County Recorder. The term of the MDA was 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."

I. The Parties acknowledge that the MDA is still in full force and effect and that the MDA governs the development of the Six Acres according to the terms and conditions set forth therein.

J. The City acknowledges that entering into this Fourth Agreement is in the best interest of the City and its residents with regard to the development of the Six Acres.

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

AGREEMENT

1. **Incorporation of Recitals and Exhibits.** The foregoing Recitals to this Fourth Agreement, as well as the Exhibits attached hereto, are incorporated into and shall constitute a part of this Fourth Agreement.

2. **Option to Purchase.** Game Pointe hereby grants to City, and City hereby accepts, the exclusive right and privilege (referred to as the "Option") of exercising an option to purchase the Six Acres on or before June 30, 2023, at 11:59:59 pm (the "Option Deadline"). The Option may be exercised by the City at any time starting on the Effective Date and ending upon the Option Deadline (with such period of time referred to as the "Option Period"). The City may, at its sole discretion, exercise the Option to purchase the Six Acres for One Million Six Hundred Ninety-Eight Thousand Eight Hundred Forty Dollars (\$1,698,840.00) prior to January 31, 2023. After January 31, 2023, the City may exercise its option if the following conditions are not met:

- a. By February 28, 2023 - the parties must have adopted an amended MDA (the "Option Price").
- b. April 30, 2023 - Game Pointe must have obtained a building permit for an acceptable facility per the MDA.
- c. June 15, 2023 -- Game Pointe must receive a land disturbance permit and begun site work.

3. Both parties agree to good faith effort in negotiations and shall not unreasonably withhold support to secure and finalize a mutually beneficial update to the terms of the Market Development Agreement governing the development of the six acres.

4. **Exercise of Option.** The Option shall be exercised by the City, if at all, on or before the Option Deadline by City providing Game Point with written notice, as set forth in Section 8, of its intent to exercise the Option hereunder.

5. **Expiration of Option.** If the Option is not exercised on or before the Option Deadline, the Option shall expire of its own force and effect. The Option shall also expire if Game Pointe obtains a building permit from the City to construct a facility permitted by the MDA, or any amendments thereto and received an inspection for footings and foundations.

6. **Closing.** If the City exercises the Option as permitted herein, then the Closing shall occur on a date scheduled by City on or before 60 days after the City provides notice of its intent to exercise the Option. Closing shall occur when the City delivers to Cottonwood Title Company the Option Price. The Closing will be held in the office of Cottonwood Title Company unless otherwise agreed in writing by the Parties. The title to the Six Acres shall be in the same marketable title and condition it was on at the time of City's sale of the Six Acres to Game Pointe. The Purchase Price will be paid by the City at the Closing in immediately available funds.

7. **Marketing of Six Acres.** Subject to Section 10 regarding assignment as well as any other applicable provisions of this Third Agreement, Game Pointe may market the Six Acres to a third-party. However, Game Pointe acknowledges and hereby agrees that any assignment or sale of the Six Acres during the Option Period is subject to the written approval of the City Council, which shall have absolute discretion.

8. **Complete Agreement.** This Fourth Agreement constitutes the entire agreement between the Parties with respect to the issues addressed herein and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Fourth Agreement may not be modified or amended except in writing mutually agreed to and accepted by all Parties hereto.

9. **Notice.** Any notices, requests, and other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered prepaid by hand, or (ii) sent prepaid by a reputable, national overnight delivery service (e.g., Federal Express, Airborne), or (iii) sent by email and addressed to each party at the applicable address set forth herein. Any such notice, request, or other communication shall be considered given on the date of hand delivery (if delivered by hand), or on the next business day following deposit with an overnight delivery service with instructions to deliver on the next day or on the next business day (if sent by overnight delivery service), and on the date that an email is sent. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. By giving at least ten (10) days prior written notice thereof, any party hereto may, from time to time and at any time, change its mailing address hereunder.

City: Herriman City
Attn: City Manager
5355 West Herriman Main Street
Herriman, Utah 84096
ncherpeski@herriman.org

With a Copy to: Herriman City
Attn: City Attorney
5355 West Herriman Main Street
Herriman, Utah 84096
tsheeran@herriman.org

Owner: Game Pointe Properties, LLC
Attn: Aaron Osmond
11466 Country Knoll Road
South Jordan, UT 84095
aosmond@gamepointe.com

10. **No Third-Party Beneficiaries.** This Fourth Agreement is solely among and solely for the benefit of the Parties. There are no third-party beneficiaries of this Agreement.

11. **Assignment.** Game Pointe shall not, without the City's written consent which may be withheld for any reason – assign its obligation or duties or otherwise transfer its right under this Fourth Agreement. City may, however, without restriction, assign its rights under this Fourth Agreement. Any such assignment by any party shall not act as a release of the assigning Party who shall remain obligated under this Fourth Agreement.

12. **Binding Effect.** The provisions of this Fourth Agreement shall be binding upon the successors, assigns, heirs, and personal representatives of the Parties.

13. **Recordation.** This Fourth Agreement shall be recorded and shall run with the land during the Option Period. If the Option is not exercised or if the Closing otherwise fails to occur as provided herein, the City shall, upon request of Game Pointe, execute and record a suitable, unconditional release of the Option in a form acceptable to the Parties.

14. **Superiority of Option.** Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against the Six Acres shall be subordinate to this Fourth Agreement and the Option set forth herein and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Fourth Agreement.

15. **Obligation to Maintain Property; Compliance with Laws.** Game Pointe shall at all times keep the Six Acres free from weeds in excess of six inches in height, in good order, condition and repair. Game Pointe shall not permit or suffer any waste of the Six Acres and shall not alter the Six Acres except for normal clearing, grading, or construction activities. Game Pointe shall cause the Six Acres, and all activities thereon, to comply at all times with all applicable laws.

16. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Fourth Agreement shall not preclude the exercise of any other provisions hereof.

17. **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Fourth Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term, or condition. Any party may, by notice delivered in the manner provided in this Fourth Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Fourth Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

18. **Applicable Law.** The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah. In the event of conflicts and/or inconsistencies within or among this Fourth Agreement and applicable statute, rules, regulations, or standards, Game Pointe shall (1) provide the better quantity or greater quality or (2) comply with more stringent requirements or standards, either or both, in accordance with City's reasonable interpretation.

19. **Attorney's Fees.** In any action arising out of this Fourth Agreement, the prevailing Party shall be entitled to its costs, reasonable attorney's fees, and other related collection or enforcements costs and expenses.

20. **Severability.** In the event that any condition, covenant, or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Fourth Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

21. **Government Records Access and Management Act.** City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor ("GRAMA"). All materials submitted by Game Pointe pursuant to this Fourth Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Game Pointe. Any materials for which Game Pointe claims a privilege from disclosure shall be submitted marked as "Business Confidential" and accompanied by a concise statement of reasons supporting claim of business confidentiality. City will make

reasonable efforts to notify Game Pointe of any requests made for disclosure of documents submitted under a claim of business confidentiality.

IN WITNESS WHEREOF, the Parties have executed this Fourth Agreement by and through their respective, duly authorized representatives as of the Effective Day first written above.

[signatures on following page]

HERRIMAN CITY

[Signature]
NATHAN CHERPESKI, City Manager

ATTEST

[Signature]
JACKIE NOSTROM, City Recorder
[Signature]
TODD SHEERAN, City Attorney
Approved as to form and legality

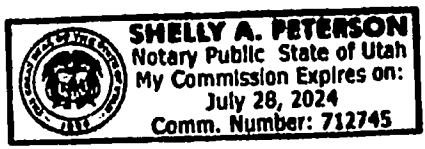


GAME POINTE PROPERTIES, LLC

Signature: [Signature]
Print Name: Aaron Osmond
Title: Manager

STATE OF UTAH)
) :ss
COUNTY OF)

On the 19 day of December, 2022 personally appeared before me Shelby H. Peterson ^{Aaron Osmond sp.}, who being by me duly sworn, did say that they are the Aaron Osmond, Manager of Game Pointe Properties, LLC, a Utah limited liability company, and that said instrument was signed on behalf of Game Pointe Properties, LLC by authority of its governing body and the above-listed signor acknowledged to me that they executed the same.



[Signature]
NOTARY PUBLIC

EXHIBIT A

Original Repurchase Agreement

WHEN RECORDED RETURN TO:

Herriman City
5355 West Herriman Main Street
Herriman, UT 84096

11301S - CAF

TAX ID 26-25-400-067

~~1518451
11/7/2019 11:55:00 AM \$40.00
Book - 10857 Pg. 897-702
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 6 R~~

REPURCHASE OPTION

This Repurchase Option Agreement (the "Agreement") is made effective as of the 9th day of October, 2019, by and between Herriman City, a Utah corporation (referred to as "City"), and Game Pointe Properties LLC, a Utah Limited Liability Company (referred to as "Game Pointe"). Game Pointe and City shall sometimes be referred to herein as the "Parties" or, individually as a "Party."

RECITALS

A. On or about October 9, 2019, Game Pointe purchased approximately six acres of unimproved real property ("Six Acres") from the City and Game Pointe subdivided the Six Acres into two lots- Lots 1 and 2. Lot 1 is more particularly described on the attached exhibit "A" ("Lot 1") and Lot 2 is also more particularly described on the attached exhibit "A" ("Lot 2" and Lot 1 and Lot 2 are collectively the "Lots").

B. Game Pointe represented to the City that it would develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years from the date Game Pointe purchased the Six Acres.

C. Game Pointe agreed that the City has the option to repurchase the Lots if Game Pointe fails to obtain a building permit to develop/construct a family entertainment center (or a similar entertainment/restaurant facility) as approved by the City in its governmental capacity on Lot 2 within two (2) years from the date Game Pointe purchased the Six Acres pursuant to the terms and conditions of a repurchase option.

C. Game Pointe desires to grant the City an option to repurchase the Lots as set forth herein.

AGREEMENT

NOW THEREFORE in consideration of the above premises, the mutual covenants, promises, and agreements contained in this Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which is fully acknowledged by the Parties the Parties agree as follows:

1. Option to Purchase the Lots. Game Pointe grants to City, for a maximum period of twenty four (24) months from October 16, 2019, (such period is referred to as the "**Option Period**"), the exclusive right and privilege of acquiring the Lots. At any time during the Option Period, City may exercise its option to purchase the Lots for One Million Six Hundred Ninety-Eight Thousand Eight Hundred Forty Dollars (\$1,698,840.00) ("**Option Price**").

2. Option Payment. The \$1,698,840 will be paid at Closing in immediately available funds.

3. Exercise of Option. This option shall be exercised, if at all, on or before the expiration of the Option Period if Game Pointe fails to obtain a building permit from the City to construct a family entertainment center (or a similar entertainment/restaurant facility), by City providing Game Pointe with written notice of its intent to exercise the option. The City will not unreasonably withhold the issuance of a building permit.

4. Normal Expiration. If this option is not exercised on or before the Option Period expires, the option shall expire of its own force and effect. The option shall also expire if Game Pointe obtains a building permit from the City to construct a family entertainment center (or a similar entertainment/restaurant facility) on Lot 2.

5. No Other Sale. Game Pointe shall not market Lot 2 to others until the Option expires.

6. Closing. This transaction shall be closed on a date scheduled by City on or before thirty (30) days after the exercise (if any) of the option, or on such other date as may be agreed in writing between the parties, but in no event shall the closing occur beyond forty-five (45) days after the option is exercised. Closing shall occur when the City delivers to Cottonwood Title Company ("**Title Company**") the Option Price. The Closing will be held in the offices of Title Company unless otherwise agreed in writing by the parties. The title to the Lots and its condition shall at closing be in the same marketable title and condition it was on City's sale to Game Pointe.

7. Complete Agreement. This Agreement together with its addenda, any attached exhibits, and any further instruments or documents referred to in this Agreement or referred to in those other instruments or documents affecting the Lots, constitute the entire Agreement between City and Game Pointe with respect to the Agreement's subject matter. There are no oral agreements between City and Game Pointe. This Agreement and any such related documents shall be construed in a manner consistent with each other. Nevertheless, to the extent of any inconsistency in this Agreement and any such related documents, the terms of this Agreement shall control. This Agreement shall not be changed except by written agreement signed by authorized representatives of both Parties.

8. Attorney's Fees. In any action arising out of this Agreement, the prevailing party shall be entitled to its costs, reasonable attorney's fees, and other related collection or enforcement costs and expenses.

9. Time is of the Essence. Time is of the essence regarding the dates set forth in this Agreement except to the extent a grace period is specifically authorized. Extensions must be agreed to in writing by both Parties. Performance under each section of this Agreement which references a date shall be required absolutely by 5:00 p.m. Mountain Time or Mountain Daylight Time as applicable.

10. Notice. Any notice, designation, consent, approval, or other communication required or permitted to be given pursuant to the provisions of this Agreement (referred to, collectively, as "Notice") shall, except as otherwise expressly provided in this Agreement, be given in writing and shall be provided by hand delivery or sent by certified or registered mail, Federal Express, or overnight courier. Notice may be sent to City at 5355 West Herriman Main Street Herriman, UT 84096 and to John Brems at 5355 West Herriman Main Street Herriman, UT 84096. Notice may be sent to Game Pointe at 290 N FLINT ST STE A Kaysville, UT 84037.

11. No Third-party Beneficiaries. This Agreement is solely among and solely for the benefit of the Parties. There are no third-party beneficiaries of this Agreement.

12. Assignments. Game Pointe shall not, without City's written consent, assign its rights, or delegate its obligations or duties under this Agreement. City may however, without restriction, assign its rights under this Agreement. Any such assignment by any party shall not act as a release of the assigning party who shall remain obligated under this Agreement.

13. Binding. The provisions of this Agreement shall be binding upon the successors, assigns, heirs, and personal representatives of the respective parties.

14. Recordation. This Agreement shall be recorded. If the option is not exercised, or if exercised, but the transaction fails to close, City shall promptly, on request from Game Pointe, execute and record a suitable, unconditional release of such option or a quitclaim deed.

15. Superiority of Option. Any mortgage, trust deed, lien, judgment, or other financial interest executed or entered against Lot 1 hereafter shall be subordinate to this Option and in no way enable the holder of such interest or their successor(s) in interest to breach the terms of this Option.

16. Obligation to Maintain Property; Compliance with Laws. Game Pointe shall at all times keep the Lots free from weed in excess of six inches in height, in good order, condition, and repair. Game Pointe shall not permit or suffer any waste of the Lots, and shall not alter the Lots except for normal clearing, grading, and construction activities. Game Pointe shall cause the Lots, and all activities on the Lots (including those requiring any alterations or improvements to be made thereon), to comply at all times with all applicable laws.

EXHIBIT B

Letter Executing Original Repurchase Option



10/14/2021

Sent via email and Certified Mail

Game Pointe Properties, LLC
Attn: Jed Stevenson
290 N. Flint St. S11. A
Kayville, UT 84037
jed@academicwest.com

Re: Exercise of Repurchase Option for Six Acres of Real Property Owned by Game Pointe Property.

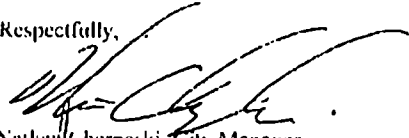
The purpose of this letter is to inform you that Herriman City intends to exercise its option to repurchase six acres of real property owned by Game Point Properties, LLC and subject to a Repurchase Agreement executed on October 16, 2019. The City's repurchase option expires on October 16, 2021. By "providing Game Pointe with [this] written notice of its intent to exercise the option" the City has satisfied the requirements of the Repurchase Agreement.

Pursuant to Section 6 of the Repurchase Agreement, the City is required to close on the property within 45 days hereof. However, as discussed in a recent Council meeting, the City is open to negotiating an extension to the Repurchase Agreement. So long as an extension is agreed upon and formalized in a written amendment to the Repurchase Agreement within 10 days hereof, the City will revoke this notice and will not otherwise close on the Property.

By signing below, you acknowledge receipt of this Notice and that such receipt satisfies the Notice Requirements of the Repurchase Agreement. A copy of this letter is also being sent via certified mail to the address above.

If you have any questions, please do not hesitate to reach out

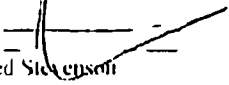
Respectfully,


Nathan Cherpeski, City Manager

Signature: _____

Jed Stevenson

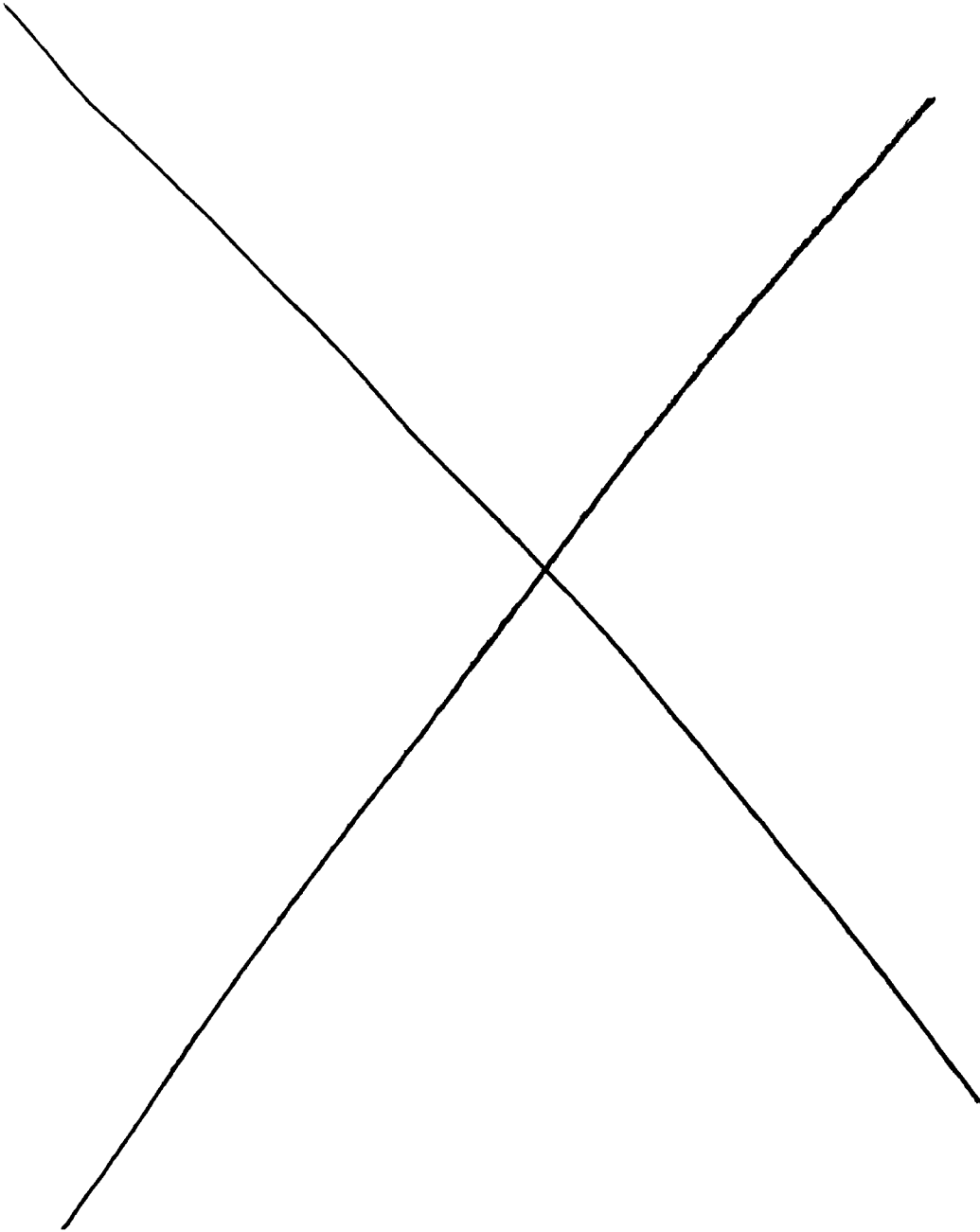
Title: _____

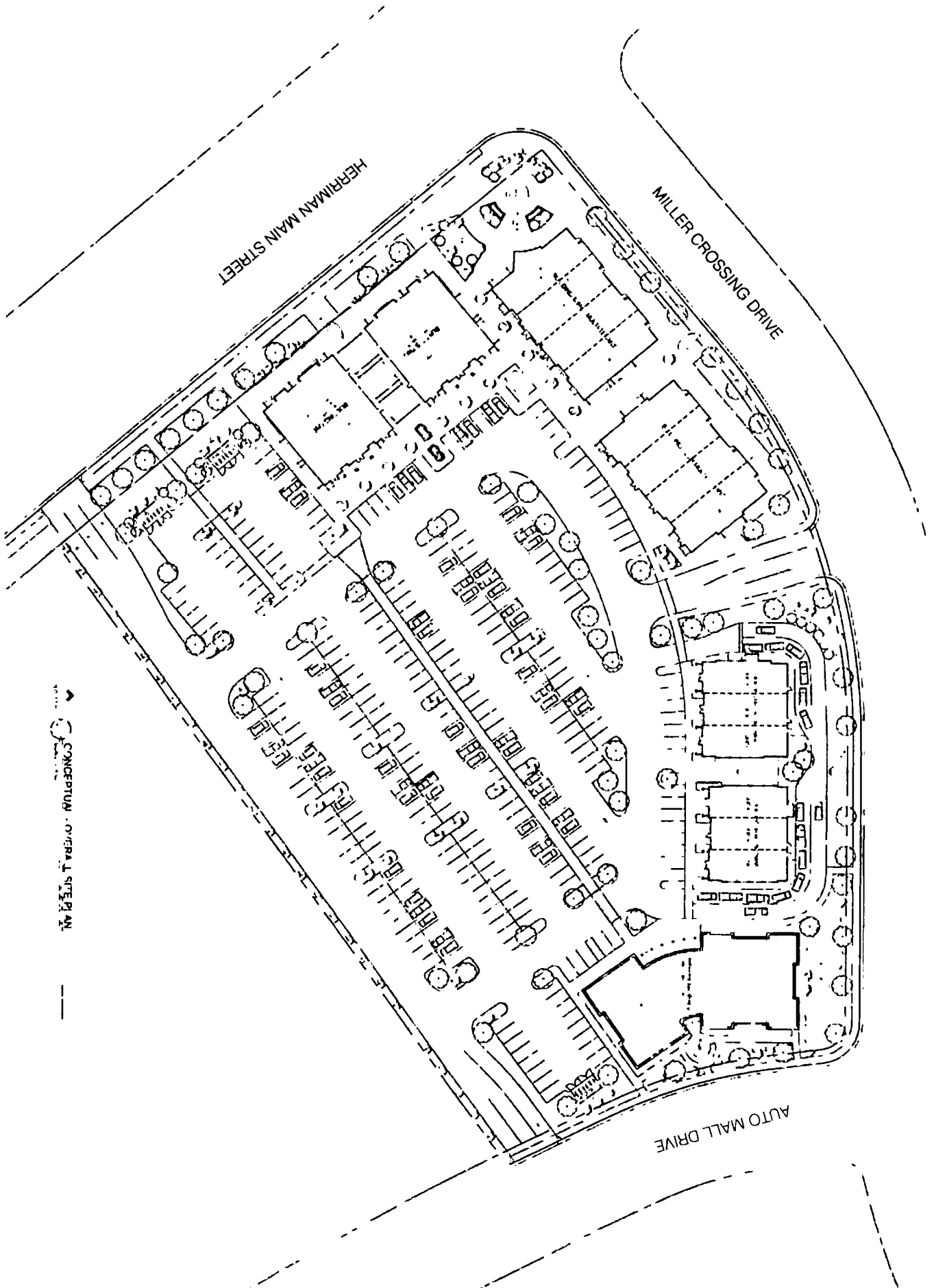

Manager

3355 W. Herriman Main St. • Herriman, Utah 84096
(801) 416-5323 office • herriman.org



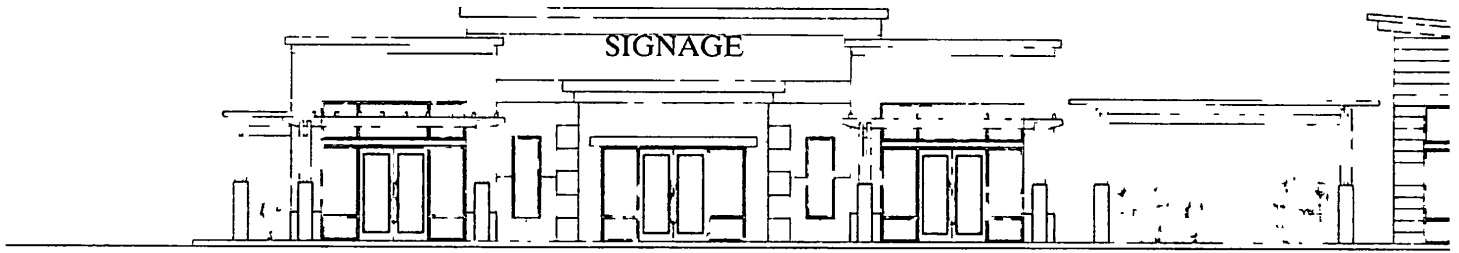
Exhibit D – Concept Plan





CONCEPTUAL OVERALL SITE PLAN

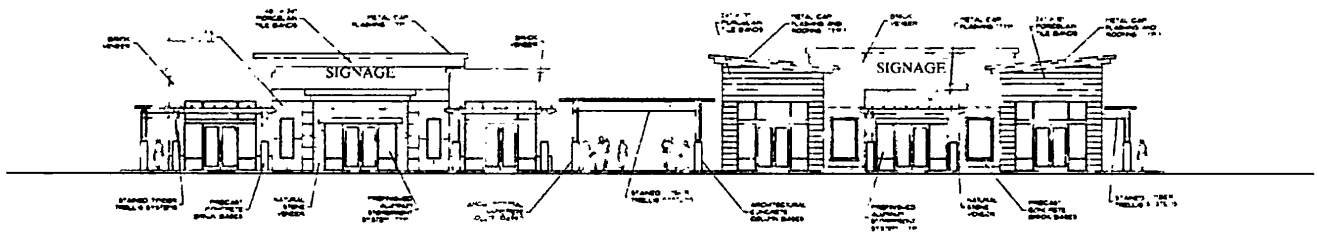
<p>DATE: 2/21/18 A100</p>	<p>PROJECT: MOUNTAIN VIEW PLAZA DRAWN: J. CHAFFIN SCALE: 1/8" = 1'-0"</p>	<p>MOUNTAIN VIEW PLAZA RETAIL CENTER Herriman Main & Miller Crossing Herriman, Utah</p>	<p>LAYTON DAVIS ARCHITECTS 200 SOUTH 1000 WEST SALT LAKE CITY, UTAH 84119</p>	<p>PRINTED DATE: 04.13.2023</p>
-------------------------------	---	--	--	---------------------------------



1 "PILING ONE" - EAST ELEVATION



2 BUILDING TWO - EAST ELEVATION



3 "PILING ONE AND TWO" - EAST ELEVATION

PROJECT DATE
2013

LAYTONDAVIS
ARCHITECTS
1000 N. GARDEN ST.
DENVER, CO 80202

**MOUNTAIN VIEW PLAZA
RETAIL CENTER**
Herriman Main & Miller Crossing
Herriman, Utah

CHRONOLOGY

MODEL NO.
233

OWN BY
CKB BY
CWL

TITLE
CONCEPTUAL
BUILDING
ELEVATIONS

2013 SHEET #
A202

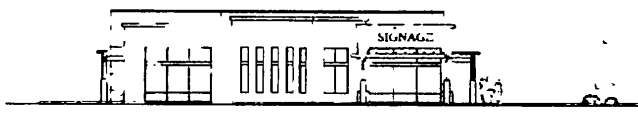


SOUTH (LANDING) ELEVATION - BUILDING THREE

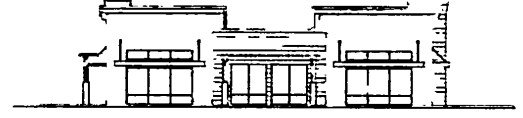


SOUTH EAST (FRONT) ELEVATION - BUILDING FOUR

BUILDINGS THREE AND FOUR - EXTERIOR ELEVATIONS

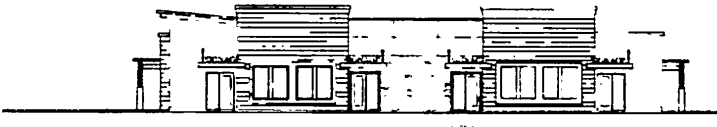


NORTH EAST (L) ELEVATION - BUILDING THREE

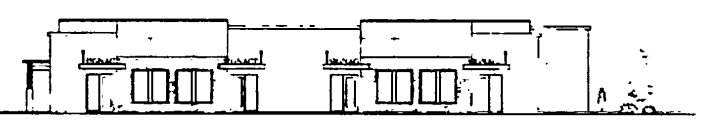


NORTH (AS) ELEVATION - BUILDING FOUR

BUILDINGS THREE AND FOUR - EXTERIOR ELEVATIONS



NORTH WEST (STREET) ELEVATION - BUILDING FOUR



NORTH WEST (STREET) ELEVATION - BUILDING THREE

BUILDINGS THREE AND FOUR - EXTERIOR ELEVATIONS

PRINTED DATE
04/15/2023

LAYTONDAVIS
ARCHITECTS
1111 1/2 W. 10TH ST.
SALT LAKE CITY, UT 84119

**MOUNTAIN VIEW PLAZA
RETAIL CENTER**
Herriman Main & Miller Crossing
Herriman, Utah

CHRONOLOGY

PROJECT NO.
23003

DATE, CHECK BY
04/15/23

TITLE
BUILDING 3 & 4
EXTERIOR
ELEVATIONS

DATE OF PLOT
A202

Exhibit E - Design Guidelines

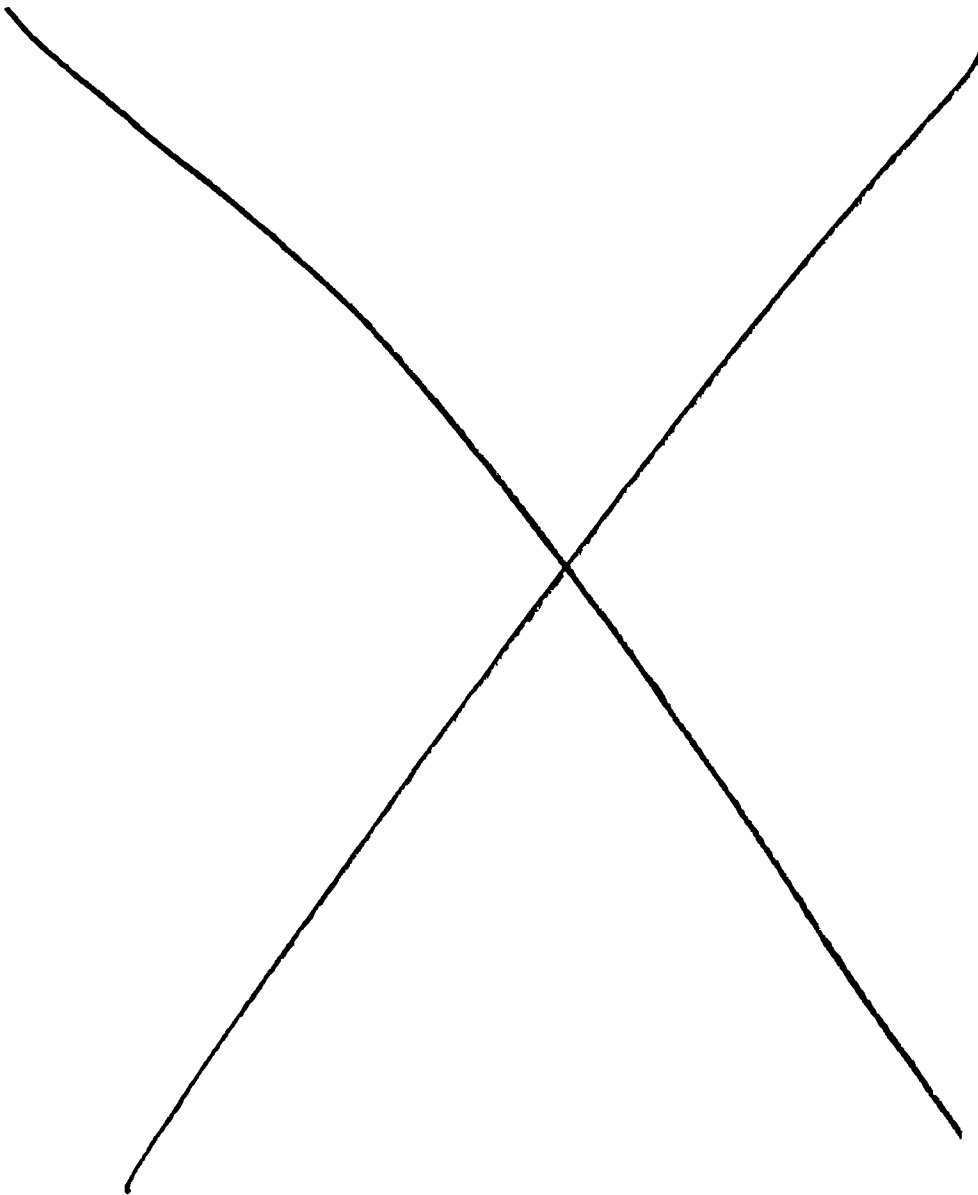
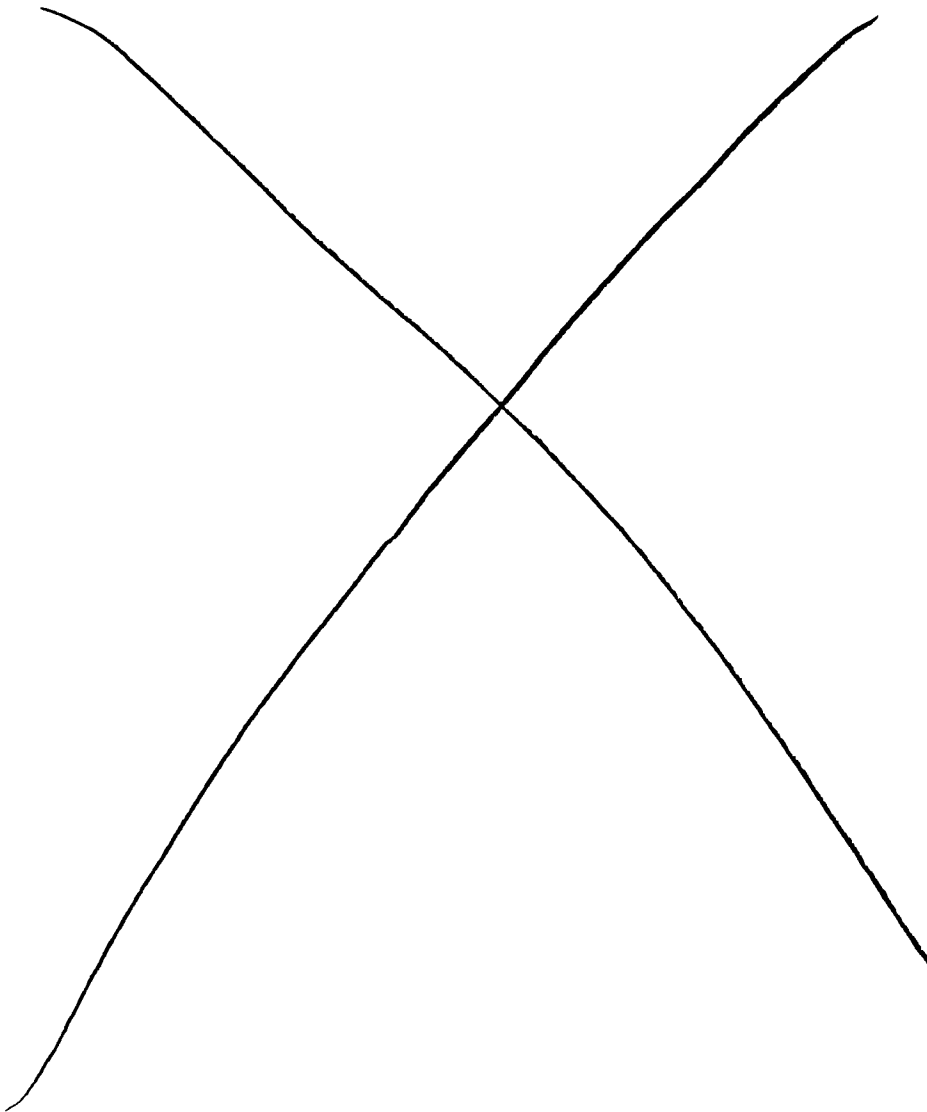


Exhibit F – Vested City Code

The vested land use ordinances for the Mountainview Plaza Master Development are on file with the Herriman City Recorder's Office



HERRIMAN, UTAH
RESOLUTION NO. R17-2023

**A RESOLUTION AMENDINDING AND RESTATING
A MASTER DEVELOPMENT AGREEMENT FOR
MOUNTAINVIEW PLAZA**

WHEREAS, the City of Herriman received a proposal from Osmond Capital, LLC to consider an amended and restated master development agreement for commercial development on ±6.0 acres of vacant property located approximately at the intersection of Herriman Main Street and Miller Crossing Drive in the C-2 Commercial Zone; and

WHEREAS, the Planning Department on February 3, 2023, mailed and posted notices of a Planning Commission (the "Commission") public hearing to be held on February 15, 2023, to consider the proposed amended and restated master development agreement; and

WHEREAS, the Commission met in a regular meeting on February 15, 2023, to consider, among other things, the proposed amended and restated master development agreement; and

WHEREAS, the Commission voted 6-0 on February 15, 2023, to recommend the City Council (the "Council") approve the proposed amended and restated master development agreement with additional recommendations; and

WHEREAS, the Council met in a regularly scheduled work meeting on February 22, 2023, to consider, among other things, the proposed amended and restated master development agreement; and

WHEREAS, the Council on February 22, 2023, requested the applicant consider the Commission's recommendations and prepare a revised amended and restated master development agreement for Council consideration; and

WHEREAS, the Council met in a regular meeting on April 12, 2023, to consider, among other things, a resolution to approve the proposed amended and restated master development agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council that the attached proposed amended and restated master development agreement be approved to govern the development of 6.0 acres of commercial property located at 5143 W Miller Crossing Drive and 12252 S Herriman Auto Row in the C-2 Commercial Zone.

This Resolution assigned no. R17-2023 shall take effect immediately.


PASSED AND APPROVED this 12th day of April 2023.

HERRIMAN CITY COUNCIL



Lorin Palmer, Mayor

ATTEST:



Jackie Nostrom, City Recorder

