E# 3297073 PG 1 OF 12
LEANN H KILTS, WEBER CTY. RECORDER
06-SEP-23 1233 PM FEE $.00 THU
REC FOR: NORTH OGDEN CITY

WHEN RECORDED, RETURN TO:

North Ogden City
Attn: City Recorder
505 East 2600 North
North Ogden, UT 84414

W3297073

A08-2023
DEVELOPMENT AGREEMENT
FOR THE
PROPERTY AT APPROXIMATELY 1651 N. WASHINGTON BLVD.

THIS AGREEMENT is made and entered into as of the 25th day of July 2023 by and between NORTH OGDEN CITY, a Utah municipal corporation, hereinafter referred to as the "City" and Terry Cevering, hereinafter referred to as "Developer."

RECITALS:

A. Developer is the owner of the property with Tax IDs: 11-014-0022 and 11-014-0068, more particularly described on the Draft Site Layout labeled Exhibit A, attached hereto and incorporated herein by the reference (the "Property").

B. Developer desires to develop the Property as a planned mixed use development consisting of 50 residential units and 7 commercial/industrial building on approximately 4.78 acres with integrated open space and related amenities in accordance with the applicable City Ordinances and as more particularly set forth on Exhibit A.

C. Pursuant to City Ordinances, the Developer has submitted to the City the required applications to rezone the Property to R4 and M-1 Commercial.

D. All approvals for development of the property and for the planned Development are subject to specific conditions imposed by the Planning Commission and City Council. This Agreement includes various conditions and requirements which must be satisfied by Developer in the development of the Property. Except as otherwise specifically provided herein, both the Property and the planned residential development are subject to, and shall conform, with this Agreement, as well as all ordinances, rules and regulations adopted by the City, including but not limited to the provisions of the City's General Plan, Zoning Ordinance, Subdivision Ordinance, and all other applicable ordinances, standards, specifications, fees, regulations and codes, collectively referred to herein as the "City Ordinances."

E. The purpose of this Agreement is to reduce to writing the respective agreement and understanding of the parties regarding the development of the Property in conformance with the City Ordinances and the specific approvals granted by the City for the Property and the planned residential development. The City and Developer, as well as any successors and assigns as more particularly defined herein, agree to be bound under the terms and conditions of this Agreement as more particularly set forth herein. Any person or entity hereinafter developing the Property, or any portion hereof shall comply with the terms of this Agreement. And to comply with the North Ogden City Zoning Code.

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

1. *INCORPORATION OF RECITALS.* The foregoing Recitals are hereby incorporated into this Agreement.

2. *REZONE.* The City agrees to rezone the Property to R-4 and M-1 Manufacturing.

3. *INTENDED USE.* Developer shall develop the property as a mixed - use development, consisting of 7 townhome buildings (50 units) and 7 commercial/industrial buildings to be used for self storage.

4. *MASTER PLAN APPROVAL.* The North Ogden City Council has approved the Developer's proposed Master Plan and has entered into this agreement to facilitate the Developer to develop the Property as proposed.

5. *PROPERTY DEVELOPMENT.* The Property and the planned development shall be developed in strict accordance with the terms and conditions of this Agreement and the City Ordinances. All development and use of the Property shall be subject to and shall comply with the terms and conditions of the North Ogden City Code. In addition, in accordance with the regulations of the City, the development shall implement those regulations of the City General Plan, have an overall architectural design theme, and allow the open spaces to be integrated with the residential uses in a mutually compatible manner. No additional property may be added to the Property or the development described herein for the purposes of this Agreement, except by written amendment to this Agreement, approved and executed by the parties.

6. *LANDSCAPING, COMMON AREAS AND AMENTITIES.* All landscaping, common areas and amenities shall be provided by the Developer in accordance with the approved plans for the project. Developer hereby agrees to construct at a minimum, the following amenities:

    a. Playground or other similar community feature.

7. *COMMERCIAL BUILDING.* Developer shall complete a building which is similar in materials to the one shown on Exhibit B, with the same percentages of rock/brick and stucco/EFIS on all sides of the building. The stone and rock shall wrap each corner of the building as shown on the example a minimum distance of 5 feet.
    a. The entire self storage area shall be surrounded by a block or cement fence with articulation features every 40 feet as outlined in North Ogden City Code.
    b. Landscaping around the perimeter of the fencing area shall include trees every 60 feet. Staggering with the articulating fencing or articulating building facades.
    c. Developer shall install a 10 foot sidewalk along the frontage for Washington Blvd. and a 6 foot sidewalk along 1700 N.

8. *DEVELOPMENT STANDARDS.* The Parties agree that no amendments to the existing ordinances have been made as part of this development agreement, but if there is a land use code or other code which prohibits the number of buildings, residential units, or other structure identified during the approval process the code shall take precedence over this agreement.

9. *LANDSCAPING.* The landscape shall be installed in compliance with North Ogden City code for the individual zones.

10. *OUTDOOR LIGHTING.* Street lighting will be required along Washington Boulevard and 1700 North and shall be paid for by the developer. UDOT approved lights will be installed along Washington Blvd in the same frequency as other projects along Washington blvd.. All lighting on the project shall be full cut off lighting, such that no filament shall be viewable from the property line. General flood lighting shall not be installed.

11. *PARKING.* A minimum of 3 stalls per residential unit shall be required in the residential portion. Tandem visitor parking is allowed under the requirements found in 11-19-4 of the North Ogden Code. The commercial portion shall be parked based on the appropriate tables in the North Ogden Code.

12. *ACCESS.* The City will allow access to 1700 North as determined by the city engineer and with appropriate distances from Washington as approved by UDOT. UDOT is required to approve any access to Washington Blvd. The City does not have any restrictions on access to 1700 North which would inhibit development where developer's property directly adjoins the Right of Way.

13. *UTILITIES AND INFRASTRUCTURE.* Developer shall install or cause to be installed natural gas, electrical service, telephone, storm water, sanitary sewer and water systems, both culinary and secondary, and all required utility and street improvements (the "Utilities and Infrastructure") for the Development. Utilities and Infrastructure construction and installation to be built in the city right of way shall be done in accordance with City Ordinances and applicable design and construction standards of the utility providers and the City. All plans and construction for water, sewer, street and storm drainage improvements

shall be reviewed and approved by the City Engineer. All Utilities and Infrastructure shall comply with applicable City Ordinances, including, but not limited to the City Subdivision Ordinance and applicable Subdivision Standards and Specifications. The City agrees to provide water, storm water, and sewer service to the development. Developer is responsible for any utility service upsizing directly related to Developer's need for the project. Developer shall not bear the costs of upsizing offsite improvements for other projects.

14. *SUBDIVISION.* Developer must complete a subdivision application and all necessary site plans and infrastructure.

15. *SECURITY FOR PUBLIC IMPROVEMENTS.* In accordance with City Ordinances, including, but not limited to Sections 8-2-3 of North Ogden Municipal Code, the Developer shall enter into a Bond Agreement in the standard form acceptable to the City and provide security to guarantee the installation and completion of all public Utilities and Infrastructure, and all public improvements to be constructed, installed, reviewed or provided by Developer pursuant to the Agreement or in connection with the Planned Development or located within the Property, or any portion thereof, and any other public improvements shall be constructed and installed at the Developer's sole expense in accordance with the City's construction and engineering standards and the City Ordinances. All public improvements shall be warranted for one (1) year in accordance with the applicable State Statues and City Ordinances after conditional acceptance has been received from the City.

16. *EASEMENTS.* Appropriate easements including satisfactory perpetual public utility easements required by the City shall be conveyed by Developer to the City in conjunction with final subdivision plat approval and recording. The utility easements shall consist of property adjacent to and along the public rights-of-way within and adjacent to the Property and around subdivision lot lines as are needed for public and/or private utilities. Additional easements may be required of Developer or property owner with the development of any particular lot, building, phase, or plat within the Planned Development and public improvements required in connection with the same. All required easements shall be noted on the final subdivision plat.

17. *DEDICATION OR DONATION.* Developer shall dedicate and convey to the City, at no cost to the City, all required public utility easements for the purpose of constructing, installing, operating, and maintaining public utilities and improvements of every nature and kind as determined and required by the City. Fee title to all public improvements required by the City in connection with the Property along with the appurtenant easements and rights-of-way, and the City's portions of water systems and storm drainage system and their related easements and rights-of-way. All public improvements and rights-of-way intended for public dedication shall be dedicated in fee in conjunction with the final plat. Prior to the time of dedication, Developer shall take such action as necessary to obtain a release of any encumbrance on any property to be dedicated to the City. The City shall have the right to inspect all such improvements prior to acceptance of the conveyance thereof. Developer is

making the dedications and donations provided in this Agreement voluntarily and as a contribution to the City and hereby waives and releases any claims for compensation therefor.

18. *VESTED RIGHTS.* Subject to the terms and provisions of this Agreement, by reason of the Developer's completed application for the City's approval of the Preliminary Plat and Master Site Plan, the parties hereby acknowledge certain vested rights of Developer to develop the Property in accordance with such approved plans, plat, and permits. Nothing herein shall be construed to provide Developer with any further or additional vested rights than those recognized by Utah law. Such vested rights shall be subject to all recognized exceptions, including, but not limited to the pending ordinance, procedural modes and form, clarifying ambiguity, and completing public interest doctrines. Except as otherwise provided herein, development of the Property shall be permitted in accordance with the approved plans, plats, and permits for the Property, the terms and conditions of this Agreement, and all applicable City Ordinances which are in effect on the date of this Agreement. Notwithstanding the foregoing, development of the property shall be subject to subsequent amendments to City Ordinances regarding fees, procedures, and police power provisions as may be allowed under applicable vested rights law in the State of Utah. For instance, any amendments to the site plan approval procedures shall require subsequent site plan applications to comply with the procedural requirements of the City Ordinances in place at the time of the application for site plan approval or amendment is submitted. Fees required in connection with any development within the Planned Development shall be paid in accordance with the fee schedule in place at the time the fees are due and paid. Development of the Property shall also be subject to subsequent City Ordinances enacted under the City's police power to protect the public health, safety, and welfare as may be allowed under applicable vested rights law in the State of Utah.

19. *RESERVED LEGISTLATIVE POWERS.* Developer 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 preserved by law.

20. *PAYMENT OF FEES.* Developer shall pay to the City all required fees in a timely manner which are due, or which may become due pursuant to the City Ordinances in connection with development of the Planned Residential Development or any portion thereof and in such amounts as are required by City Ordinances at the time such fees are actually paid to the City. Developer shall pay all required impact fees for all development on the project.

21. *PROVISION OF MUNICIPAL SERVICES.* Subject to Developer complying with all of the City's Ordinances and the provisions of this Agreement, the City agrees to provide standard municipal services to the Property equal to those generally provided to other areas by the City, subject to payment of all reasonable fees and charges charged or levied therefor by the City.

22. *DEFAULT.* The City may pursue any enforcement action deemed necessary and appropriate for any violation of City Ordinances in accordance with applicable enforcement provisions as set forth in City Ordinances or otherwise permitted by law. Notwithstanding and in addition to the City's right to pursue any enforcement action for violation of City Ordinances, in the event any party fails to perform its obligations hereunder or to comply with the terms of this Agreement, the non-defaulting party may have the following enforcement remedies. Prior to the invoking the remedies provided herein, the non-defaulting party shall provide the defaulting party written notice of default and a twenty (20) day cure period. All notices of default shall be provided in accordance with the Notice provisions set forth in Section 41. In the even the non-defaulting party does not cure the default within the required twenty (20) day cure period or enter into a written agreement for curing the default within the reasonable time, acceptable to the non-defaulting party in its reasonable discretion, the non-defaulting parting may, at is election, have the following remedy or remedies:

    i. *All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.*
    ii. *The right to withhold all further approvals, licenses, permits, or other rights associated with the Property until such default has been cured.*
    iii. *The right to draw on any applicable security posted or provided in connection with the Planned Development.*
    iv. *The right to terminate this Agreement*
    v. *The rights and remedies set forth herein above shall be cumulative.*

Developer shall also be in default under the terms of this Agreement under the following circumstances if not cured within thirty (30) days after notice of default is given:

Insolvency - Developer shall be adjudicated bankrupt or makes any voluntary or involuntary assignment for the benefit of creditors, or bankruptcy, insolvency, reorganization, arrangement, debt adjustment, receivership, liquidation or dissolutions proceedings shall be instituted by or against Developer; and if instituted adversely, the one against whom such proceedings are instituted consents to the same or admits in writing the material allegations thereof, or said proceedings shall remain undismissed for 150 days.

Misrepresentation - Developer has made a materially false representation or warranty in any agreement with, or application to the City.

23. *ASSIGNMENT.* Developer shall not assign its obligations under this Agreement or any rights or interest herein without giving prior written notice to the City. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. No party shall transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this Agreement separate from the party's interest in the Property except for the sale of lots or lease of buildings within the Planned Residential Development. In the event of a sale or transfer of the Property, or any portion thereof, the

buyer or transferee ("Subsequent Developer") shall be liable for the performance of each of the obligations contained in this Agreement as it relates to that portion of the Property it is buying, and acceptance of a deed to any portion of the Property shall constitute an agreement to assume and to be bound by the provisions of this Agreement as it relates to the Property covered by the deed. Each buyer or transferee shall sign an assignment and assumption agreement in a form reasonably acceptable to the City agreeing to be bound by the terms and conditions of this Agreement as provided herein. Any reference to Developer herein shall be construed to refer to any Subsequent Developer with respect to the portion of the Property owned by such Subsequent Developer.

24. *OWNERSHIP.* Developer hereby warrants and represents that it is the legal owner of record of the Property, it has the right to develop the Property, and it has full authority to enter into the terms of this Agreement encumbering the Property.

25. *NOTICE.* All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been provided on the date of personal service upon the party for whom intended or upon receipt if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the parties at the following addresses:

To the City:

North Ogden City
Attn: City Manager
505 East 2600 North
North Ogden, UT 84414

To the Developer:

Terry Cevering
5722 W. 2050 N.
Plain City, UT 84404

Any party may change its address for notice under this Agreement by giving written notice to the other party in accordance with the provisions of this paragraph.

26. *ENTIRE AGREEMENT.* This Agreement, together with the Exhibits attached hereto, documents reference herein, and all regulatory approvals given by the City for the Property and Planned Development, contains 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 agreement, referenced documents, regulatory approvals and related conditions. It is expressly agreed by the parties that this Agreement is intended to and shall govern the development of the Property pursuant to the City Ordinances, including, but not limited to, all planning, zoning, and subdivision issues.

27. *BINDING EFFECT.* This Agreement shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns, as permitted herein. The

covenants contained herein shall be deemed to run with the Property and a copy of this Agreement shall be recorded in the office of the Weber County Recorder, State of Utah.

28. *NON-LIABLITY OF CITY OFFICIALS, EMPLOYEES, AND OTHERS.* No officer, representative, agent, or employee of the City shall be personally liable to the Developer or any successor in interest or assignee of the Developer in the event of any default or breach by the City, or for any amount which may become due to Developer, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

29. *TERMINATION.* In addition to any other enforcement right or remedy provided herein, and notwithstanding anything in this Development Agreement to the contrary, it is hereby agreed by the parties hereto that in the event the Planned Residential Development, including all phases thereof, is not completed within either (8) years of the date of this Agreement, or in the event the Developer does not comply with the provisions of this Agreement, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement and/or to not approve any additional phases for the Planned Residential Development. Any termination may be in effect by the City by giving written notice of intent to terminate to the Developer at its last known address, as set forth herein. Whereupon the Developer shall have sixty (60) days during which the Developer shall be given the opportunity to correct any alleged deficiencies and to take appropriate steps to commence and/or complete the Planned Residential Development. In the event the Developer fails to correct the alleged deficiencies or to take appropriate steps to commence or complete the Planned Residential Development as provided herein, the City shall be released from any further obligations under this Agreement and may terminate the same by written notice to the Developer. The parties expressly recognize and acknowledge that the development of the Planned Residential Development is a phased Planned Mixed - Use Development. It is also recognized that it is critical to the City that certain development occurs within a reasonable time for the date of this Agreement. It is expressly acknowledged by the parties that the Planned Residential Development is intended to be developed in reasonably staged phases and that Developer shall use its best efforts to proceed with the Planned Residential Development in a timely fashion. The release and indemnification provisions of Section 21 and Section 36 shall survive any termination of this Agreement.

30. *GOVERNING LAW AND JURISDCICTION.* The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The parties to this Agreement agree that any judicial action associated with the Agreement shall be taken in the Second Judicial District Court of the State of Utah.

31. *SEVERABILITY.* If any portion of this Agreement is held to be unenforceable by court of competent jurisdiction, any enforceable portion thereof and the remaining provisions shall continue in full force and effect.

32. *AMENDMENT.* This Agreement may be amended only in writing signed by the parties hereto. Any amendments to the Planned Residential Development documents, including, but not limited to the plans, plats, and Exhibits attached hereto, must be approved by the City in accordance with applicable City Ordinances in addition to required amendments to this Agreement.

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 above written.

"CITY"
NORTH OGDEN CITY

ATTEST:

Recorder

By: _____ MAYOR

"DEVELOPER"
Terry Cevering

By: _____

EXHIBIT A

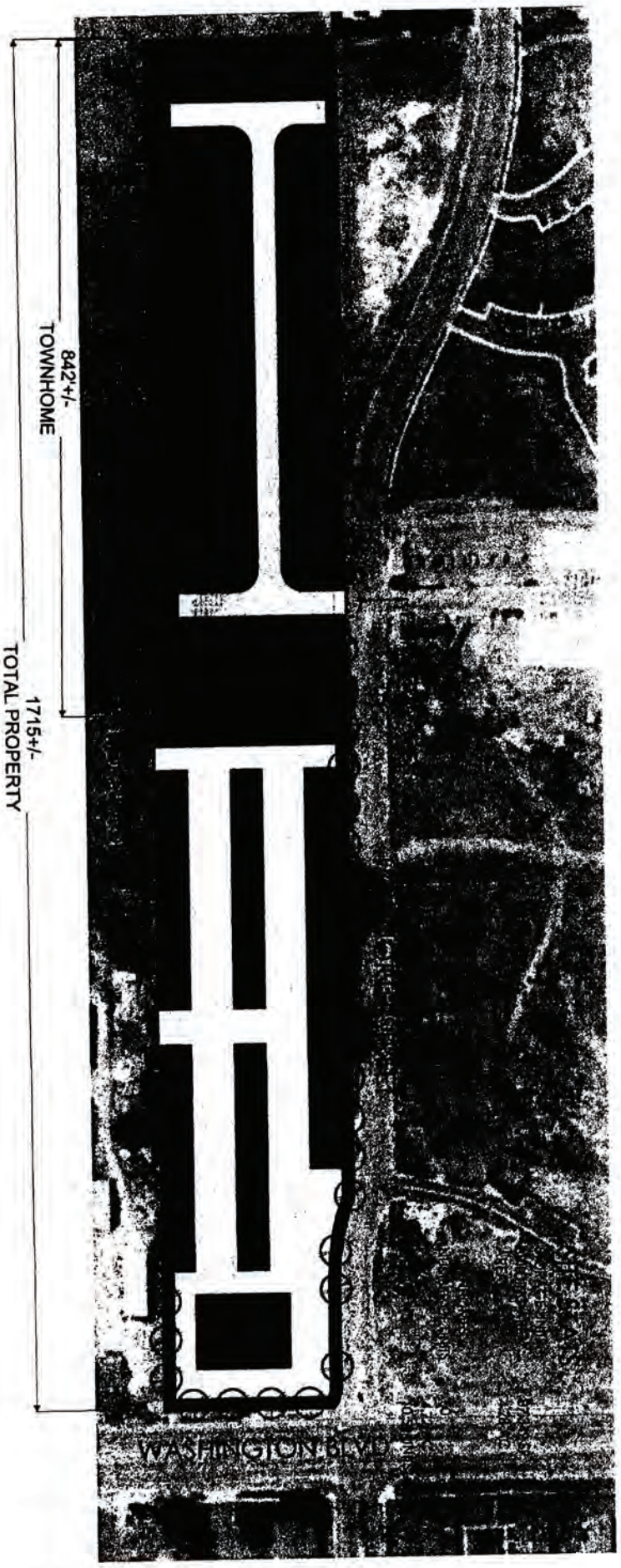
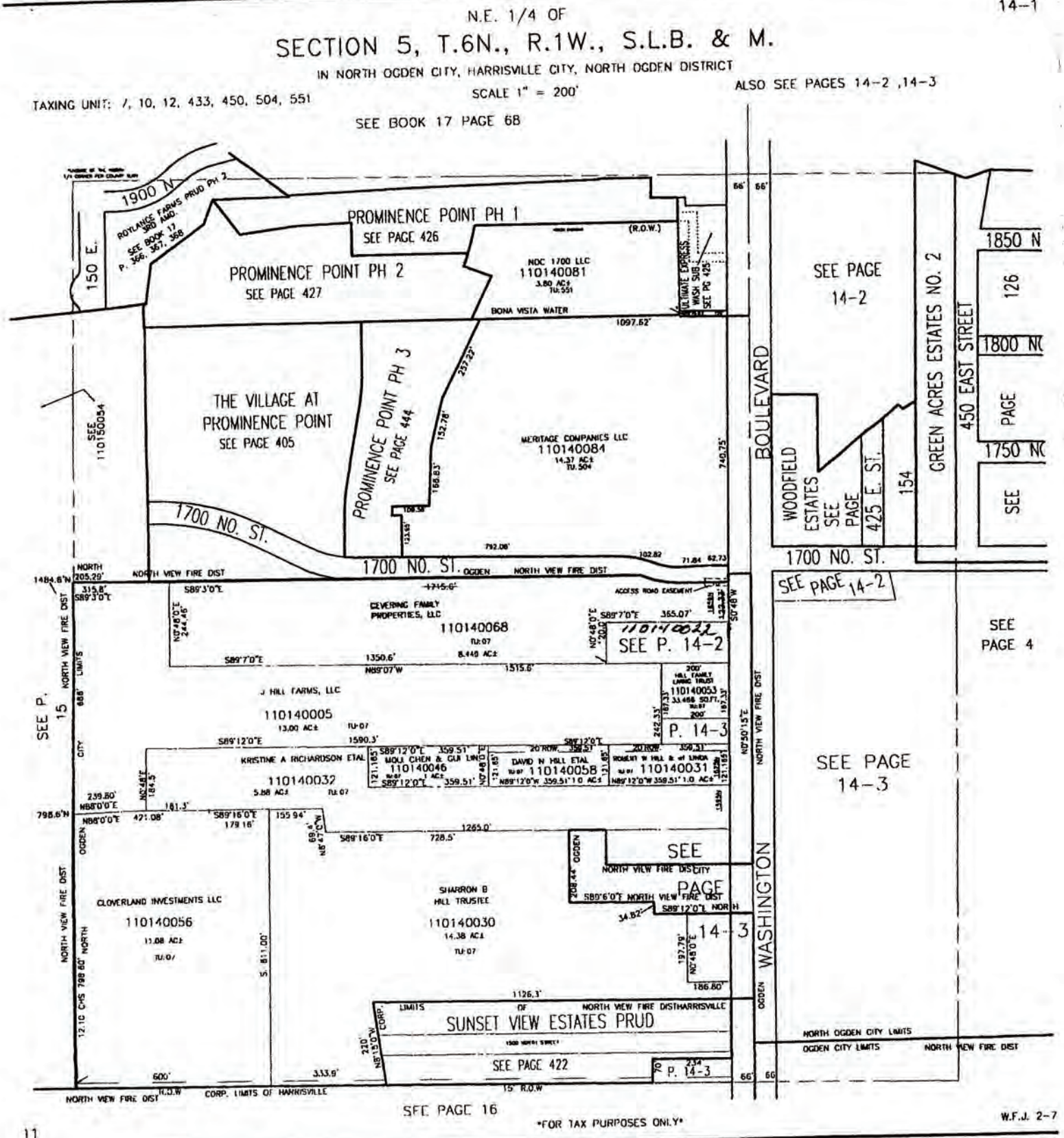


Exhibit A (continued)



11

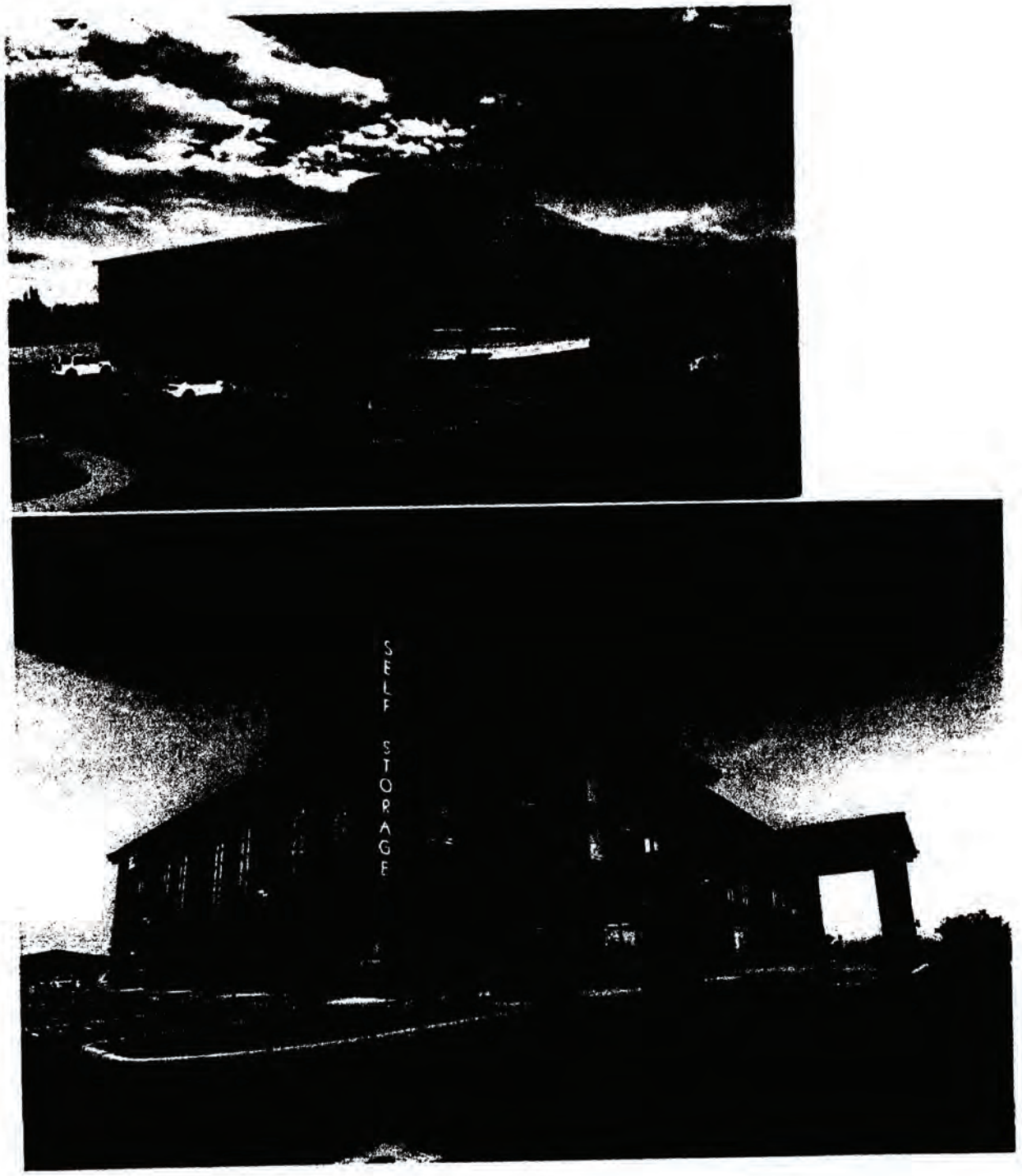



EXHIBIT B