

When recorded return to:

LRemington LLC
Attn: Lisa A. Wark
1225 N. Cottage Way
Midway, UT 84049

Ent 538043 Bk 1457 Pg 68-85
Date: 26-OCT-2023 9:19:41AM
Fee: \$40.00 Check Filed By: KM
MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: LREMINGTON LLC

Heber City Corporation
Attn: City Recorder
75 North Main Street
Heber City, UT 84032

Parcel No. 00-0005-6924
Serial No. OHE-1152-0-031-035

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

(LRemington Garden Apartments)

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT entered into this 25th day of October, 2023, by and between **Heber City** (“City”), and **LRemington L.L.C.** (“Developer” or “Owner”). Developer and the City are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.” This Agreement supersedes and replaces any previous development agreements entered into by and between the Developer and the City involving the same Property and is the entire, complete Agreement between the Parties.

RECITALS

WHEREAS, the Developer is the owner of approximately 1.2 acres of real property described in Exhibit A, located at 160 West 500 North, Heber City, Utah (the “Property”); and

WHEREAS, the Developer has submitted a site plan and conceptual elevations to the City for redevelopment of the site; and

WHEREAS, the City has adopted a new General Plan “Envision Heber 2050” that identifies infill and redevelopment in the downtown as a priority for the City; and

WHEREAS, the City and Developer are desirous to see redevelopment of the site in a manner consistent with the new General Plan and existing adjoining development; and

WHEREAS, the City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Heber City Land Use Code, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the Property, and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and

general welfare of the public.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. **Zoning.** The property shall be used and developed consistent with the requirements of the R-3 Residential and COSZ Zone, except as characterized by the approved Site Plan and elevations shown in Exhibit B and C and the provisions of this agreement.
2. **Density.** Development shall not exceed 31 dwelling units, which includes 3 Affordable Housing units, as set forth in paragraph 11.
3. **Height.** Height of the structure shall not exceed three stories above existing grade and the building height requirements in the City Code.
4. **Rules & Restrictive Covenants.** Developer shall institute rules and/or restrictive covenants regarding, occupancy, nuisances, noise, number of allowed vehicles per dwelling, recreational vehicles, parking, use of the property, guests, etc.
5. **Parking.** Site shall include 45 interior parking spaces, 7 to 8 on premises exterior parking spaces, and up to 8 street parking spaces to be striped by Developer. If the site is developed with the maximum 31 dwellings, an additional 1.5 parking stalls per dwelling unit shall be provided for each of the 3 additional dwelling units.
6. **On-street parking.** Developer shall stripe on-street parking stalls along 500 North Street as per Engineering Specifications. Such parking is not reserved for specific use of the LRemington Garden Apartments.
7. **Site Plan.** The City has reviewed and approved the general configuration of the Site Plan attached hereto as Exhibit B. The project shall be constructed in accordance with Site Plan.
8. **Architecture and Building Elevations.** All exterior elevations shall be constructed with the design elements and general elevations as shown in Exhibit C. Unless otherwise approved by the City, all exteriors shall be earth tone colors.
9. **Landscaping.** All non-hard surfaced areas shall be maintained with landscaping.
10. **Lighting.** All lighting on the site shall be dark-sky complaint as per Heber City Zoning requirements.
11. **Affordable Housing.** In accordance with Heber City Code Chapter 18.102, Developer shall provide one (1) residential unit at an affordable rate to Qualified Applicants having household incomes of no more than 60% of area median income for Wasatch County and

two (2) residential unit at an affordable rate to Qualified Applicants having household incomes of no more than 80% of area median income for Wasatch County. The design and elevations of the affordable housing units shall be consistent with the other buildings in the project. Heber City, Wasatch County and Wasatch County School District employees shall have priority to the affordable housing units. Prior to issuance of any building permit within the project, Developer shall execute and record with the Wasatch County Recorder Deed Restrictions approved by the City against the three affordable housing units.

12. **Permitting.** The site shall be eligible for approval of a building permit upon final site plan approval by the planning and engineering departments.
13. **Conditions of Approval:** The Developer shall remain bound by all legally adopted Ordinances, Resolutions and policies of the City unless specifically agreed to otherwise herein.
14. **Acceptance of Improvements:** The City agrees to accept all Property improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that 1) the City's planning and engineering departments review and approve the plans for any Property improvements prior to construction; 2) Developer permits City planning and engineering representatives to inspect upon request any and all of said Property improvements during the course of construction; 3) the Property improvements are inspected by a licensed engineer who certifies that the Property improvements have been constructed in accordance with the approved plans and specifications; 4) Developer has warranted the Property improvements as required by the City planning and engineering departments; and 5) the Property improvements pass a final inspection by the City planning and engineering departments.
15. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City Ordinances and Resolutions, in force and effect on the date the City Council granted preliminary approval to Developer for the Project. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of the subdivision plat, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.
16. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process or have had the opportunity to consult with an attorney. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid,

or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by this Agreement.

17. **Default.** Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual agreement, 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 way said failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such thirty (30) day time 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 thirty (30) day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.
18. **Termination.** If the City elects to consider terminating this Agreement due to a material default of the Developer, then the City shall give to the 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. The 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 that a material 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 the Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. In addition, the City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such public meeting, the Developer does not waive any and all remedies available to the Developer at law or in equity.
19. **Remedies.**
 - a. Developer's Exclusive Remedy. Developer's sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and Heber City's obligations under this Agreement. IN NO EVENT SHALL HEBER CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.
 - b. Heber City's Remedies Upon Default. In addition to all other remedies provided for in law or equity, Heber City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer until the Default has been cured. Heber City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

20. **Entire Agreement.** This Agreement, including its Exhibits, contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and of the Developer.
21. **Time is of the essence.** In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.
22. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue for a period of five (5) years. Unless otherwise agreed between the City and the Developer, the Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.
23. **No Third-Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.
24. **Recording.** This Agreement shall be recorded with the Wasatch County Recorder as soon as reasonably practicable and no later than thirty (30) days after a binding vote of the City Council approving the Agreement. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.
25. **Notices.** Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

The City:

Heber City Manager
75 N Main Street
Heber City, UT 84032

Developer

LRemington LLC
Attn: Lisa A. Wark
1225 N. Cottage Way
Midway, UT 84049

26. **Insurance and Indemnification.** Developer shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Developer, its agents or employees pursuant to this Agreement, unless caused by the City's gross negligence or willful misconduct.
27. **Bodily Injury and Property Damage Insurance.** Developer agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) rising from or as a result of the death of any person or any accident, injury, loss or damage to any person or property directly caused by any acts done or omissions of Developer or its agents, servants, employees or contractors in connection with this Agreement, except for willful misconduct or negligent acts or omissions of the City or its elected or appointed boards, officers, agents, employees or consultants.
28. **Binding Effect.** If Developer conveys any portion of the Property or buildings to one or more owners or sub-developers, the property so conveyed shall have the same rights, privileges, and shall be subject to the same limitations and rights of the City, applicable to such properties under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.
29. **No Waiver.** Failure of any 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 at some future date any such right or any other right it may have.
30. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.
31. **Other Necessary Acts.** Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and

intent of this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

32. **Covenants Running with the Land and Manner of Enforcement.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.
33. **Amendment.** Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Property at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 32. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

[Remainder of page left intentionally blank; signatures on following page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this 25th day of Oct., 2023.

HEBER CITY:

By: Heidi Franco
Heidi Franco, Mayor

ATTEST:

Wanda Cooke
Heber City Recorder



DEVELOPER/OWNER, LREMINGTON LLC

By: Lisa A. Wark
LISA A. WARK, MANAGER

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

On this 7th day of September, 2023, personally appeared before me the above-named Owner, who duly acknowledged to me that he is the owner in fee and executed the same as such.

Alisha Wood
NOTARY PUBLIC

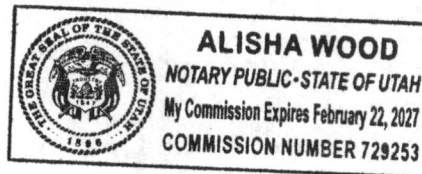


Exhibit A

Exhibit 1: Legal Description

Parcel ID:

00-0005-6924

Serial Number

OHE-1152-0-031-035

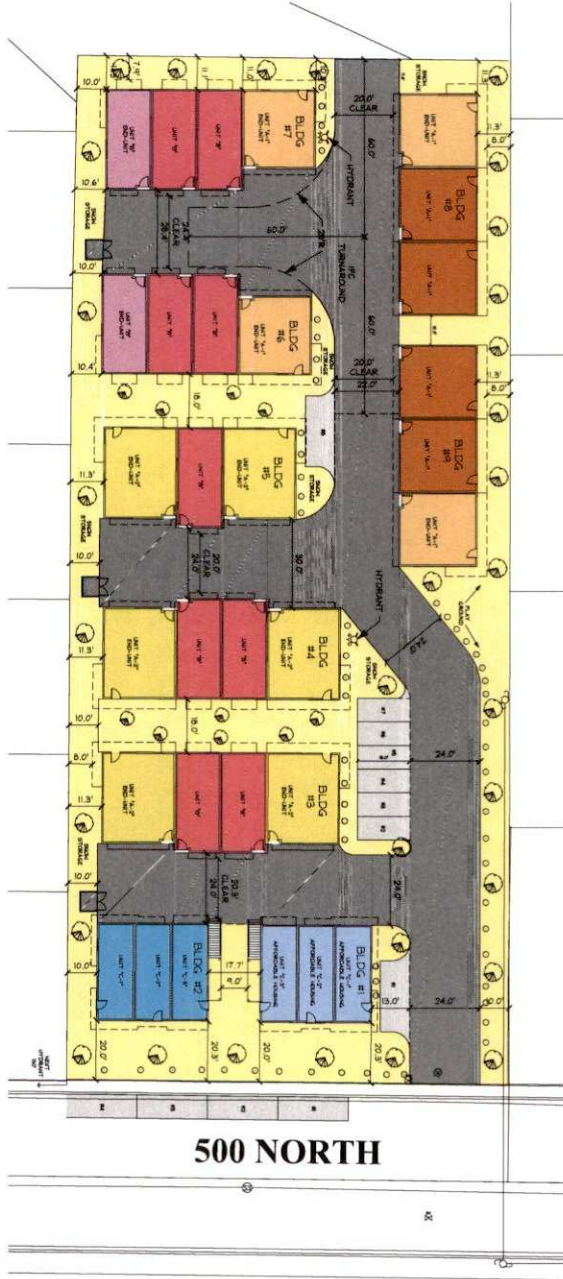
Legal Description

Beginning at a point 16 rods West and 168.25 rods South 00°48'00" West from the Northeast corner of Section 31, Township 3 South, Range 5 East, Salt Lake Base and Meridian, and running thence North 89°12'00" West 150 feet; thence North 00°48'00" East 350 feet; thence South 89°12'00" East 150 feet; thence South 00°48'00" West 350 feet to the place of beginning.

Exhibit 1a: Vicinity Map



Exhibit B



500 NORTH

LIVING SQUARE FOOTAGE	
UNIT #A-1	415 SQ. FT.
FIRST	415 SQ. FT.
SECOND	717 SQ. FT.
THIRD	798 SQ. FT.
TOTAL	1,930 SQ. FT.
UNIT #A-2 END-UNIT	415 SQ. FT.
FIRST	415 SQ. FT.
SECOND	421 SQ. FT.
THIRD	642 SQ. FT.
TOTAL	1,478 SQ. FT.
UNIT #A-2 END-UNIT	333 SQ. FT.
FIRST	333 SQ. FT.
SECOND	642 SQ. FT.
THIRD	462 SQ. FT.
TOTAL	1,437 SQ. FT.
UNIT #B	277 SQ. FT.
FIRST	277 SQ. FT.
SECOND	598 SQ. FT.
THIRD	608 SQ. FT.
TOTAL	1,483 SQ. FT.
UNIT #C	271 SQ. FT.
FIRST	271 SQ. FT.
SECOND	593 SQ. FT.
THIRD	598 SQ. FT.
TOTAL	1,462 SQ. FT.
UNIT #C-1	711 SQ. FT.
TOTAL	711 SQ. FT.
UNIT #C-2	748 SQ. FT.
TOTAL	748 SQ. FT.
UNIT #C-3	793 SQ. FT.
TOTAL	793 SQ. FT.

PARKING	
STREET PARKING SPACES	46
STREET PARKING SPACES	9
STREET PARKING SPACES	4

PROJECT SQUARE FOOTAGE			
UNIT	SOFT	TOTAL SOFT	TOTAL FOOTPRINT
UNIT #A-1	1,497 SQ. FT.	6,109 SQ. FT.	2,438 SQ. FT.
UNIT #A-2 END-UNIT	1,498 SQ. FT.	6,192 SQ. FT.	2,438 SQ. FT.
UNIT #A-2 END-UNIT	2,117 SQ. FT.	12,102 SQ. FT.	4,428 SQ. FT.
UNIT #B	1,484 SQ. FT.	2,898 SQ. FT.	1,504 SQ. FT.
UNIT #C	711 SQ. FT.	711 SQ. FT.	481 SQ. FT.
UNIT #C-1	748 SQ. FT.	748 SQ. FT.	481 SQ. FT.
UNIT #C-2	793 SQ. FT.	793 SQ. FT.	481 SQ. FT.
UNIT #C-3	793 SQ. FT.	793 SQ. FT.	481 SQ. FT.
PROJECT TOTAL	46,814 SQ. FT.	46,814 SQ. FT.	8,196 SQ. FT.
LANDSCAPING	3,738 SQ. FT.		307.28

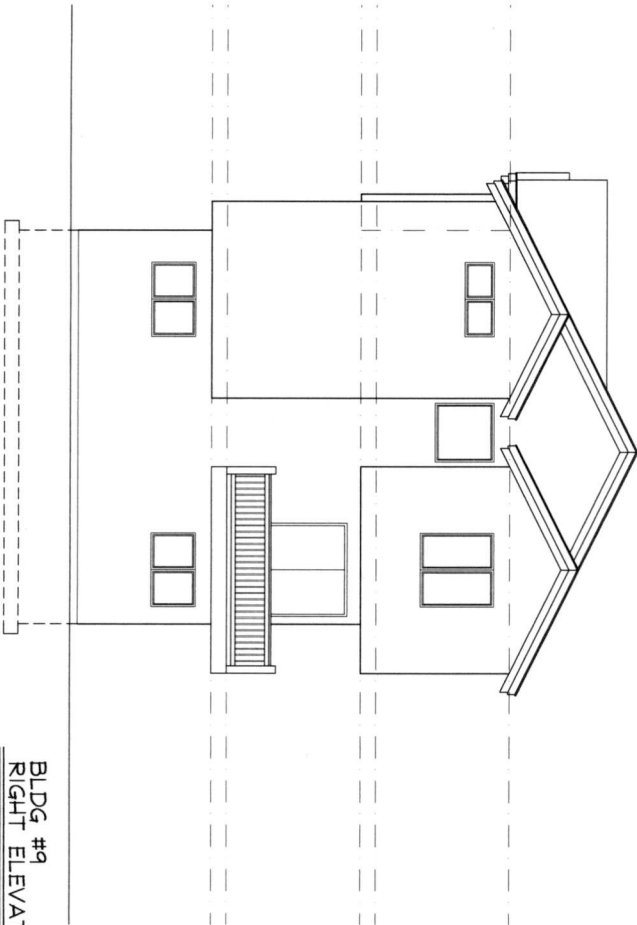
PRESENTATION
SITE / LANDSCAPE PLAN
SCALE: 1" = 20'-0"

PRELIMINARY DRAWINGS ONLY
NOT FOR CONSTRUCTION OR PERMITS

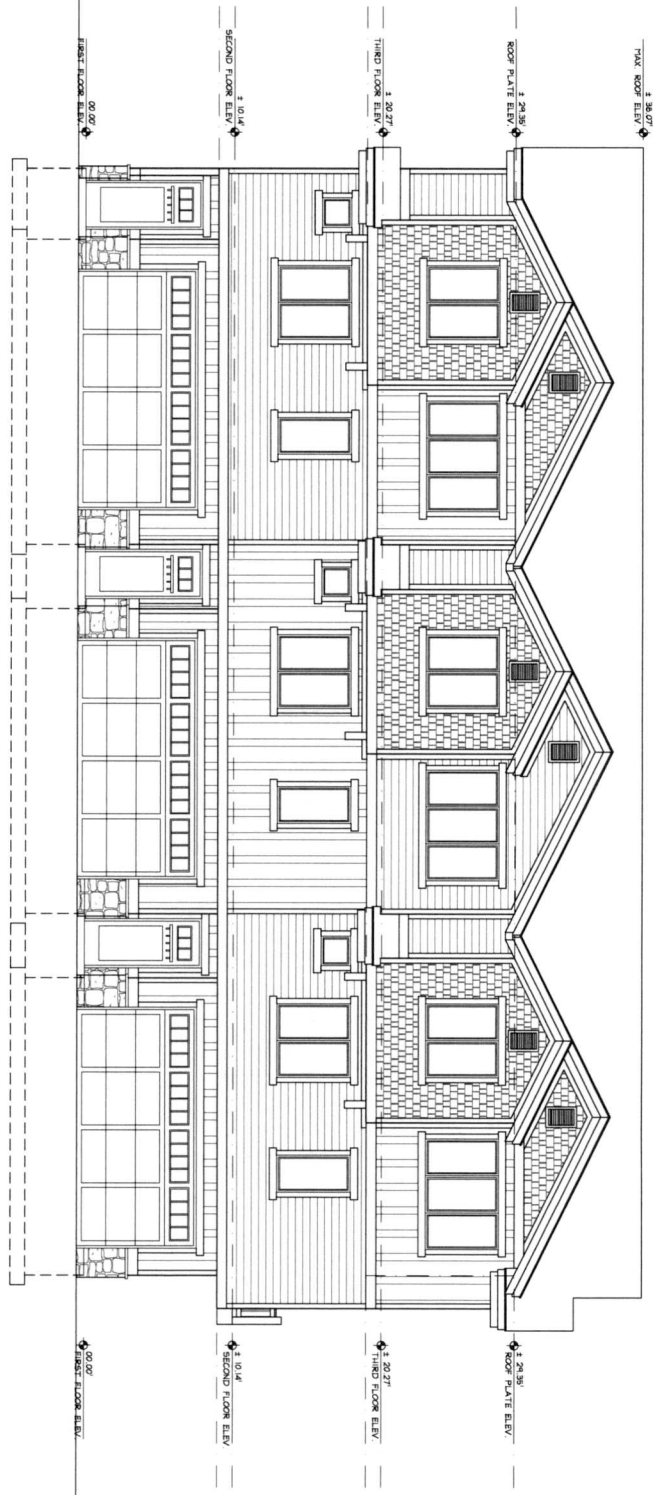
CALL BEFORE YOU DIG
UTAH STATE OFFICE
UTILITY INFORMATION CENTER
www.utahdigs.org

A
1 of 2

Exhibit C



BLDG #9
RIGHT ELEVATION
SCALE: 1/4"=1'-0"



BLDG #9
FRONT ELEVATION
SCALE: 1/4"=1'-0"

SEE SHEET RA-2 FOR ADD. NOTES

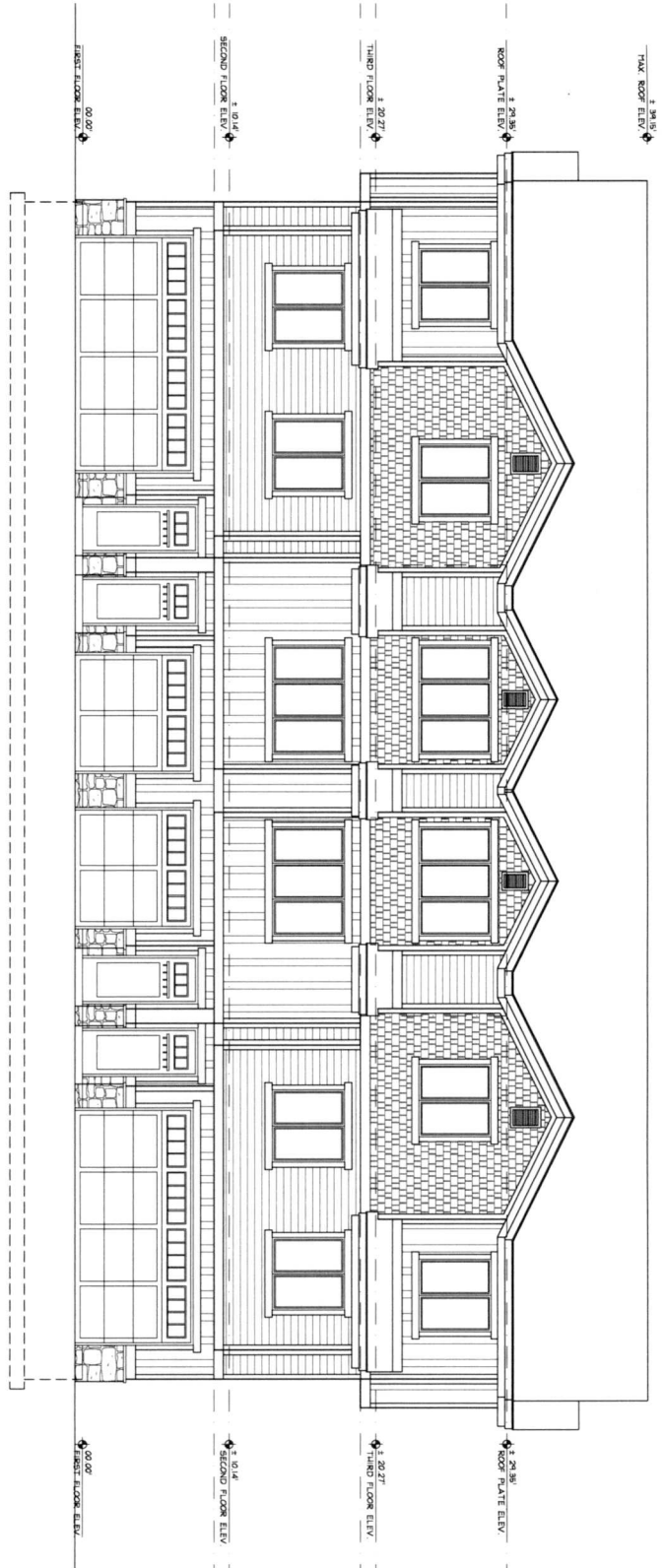
PRELIMINARY DRAWINGS ONLY
NOT FOR CONSTRUCTION



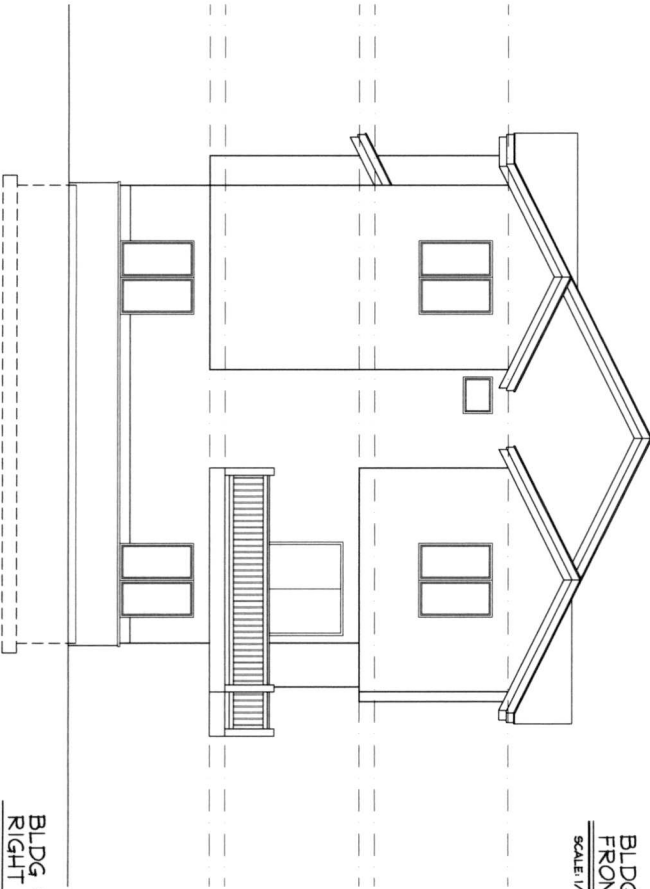
PROJECT #
2105
DATE PRINTED
03/30/2023

Craig Kitterman & Associates Architects
1079 E. Murray-Holladay Road Holladay, Utah 84117 Office: 801-270-8606

L. REMINGTON TOWNHOMES
160 E. 500 N. HEBER, UTAH



BLDG #4
FRONT ELEVATION
SCALE 1/4"=1'-0"



BLDG #4
RIGHT ELEVATION
SCALE 1/4"=1'-0"

SEE SHEET RA-3 FOR ADD. NOTES

APPLICABLE REQUIREMENTS ONLY.
NOT BEARDED FOR CONSTRUCTION.

PROJECT # 21-05
DATE PRINTED 09/20/2021

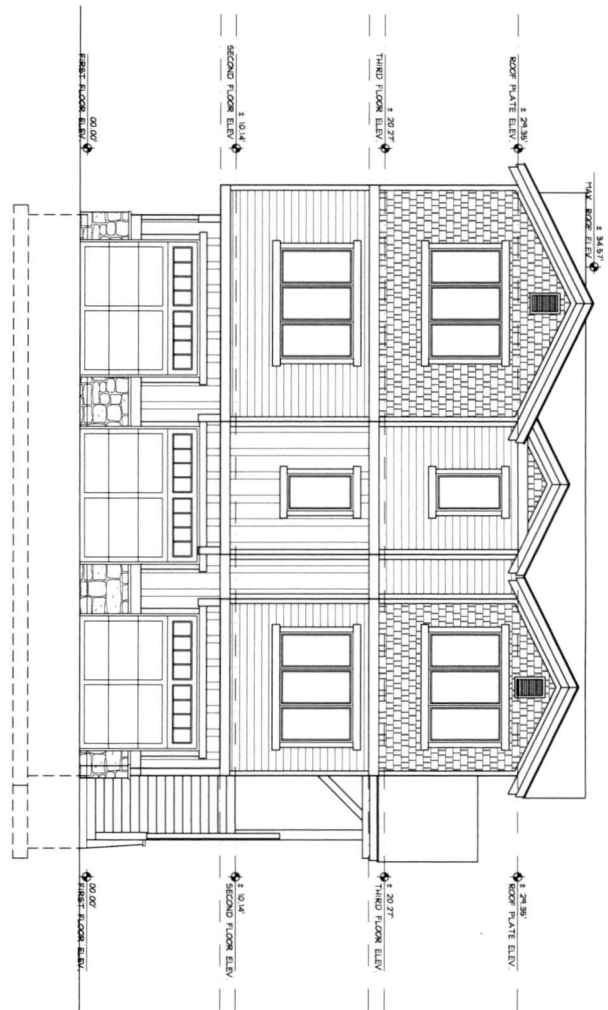
Craig Kitterman & Associates Architects

1079 E. Murray-Holladay Road Holladay, Utah 84117 Office: 801-270-8606

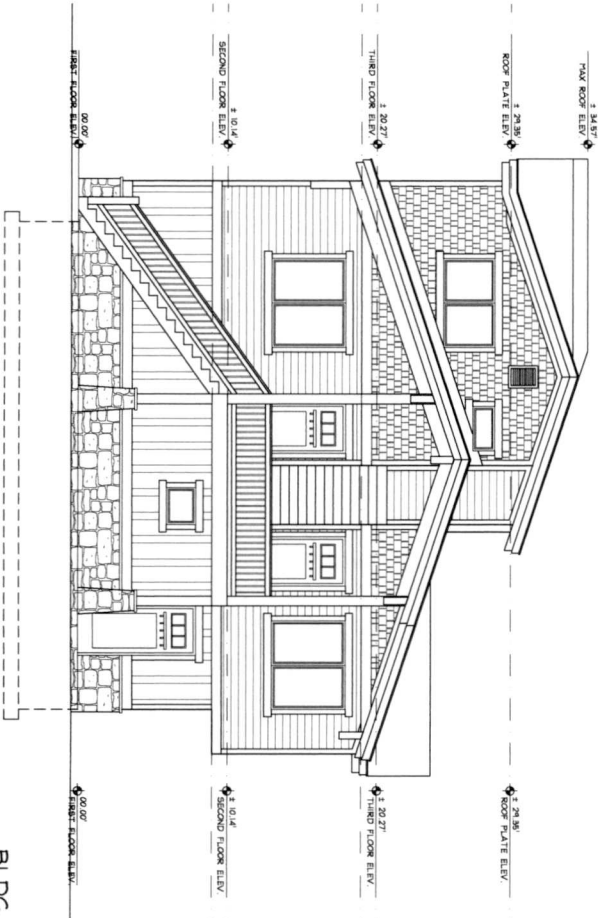
L. REMINGTON TOWNHOMES

160 E. 500 N. HEBER, UTAH





BLDG #1
FRONT ELEVATION
SCALE: 1/4"=1'-0"



BLDG #1
RIGHT ELEVATION
SCALE: 1/4"=1'-0"

SHEE SHEET #A-2 FOR ADD. NOTES

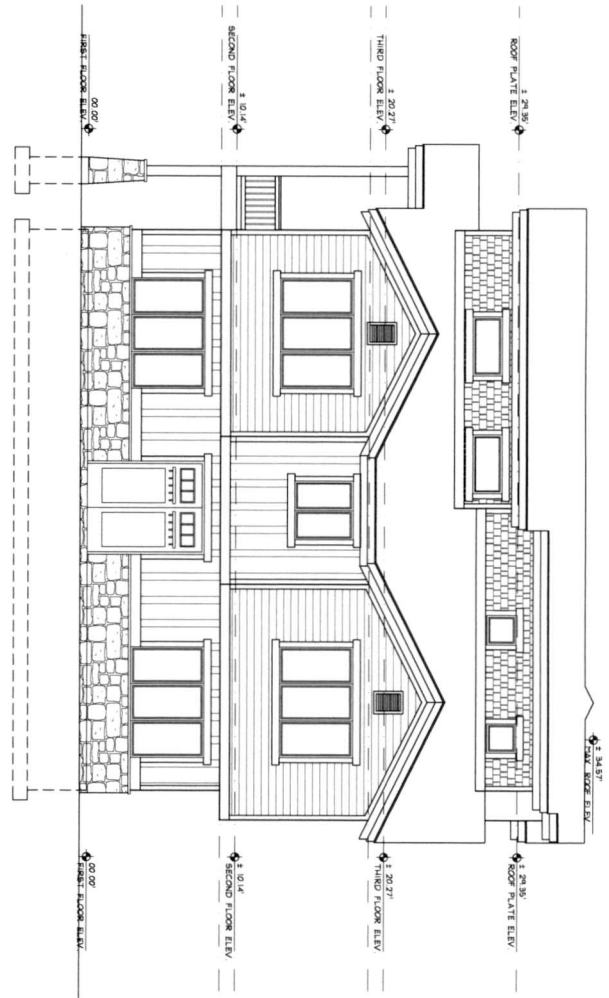
FOR SELECTION OF FINISHES, SEE SHEET #A-2 FOR ADD. NOTES

PROJECT # 2146
DATE PRINTED 03/10/2011

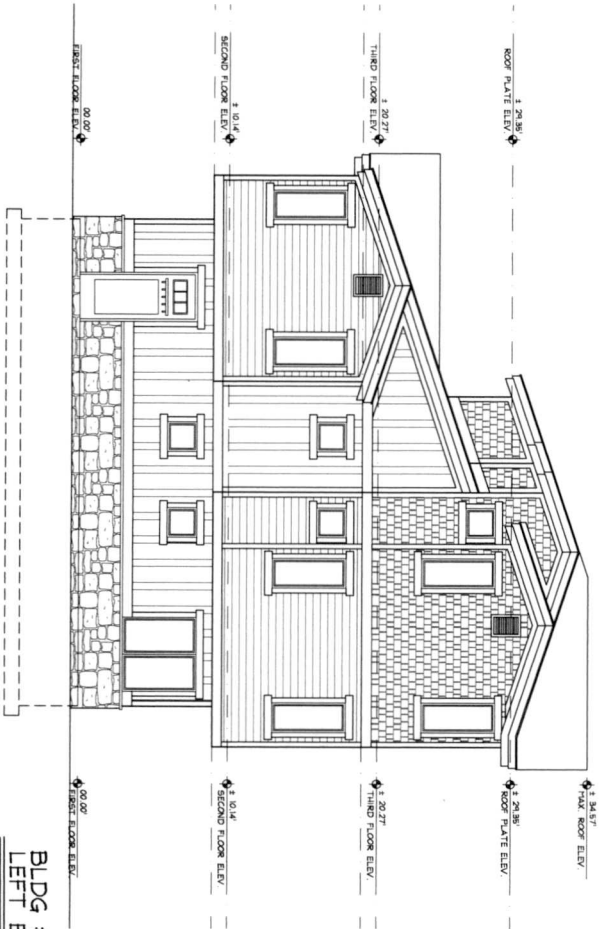
Craig Kitterman & Associates Architects
1079 E. Murray-Holladay Road Holladay, Utah 84117 Office: 801-270-8606

L. REMINGTON TOWNHOMES
160 E. 500 N. HEBER, UTAH





BLDG #1
REAR ELEVATION
SCALE: 1/4"=1'-0"



BLDG #1
LEFT ELEVATION
SCALE: 1/4"=1'-0"

SEE SHEET SA-3 FOR ADD. NOTES

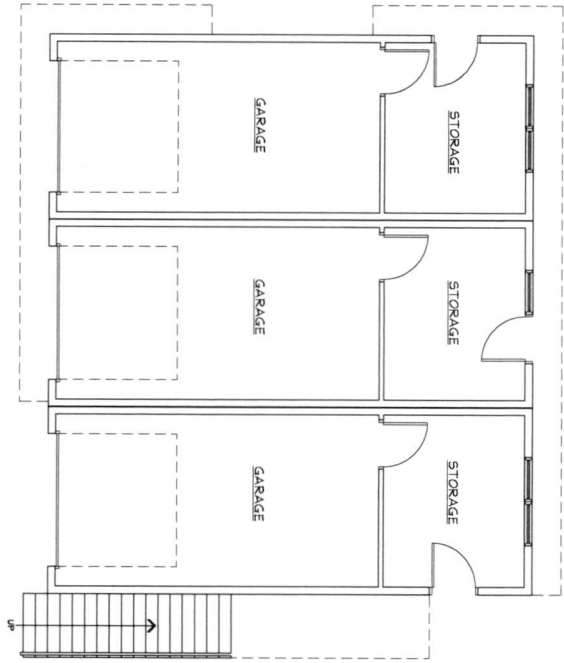
GENERAL NOTES:
1. DRAWING IS FOR CONSTRUCTION ONLY.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

PROJECT # 2140
DATE PRINTED 03/10/2013

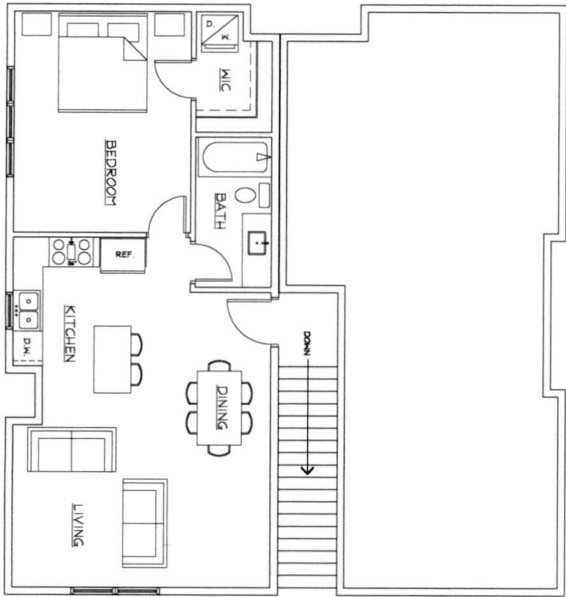
Craig Kitterman & Associates Architects
1079 E. Murray-Holladay Road Holladay, Utah 84117 Office: 801-270-8606

L. REMINGTON TOWNHOMES
160 E. 500 N. HEBER, UTAH

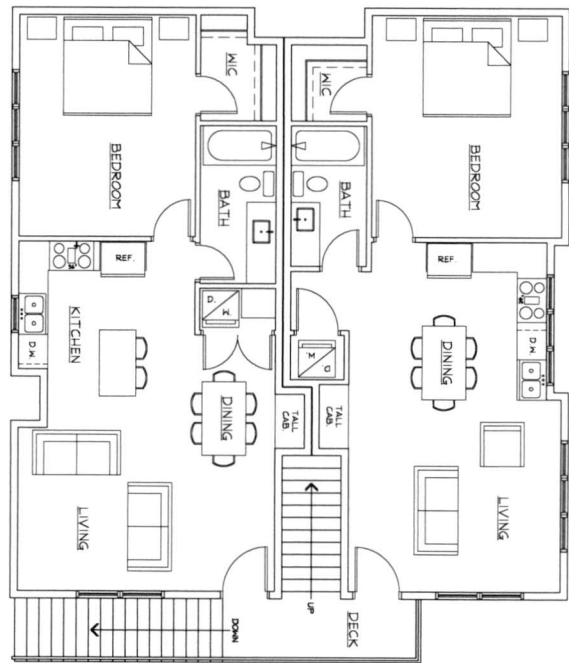




BLDG #1
FIRST FLOOR PLAN
SCALE 1/4"=1'-0"



BLDG #1
SECOND FLOOR PLAN
SCALE 1/4"=1'-0"



BLDG #1
THIRD FLOOR PLAN
SCALE 1/4"=1'-0"

SEE SHEET MA-3 FOR ADD. NOTES

PERMITTING DRAWINGS ONLY
NOT TO BE USED FOR CONSTRUCTION