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RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
MIDVALE CITY  
7505 S HOLDEN ST  
MIDVALE UT 84047  
BY: MBP, DEPUTY - MA 28 P.

When recorded, return to:

Midvale City  
7505 S. Holden Street  
Midvale City, UT 84047  
Attn: Midvale City Recorder

**DEVELOPMENT AGREEMENT  
(NORTH UNION APARTMENTS PROJECT)  
Midvale City, Utah**

THIS DEVELOPMENT AGREEMENT (this "Development Agreement") is entered into as of this ~~30<sup>th</sup>~~<sup>31<sup>st</sup></sup> day of ~~January~~<sup>April</sup>, 2019 by and between Midvale Creekview Holdings, LLC, a Utah limited liability company ("Developer"), and Midvale City Corporation, a Utah municipal corporation ("Midvale City" or "City"). Developer and City are sometimes referred to herein, individually, as a "Party," and collectively, as the "Parties."

A. Property. Developer is the owner of certain real property within Midvale City (as more particularly defined below, the "Property").

B. North Union Apartments Project. Developer intends to construct on the Property a mixed-use, multi-family and commercial project known as the North Union Apartments (as more particularly defined below, the "Project").

C. Zoning. Property is zoned, pursuant to the City's Zoning Ordinance, as Regional Commercial with Residential Overlay Zone (hereinafter referred to as "RCRO Zone"). This zone establishes the procedural and substantive requirements for approval by the City for development on the Property. Section 17-7-12.1.8 of the Midvale City Municipal Code requires the Property to be developed in accordance with this Agreement, including the development plans contained herein.

D. Conditional Use Permit and Preliminary Site Plan. The Midvale City Planning Commission approved a Conditional Use Permit and Preliminary Site Plan for the Project on November 14, 2018. The findings and conditions of approval of the Conditional Use Permit and Preliminary Site Plan are set forth in the letter from the City to Developer attached as **Exhibit B**. The approved Preliminary Site Plan for the Project relating to these conditions is attached as **Exhibit C** (the "Preliminary Site Plan").

E. State Authority. Pursuant to Section 10-9a-102 of the Utah Code, Midvale City is authorized to enter into development agreements as provided therein and, as a legislative act, desires to enter into this Development Agreement in order to obtain the benefits for the City provided herein.

NOW THEREFORE, in consideration of the above recitals, terms of this Development Agreement, and the mutual benefits to be derived herefrom, the Parties agree as follows:

## **Article 1 The Project**

1.1 Legal Description of Property. The property owned by Developer that is covered by this Agreement consists of approximately 3.4 acres of land located at 7205 South 900 East, between North Union Avenue, South Union Avenue, 900 East, and the Jordan Salt Lake City Canal, and is more fully described in **Exhibit A** (the "Property").

1.2 Description of Project. The Developer's planned project for the Property consists of replacing the existing office building complex and commercial space with a mixed-use building containing no more than 227 residential units in four stories of apartments and one- to two-story townhomes; approximately 7500 square feet of leasable commercial tenant space; a two-story parking garage containing 372 parking stalls; indoor and outdoor recreation amenity space; 20 surface-level parking stalls; a pedestrian plaza between the building and 900 East; a pedestrian connection to the north across North Union Avenue; and landscaping. These project improvements are shown and described on the Preliminary Site Plan. Notwithstanding anything contained to the contrary herein, the type and number of residential units in the building may be revised, not to exceed 227 total units, provided Developer demonstrates to City that Developer is maintaining the required number of parking stalls for the number and type of residential units in the Project.

### 1.3 Project Approval.

1.3.1 Approval. Pursuant to the provisions of Title 17 of the Midvale Municipal Code and the RCRO Zone (Chapters 17-7-12 and 17-7-12.1 of the Midvale City Municipal Code) in effect as of the date of this Agreement (together, the "Zoning Ordinance"), the Project has been approved by the City, subject to the provisions of the Zoning Ordinance in effect on the date hereof, the Conditional Use Permit, the Preliminary Site Plan and Preliminary Site Plan Conditions, and this Agreement. City Staff approval of the Final Site Plan for the Project shall be required to ensure all conditions of the Preliminary Site Plan and Conditional Use Permit approvals are satisfied before construction may commence on the Project. All construction and improvements for the Project shall follow the approved Final Site Plan and this Agreement.

1.3.2 Vested Rights. The City acknowledges and agrees that Developer has the vested right to develop and construct the Project in accordance with the provisions of the Zoning Ordinance in effect on the date hereof, the Preliminary Site Plan and Preliminary Site Plan Conditions, the Conditional Use Permit, and this Agreement, subject to City Staff approval of a Final Site Plan for the Project, including proof of water and sewer availability for the Project from the service providers for this Property; provided, however, that the Developer acknowledges and agrees that the construction and operation of the Project is subject to all Applicable Laws as defined in Section 3.3 of this Agreement.

1.3.3 Reserved Legislative Powers and Zoning Authority of the City. Notwithstanding the provisions of Section 1.3.2, 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 that cannot, as a matter of law, be limited by contract. The City further agrees that notwithstanding the retained power of the City to enact legislation under its police powers, such legislation shall only be applied to modify the vested rights of Developer under the terms of this Agreement if such legislation is based upon policies, facts, and circumstances that are sufficient to satisfy the compelling countervailing public interest exception to the vested rights doctrine of the State of Utah. The City further agrees that any such proposed legislative changes that may affect the vested rights of the Project shall be of general application to all development activity within the City. The City further agrees that unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed legislative change that may modify vested rights under this Agreement under the compelling, countervailing public interest exception to the vested rights doctrine.

1.3.4 Amendments to Preliminary and Final Site Plans. In the event Developer desires in the future to amend the Preliminary and Final Site Plans in any respect, and if the City approves of such amendment in accordance with all Applicable Laws, including without limitation, the Zoning Ordinance in effect as of the date of such amendment, the Parties may enter into an agreement that approves the substitution of the new approved Preliminary and Final Site Plans to replace the original Preliminary and Final Site Plans. Notwithstanding anything contained herein, Developer shall have no vested right to such amendment as provided above, but rather the approval by the City of any such amendment to the Preliminary and Final Site Plans shall be subject to Developer's compliance with the then Applicable Laws, including without limitation the then existing Zoning Ordinance.

## **Article 2 Conditions of Master Planned Development**

2.1 Development Review Process. Prior to any construction on the Property, the Developer shall obtain the following development approvals:

2.1.1 Final Site Plan Submittal and Approval. The Developer shall prepare and submit a Final Site Plan for the Project that is consistent with the approved Preliminary Site Plan, Preliminary Site Plan Conditions, and Conditional Use Permit included in **Exhibits B and C**. The Final Site Plan shall be prepared in accordance with this Agreement, the Zoning Ordinance, and all requirements of the City Engineer, Fire Marshal, and Building Official.

2.1.2 Water Letter. An up-to-date letter from Midvale City indicating its ability to provide potable water to the Project.

2.1.3 Sewer Letter. An up-to-date letter from Midvalley Improvement District indicating its ability to provide sewer service to the Project.

2.1.4 Pedestrian Connection. A binding agreement with the property owner of the shopping center to the north allowing pedestrian connections to and across its property to support pedestrian activity between the residential and commercial developments.

2.1.5 East Jordan Irrigation Company Approval. An up-to-date letter from East Jordan Irrigation Company or its assigns indicating its approval and any associated conditions of improvements adjacent to or along the East Jordan Canal.

2.2 Adherence to Final Site Plan. Developer agrees that it will construct the Project as shown on the Final Site Plan and in accordance with the Preliminary Site Plan, Preliminary Site Plan Conditions, and Conditional Use Permit.

2.3 Property Consolidation and Right-of-Way Dedication. Prior to the commencement of any development activity on the Property, the Property shall be consolidated into a single parcel and the right-of-way shown on the Final Site Plan shall be dedicated to Midvale City, if applicable. Developer agrees to create the recordable documents for this to occur. These documents shall be reviewed and approved by Midvale City before they are recorded in the Salt Lake County Recorder's Office.

2.4 Security for Off-Site and On-Site Public Improvements. The Developer agrees to complete all required off-site and on-site public improvements related to the Project in accordance with the approved construction/civil plans submitted and reviewed as part of the Final Site Plan for the Project. Developer shall guarantee such improvements through one or more infrastructure performance bonds consistent with the specific entity's infrastructure bonding policies and Utah Law. These bonds shall provide the financial security for the public improvements including, but not limited to, water, sewer, public sidewalk and street improvements, surface drainage, and other public improvements. Infrastructure performance bonds shall be in place prior to any construction occurring on the Property.

2.5 Agreement to Comply with Specific Conditions of Approval.

2.5.1 Fencing and Screening. Developer agrees that:

2.5.1.1 Prior to the issuance of the first Certificate of Occupancy, all trash collection and recycling areas; service areas; mechanical equipment; and loading docks shall be screened on all sides so that no portion of such areas is visible from public streets and alleys and adjacent properties.

2.5.1.2 Prior to the issuance of the first Certificate of Occupancy, a sight-obscuring, visual barrier fence conforming to the fence requirements of the Zoning Ordinance, Preliminary Site Plan, Preliminary Site Plan Conditions, and Conditional Use Permit shall be installed along the boundary between the Project and the adjacent single family residence northwest of the Project unless the single family residential use of the adjacent property is abandoned, in which case no fence shall be permitted along said boundary.

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CO. RECORDER

2.5.1.3 Prior to the issuance of the first Certificate of Occupancy, a non-sight-obscuring barrier fence conforming to the fence requirements of the Zoning Ordinance, Preliminary Site Plan, Preliminary Site Plan Conditions, Conditional Use Permit, and East Jordan Irrigation Company Approval shall be installed along the boundary between the Project and the East Jordan Canal east of the Project. This requirement may be waived, at the City's sole discretion, if a formal agreement between the City and East Jordan Irrigation Company is reached to allow public use of the East Jordan Canal property.

2.5.2 Landscaping, Recreational Amenities, and Public Sidewalk Improvements. Developer agrees that:

2.5.2.1 Subject to Sections 2.5.2.2 and 2.5.2.3, all landscaping, recreational amenities, and public sidewalk improvements must be installed and in working order in accordance with the Final Site Plan prior to the issuance of the first Certificate of Occupancy with respect to a building in the Project. Upon Developer's completion of the landscaping, recreational facilities, and public sidewalk improvements, the City shall inspect the improvements for compliance with the Final Site Plan and accept such improvements upon a finding of compliance. Developer shall warrant all the landscaping, recreational facilities, and public sidewalk improvements for twelve months from the date of City acceptance. A final inspection of the landscaping, recreational amenities, and public sidewalk improvements shall occur prior to the expiration of the twelve-month warranty period. It shall be Developer's responsibility to schedule such inspection and to replace or repair any landscaping, recreational facilities, or public sidewalk improvements that are found to be damaged or defective prior to expiration of the twelve-month warranty period.

2.5.2.2 If seasonal conditions or site construction issues make the completion of the landscaping, recreational facilities, and public sidewalk improvements unfeasible at the time Developer requests the first Certificate of Occupancy, Developer shall guarantee the completion of such improvements by providing an irrevocable letter of credit or completion bond for such purpose. The amount of such letter of credit or bond shall be in the amount that the City reasonably estimates will be necessary to purchase the materials and to complete the landscaping and recreational amenities.

2.5.2.3 In the event Developer delivers a letter of credit or completion bond with the City pursuant to Section 2.5.2.2, then the City will issue the requested Certificate of Occupancy and the landscaping, recreational amenities, and public sidewalk improvements shall be

completed within nine months of the issuance of such Certificate of Occupancy, but no later than May 31<sup>st</sup> of the following year, whereupon the letter of credit or completion bond shall be deemed terminated and returned to Developer. If Developer fails to complete the landscaping, recreational facilities, and public sidewalk improvements within the allotted time frame, upon twenty (20) days' written notice to Developer, the City may draw on the letter of credit or bond to the extent necessary to complete the landscaping, recreational facilities, and public sidewalk improvements. The use of the above-described funds shall be the City's sole remedy in the event of any failure by Developer to complete the landscaping, recreational facilities, and public sidewalk improvements for the Project.

2.5.2.4 "Public Sidewalk Improvements" shall be understood to include, without limitation, concrete, street trees, trees wells/grates, benches, and other site furnishings provided by Developer and located in the public right-of-way

2.5.3 Shared Parking Between Commercial and Residential Uses. Developer shall comply with all shared parking requirements for the Project as set forth in the Zoning Ordinance, Preliminary Site Plan, Preliminary Site Plan Conditions, and Conditional Use Permit.

2.5.4

### **Article 3 General Terms and Conditions**

3.1 Rights of Access. For the purpose of assuring compliance with this Development Agreement, upon reasonable advanced notice to Developer, representatives of the City shall have the right of access to the Property and all buildings and structures thereon without charges or fees, during the period of construction for the purposes of this Agreement. Such representatives shall comply with all safety rules of Developer and its general contractor, including signing a standard construction area release. In addition, upon reasonable advanced notice to Developer, the City shall have the right to enter the Property or any buildings or improvements thereon at all reasonable times for the purpose of exercising the City's remedies, including cure rights contained in this Agreement and for the construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property.

3.2 Construction of Agreement. This Development Agreement shall be constructed and interpreted to ensure that the Developer complies with the requirements and conditions of the Preliminary Site Plan, Preliminary Site Plan Conditions, Conditional Use Permit, Final Site Plan, and the Zoning Ordinance.

3.3 Applicable Laws. Where this Development Agreement refers to laws of general applicability to the Project, that language shall be deemed to refer to ordinances which apply

generally to other similarly situated, subdivided properties within Midvale City and any other applicable laws, rules, or regulations which apply to Developer's ownership, development, and use of the Property, whether or not in existence on the date hereof, including without limitation any such ordinances, rules, or regulations in existence on the date hereof that are subsequently amended or deleted (individually and collectively, the "Applicable Laws").

3.4 Agreements to Run with the Land. This Development Agreement shall be recorded against the Property. The agreements contained herein shall be deemed to run with the land and shall be binding on and shall inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Project or the Property.

3.5 Release of Developer. In the event of a transfer of the Property, Developer shall obtain an assumption by the transferee of the Developer's obligations under this Development Agreement and, in such an event, the transferee shall be fully substituted as Developer under this Development Agreement and the Developer executing this Development Agreement shall be released from any further obligations with respect to this Development Agreement.

3.6 Duration; Survival of Developer's Obligations and Rights. The term of this Development Agreement shall commence on the date this Development Agreement is executed by both Parties and shall continue for a period of five (5) years unless either terminated as provided herein or by agreement by both parties. Notwithstanding the foregoing and subject to applicable laws, Developer's rights, remedies, obligations, and responsibilities under this Development Agreement shall survive and continue beyond termination of this Development Agreement as to site plans that have been given final approval and have been recorded and for all offsite or other improvements that Developer was obligated to construct or make in connection with or as a condition of such final approval.

3.7 Notices. Any notice, confirmation or other communication hereunder shall be given in writing by hand delivery (receipted), nationally-recognized, overnight courier service, United States mail, or facsimile (confirmed) to the following addresses or numbers:

Midvale City:

Midvale City Manager  
MIDVALE CITY CORPORATION  
7505 S. Holden Street  
Midvale City, UT 84047  
FAX: (801) 567-0518

Midvale City Community Development Director  
MIDVALE CITY CORPORATION  
7505 S. Holden Street  
Midvale City, UT 84047  
FAX: (801) 567-0518

Midvale City Attorney  
MIDVALE CITY CORPORATION  
7505 S. Holden Street  
Midvale City, UT 84047  
FAX: (801) 567-0518

Developer:

Midvale Creekview Holdings, LLC  
c/o RW Midvale Creekview, LLC  
4655 S. 2300 E., Ste. 205  
Salt Lake City, UT 84117

With a copy to:

CCA Acquisition Company, LLC  
Attn: Steven Usdan  
5670 Wilshire Boulevard, Suite 1250  
Los Angeles, CA 90036

And:

Cheney Law Group  
Brian C. Cheney  
2825 E. Cottonwood Pkwy., Ste. 500  
Salt Lake City, UT 84121

Any Party hereto may change its address by notice given to the other Parties in the manner required for other notices above.

3.8 Savings Clause; Severability. If any provision of this Development Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remaining provisions of this Development Agreement, or the application of such provision to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby or considered invalid. If any part or provision of this Development Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Development Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant, or other provision of this Development Agreement 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.

3.9 No Third-Party Rights. This Development Agreement does not create any third-party beneficiary rights. It is specifically understood by the Parties that: (a) the development of the Property under this Development Agreement is a private development, (b) the City has no interest in or responsibilities for or duty to third parties concerning any improvements on the



Property, and (c) Developer shall have full power over and exclusive control of the Property subject to the obligations of Developer under this Development Agreement and all Applicable Laws.

3.10 Integration. Except as otherwise specified and agreed in writing, this Development Agreement contains the entire agreement between the Parties 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. By this reference, the foregoing recitals and the attached exhibits are incorporated in and made a part of this Development Agreement by this reference.

3.11 Further Assurances. The Parties to this Development Agreement agree to reasonably cooperate with each other in effectuating the terms and conditions of this Development Agreement and, further, agree to execute such further agreements, conveyances, and other instruments as may be required to carry out the intent and purpose of this Development Agreement.

3.12 Waiver: Time of Essence. No failure or delay in exercising any right, power, or privilege hereunder on the part of any Party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the Party making the waiver. Time is of the essence of this Development Agreement.

3.13 Obligations and Rights of Mortgage Lenders. Developer may finance the Property and may execute one or more mortgages, deeds of trust, or other security arrangements with respect to the Property and may assign this Development Agreement to a holder of any such financial instrument without prior written notice to or consent of the City. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Development Agreement by virtue of such assignment to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Development Agreement which pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to all requirements and obligations of this Development Agreement and any pro rata claims for payments or charges against the Property, or such portion thereof, deed restrictions, or other obligations which accrue prior to the time such holder comes into possession. Nothing in this Development Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Development Agreement, and, as would be the case in any assignment, the purchaser of the Property from the holder shall be subject to all of the terms and conditions of this Development Agreement, including the obligation to complete all required amenities and improvements. Additionally, nothing herein shall be so construed as to prohibit a mortgage or deed of trust holder from providing security for the standard installation of development improvements pursuant to the Applicable Laws.

3.14 Disputes. In the event that a dispute arises in the interpretation or administration of this Development Agreement or if the default mechanism contained herein shall not resolve a default under this Development Agreement, then prior to taking any action to terminate this Development Agreement every continuing dispute, difference, and disagreement shall be referred to a single mediator agreed upon by the Parties. If no single mediator can be agreed upon, a mediator or mediators shall be selected from the mediation panel maintained by the United States District Court for the District of Utah in accordance with any designation process maintained by such court. The Parties shall mediate such dispute, difference, or disagreement in a good faith attempt to resolve such dispute, difference, or disagreement. The mediation shall be non-binding. Notwithstanding the foregoing, the Parties agree that the City retains the right to exercise enforcement of its police powers in the event Developer is in direct violation of a provision of this Development Agreement or of any Applicable Law.

3.15 Institution of Legal Action; Restriction on Remedies. In the event that the mediation does not resolve a dispute, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Development Agreement or to enjoin any threatened or attempted violation of this Development Agreement, or to terminate this Development Agreement; provided, however, the Parties agree that in no event shall either Party seek or be entitled to money damages for any breach, default or violation of this Development Agreement. Legal actions shall be instituted in the Third Judicial District Court of the County of Salt Lake, State of Utah.

3.16 Counterparts. This Development Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.17 Costs and Expenses; Attorneys' Fees. Except as otherwise specifically provided herein, each Party shall bear its own costs and expenses (including legal and consulting fees) in connection with this Development Agreement and the negotiation of all agreements and preparation of documents contemplated by this Development Agreement. In the event of a breach or dispute arising under this Development Agreement, the non-breaching Party or the Party prevailing in such dispute shall be entitled to recover from the breaching or non-prevailing Party its costs, including, without limitation, court costs, reasonable attorneys' fees, expert witness fees, fax, copy, telephone, and other incidental charges.

3.18 Temporary Land Use Regulations. The Project shall be excluded from any moratorium or other temporary land use regulations adopted pursuant to Utah Code Ann. § 10-9a-504, unless such a temporary land use regulation is found on the record by the City Council to be necessary to avoid jeopardizing a compelling, countervailing public interest.

IN WITNESS WHEREOF, this Development Agreement has been executed by Midvale City Corporation, acting by and through the Midvale City Council, and by a duly authorized representative of Developer as of the above stated date.

*[signature and acknowledgment pages follow]*

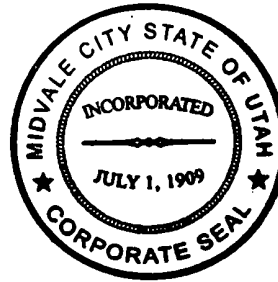
CITY:

MIDVALE CITY CORPORATION

By: *Robert M. Hale*  
Robert M. Hale, Mayor

ATTEST:  
*Rori L. Andreason*  
Rori L. Andreason, MMC  
City Recorder

APPROVED AS TO FORM:  
*Lisa A. Garner*  
Lisa A. Garner  
City Attorney



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

On the 14 day of May, 2019, personally appeared before me Robert M. Hale, who being by me duly sworn did say he is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.


*Rori L. Andreason*  
Notary Public  
Residing at: Midvale, UT

My Commission Expires:  
11-01-2020




DEVELOPER:

MIDVALE CREEKVIEW HOLDINGS, LLC,  
a Utah limited liability company

By:   
Its: Authorized Party

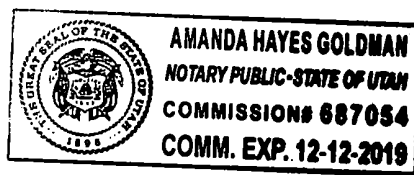
STATE OF UTAH )  
 : ss  
COUNTY OF SALT LAKE )

On the 30 day of April, 2019, personally appeared before me Adam Davis, who being by me duly sworn did say he/she is the Authorized Party of Midvale Creekview Holdings, LLC, a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.

  
Notary Public  
Residing at: Salt Lake City

My Commission Expires:  
12-12-2019

NOTARY SIGNATURE AND SEAL



## EXHIBIT A

### Legal Description of the Property

That certain real property located in Salt Lake County, Utah, as more particularly described as follows:

Parcel 1: (22-29-130-007 / 7205 South 900 East)

COMMENCING 27.4 RODS EAST AND 73.4 RODS SOUTH FROM THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 16 RODS; THENCE SOUTH 66° EAST 3 RODS; THENCE NORTH 1° EAST TO A POINT DUE EAST OF BEGINNING; THENCE WEST TO BEGINNING.

LESS AND EXCEPTING THAT PORTION LYING WITHIN SOUTH UNION AVENUE.

Parcel 2: (22-29-130-008 / 7205 South 900 East)

COMMENCING 27.4 RODS EAST AND 89.4 RODS SOUTH AND SOUTH 66° EAST 3 RODS FROM THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 66° EAST 45.64 FEET, MORE OR LESS; THENCE NORTH 16.2 RODS; THENCE WEST 31.6 FEET, MORE OR LESS TO A POINT DUE NORTH FROM BEGINNING, THENCE SOUTH 1° WEST TO BEGINNING.

LESS AND EXCEPTING THAT PORTION WHICH LIES WITHIN SOUTH UNION AVENUE.

Parcel 3: (22-29-130-009 / 913 East South Union Avenue)

BEGINNING AT A POINT ON THE NORTH LINE OF SOUTH UNION AVE. WHICH IS SOUTH 1502.38 FEET AND WEST 745.19 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ALSO SOUTH 66°14'47" EAST 224.84 FEET AND NORTH 6°30'39" EAST 34.55 FEET FROM THE MONUMENT IN THE INTERSECTION OF NINTH EAST STREET AND SOUTH UNION AVE., AND RUNNING THENCE NORTH 66°14'47" WEST 45.86 FEET ALONG SAID NORTH LINE OF SOUTH UNION AVE. TO THE WEST DEED LINE OF THE SCHINDLER PROPERTY AS DESCRIBED IN THAT CERTAIN QUIT CLAIM DEED RECORDED MARCH 14, 1980 AS ENTRY NO. 3410957 IN BOOK 5067 AT PAGE 65 OF OFFICIAL RECORDS; THENCE NORTH 1°00' EAST 170.59 FEET TO AN OLD WIRE FENCE LINE; THENCE SOUTH 81°00' EAST 60.24 FEET TO A 6 FOOT CHAIN LINK

FENCE; THENCE SOUTH 6°30'39" WEST 180.79 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING.

Parcel 4: (22-29-130-011 / 935 East South Union Avenue)

BEGINNING AT A POINT SOUTH 55°18' EAST 2562.4 FEET FROM THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 42°32' WEST 125.4 FEET; THENCE NORTH 72°16' WEST 98.6 FEET; THENCE NORTH 11° EAST 115.5 FEET; THENCE SOUTH 73° EAST 150.2 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION CONVEYED TO SALT LAKE COUNTY A BODY POLITIC AND CORPORATE BE THAT CERTAIN WARRANTY DEED RECORDED FEBRUARY 28, 1984 AS ENTRY NO. 3909828 IN BOOK 5534 AT PAGE 1679 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE PROPOSED NORTHERLY RIGHT-OF-WAY LINE OF SOUTH UNION AVENUE, SAID POINT BEING SOUTH 42°32' WEST 119.0 FEET FROM AN OLD ESTABLISHED FENCE CORNER WHICH FENCE CORNER IS SOUTH 1464.77 FEET AND WEST 524.00 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 42°32' WEST 6.40 FEET; THENCE NORTH 72°16' WEST 80.58 FEET; THENCE NORTH 9°50'54" EAST 10.81 FEET TO SAID PROPOSED NORTHERLY RIGHT-OF-WAY LINE OF SOUTH UNION AVENUE; THENCE SOUTH 66°14'47" EAST ALONG SAID PROPOSED NORTHERLY LINE 24.59 FEET; THENCE SOUTH 70°03'40" EAST ALONG SAID PROPOSED NORTHERLY LINE 60.34 FEET TO THE POINT OF BEGINNING.

Parcel 5: (22-29-130-013 / 942 East North Union Avenue)

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF NORTH UNION AVENUE, SAID POINT BEGIN SOUTH 1156.45 FEET AND WEST 510.59 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 18°00'46" WEST 133.00 FEET; THENCE NORTH 71°59'14" WEST 87.50 FEET; THENCE SOUTH 09°50'54" WEST 122.62 FEET; THENCE NORTH 80°09'06" WEST 74.57 FEET; THENCE NORTH 6°30'39" EAST 55.02 FEET; THENCE NORTH 81°00' WEST 17.61 FEET, MORE OR LESS, TO THE WEST LINE OF GRANTOR'S PROPERTY, BEING THE EAST LINE OF DINKELMAN PROPERTY; THENCE NORTH 11°48' EAST ALONG COMMON BOUNDARY OF GRANTOR'S AND DINKELMAN PROPERTY 215.48 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF SAID NORTH UNION AVENUE; THENCE SOUTH 71°59'14" EAST ALONG SAID LINE 198.99 FEET TO THE POINT OF BEGINNING.

Parcel 6: (22-29-130-017 / 954 East North Union Avenue)

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF NORTH UNION AVENUE, SAID POINT BEING SOUTH 1156.45 FEET AND WEST 510.59 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 71°59'14" EAST ALONG SAID RIGHT OF WAY LINE 190.81 FEET TO A POINT ON A 550.96 FOOT RADIUS CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH 64°46'30" WEST FROM SAID POINT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 166.44 FEET TO A POINT OF TANGENCY; THENCE SOUTH 42°32' EAST 84.90 FEET; THENCE NORTH 71°59'14" WEST 75.13 FEET; THENCE NORTH 18°00'46" EAST 133.00 FEET TO THE POINT OF BEGINNING.

Parcel 7: (22-29-130-019 / 948 East North Union Avenue)

BEGINNING AT A POINT PERPENDICULAR TO AND 40.00 FEET NORTHERLY FROM THE CENTERLINE OF SOUTH UNION AVENUE, SAID POINT ALSO BEING SOUTH 1521.98 FEET AND WEST 683.68 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 66°14'47" WEST PARALLEL TO THE NORTHERLY RIGHT OF WAY LINE OF SAID SOUTH UNION AVENUE 66.31 FEET; THENCE NORTH 06°30'39" EAST ALONG A FENCE LINE 312.19 FEET; THENCE SOUTH 71°59'14" EAST 162.63 FEET; THENCE SOUTH 42°32' WEST 84.90 FEET; THENCE SOUTH 47°28' EAST 75.00 FEET; THENCE SOUTH 42°32' WEST 61.53 FEET; THENCE NORTH 72°19'55" WEST ALONG A FENCE LINE 148.92 FEET; THENCE SOUTH 09°50'54" WEST ALONG A FENCE LINE 103.94 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**

Preliminary Site Plan and Conditional Use Permit Conditions

*[attachment follows]*





7505 South Holden Street  
Midvale, Utah 84047  
Phone (801) 567-7200  
Fax (801) 567-0518

November 15, 2018

Adam Davis  
[adavis@rockworthco.com](mailto:adavis@rockworthco.com)

RE: Rezone/Conditional Use Permit/Preliminary Site Plan: Creekview Apartments at approx. 7205 South 900 East

Mr. Davis:

This letter is to confirm action taken by the Midvale City Planning Commission at their regularly scheduled meeting on Wednesday, November 14, 2018 and shall serve as the official decision with regards to the above application request. It was the decision of the Planning Commission to recommend approval of the proposed rezone and approve the Conditional Use Permit and Preliminary Site Plan for a mixed-use project at approximately 7205 South 900 East using the following motions:

Rezone:

*Based on the following findings, I move that we forward a recommendation to the Midvale City Council to approve rezoning of 7205 South 900 East and associated parcels to the Regional Commercial zone with Residential Overlay:*

- 1. The proposed rezoning is consistent with the goals of the 2016 Midvale City General Plan;*
- 2. The proposed redevelopment of these properties fulfills the goals of the Regional Commercial Residential Overlay; and*
- 3. The proposed redevelopment supports and enhances the existing Fort Union commercial area.*

*It is recommended that the effective date of an ordinance approving the rezone be tied to the City Council's approval and execution of a Development Agreement for the project site.*

Conditional Use Permit/Preliminary Site Plan:

*Based on the following findings, I move that we approve the Preliminary Site Plan and Conditional Use Permit request for the proposed redevelopment of property at 7205 South 900 East with the subsequent conditions of approval:*

*Findings:*

- 1. With the conditions included in this approval, the proposed preliminary site plan complies with the development standards and requirements of the Regional Commercial zone with Residential Overlay;*
- 2. The recreational amenity areas are appropriate and adequate for the proposed mixed-use project;*

3. *The use of the parking structure by commercial tenants is appropriate, provided a minimum of 372 stalls are reserved for resident use and a direct pedestrian connection is established between the parking structure and commercial space; and*
4. *The overall proposed architectural design, including openings, façade shifts, and variation in exterior materials and colors, is appropriate for the area with the changes required below.*
5. *Fencing is necessary for protection of recreational amenities or screening of ground level equipment and service areas between the single-family residence and canal adjacent to the project area.*

*Conditions of approval:*

1. *This approval is contingent upon the City Council approving the rezone request for the subject properties to include the Regional Commercial Residential Overlay;*
2. *The applicant shall prepare and submit a Final Site Plan application to be reviewed and approved by the City Engineer, Fire Marshal, and City Planner. The Final Site Plan application shall include the following:*
  - a. *Those changes necessary to comply with the City Engineer, Fire Marshal, and Salt Lake City Public Utilities requirements;*
  - b. *Detailed plans, including fixtures, improvements, and programming, where applicable, for the plaza space to be located along 900 East;*
  - c. *A Snow Removal and Storage Plan;*
  - d. *A revised landscape documentation package complying with the landscape and site design standards of the RCRO zone;*
  - e. *A non-sight-obscuring fence shall be provided along the canal. Details for the proposed fencing shall be provided;*
  - f. *Detailed plans for the recreational amenity areas;*
  - g. *An improved pedestrian connection between the proposed project and The Shops at Fort Union property across North Union Avenue. The applicant shall work with the owner of The Shops property to determine the appropriate location;*
  - h. *Stamped concrete, asphalt, or other distinguishable material where pedestrian walkways cross roads or driveways;*
  - i. *Approval by the City Engineer of the reduction in stall length across the parking garage;*
  - j. *A Lighting Plan, complying with the City's exterior lighting standards, for the surface parking areas, parking structure, and pedestrian areas;*
  - k. *Building Elevations clearly showing materials, colors, and coverage percentages. Color samples shall be provided; and*
  - l. *Details for the trash enclosure. The enclosure shall provide complete screening and be compatible with the building. The enclosure may be located inside the parking garage.*
3. *The applicant shall comply with all requirements from the City Engineer, Building Official, and Fire Marshal.*
4. *All signage on the property shall comply with the requirements of the RCRO zone and sign permits shall be obtained prior to installation of such signage.*
5. *The applicant shall work with the City to draft a Development Agreement for this project site. This agreement shall be executed in conjunction with the effective*

*date of the ordinance approving the rezone to allow the Regional Commercial Residential Overlay.*

I will tentatively schedule this item for the Council agenda on December 4 and begin work on the Development Agreement.

Should you have any additional questions, please contact our office. My direct contact information is available below.

Sincerely,



**Alex Murphy**  
*Associate Planner*

Midvale City  
7505 S Holden Street  
Midvale, UT 84047  
[amurphy@midvale.com](mailto:amurphy@midvale.com)

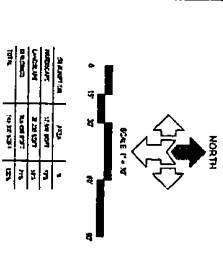
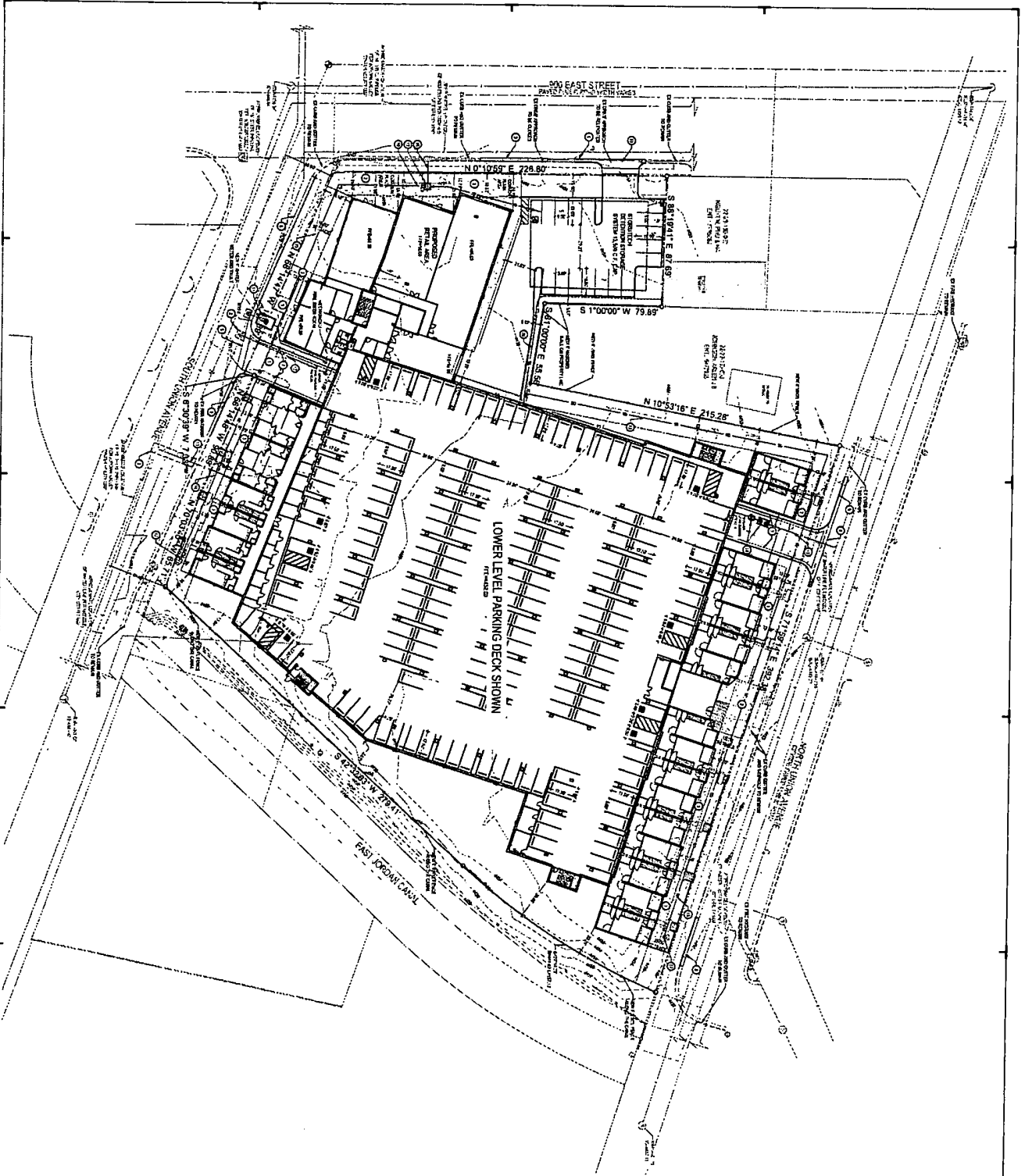
(801) 567-7231 (office)  
(801) 567-0518 (fax)

**EXHIBIT C**

Preliminary Site Plan

*[attachment follows]*

13:29:16 (11/27/2014) Proj: 0110222 - P10.dwg Rev: 01 2/18/14 - 233m



**GENERAL NOTES:**  
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE UTAH CONSTRUCTION CODES AND ALL APPLICABLE LOCAL ORDINANCES.  
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.  
 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.  
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.  
 5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE CONSTRUCTION PERIOD.

- KEYED NOTES:**
- 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE UTAH CONSTRUCTION CODES AND ALL APPLICABLE LOCAL ORDINANCES.
  - 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
  - 3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
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  - 5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE CONSTRUCTION PERIOD.
  - 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
  - 7. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
  - 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.
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  - 11. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
  - 12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.
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  - 23. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
  - 24. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.
  - 25. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE CONSTRUCTION PERIOD.

**Call**  
 801.225.7700  
**Dig**  
 801.225.7700

WE CONDUCT A FULL-SCALE PRELIMINARY AND RESTRICTION OF LIABILITY SURVEY ON ALL PROJECTS IN THE STATE OF UTAH.

REVISIONS	
NO.	DESCRIPTION
1	ISSUED FOR PERMITTING
2	ISSUED FOR PERMITTING
3	ISSUED FOR PERMITTING
4	ISSUED FOR PERMITTING
5	ISSUED FOR PERMITTING
6	ISSUED FOR PERMITTING
7	ISSUED FOR PERMITTING
8	ISSUED FOR PERMITTING
9	ISSUED FOR PERMITTING
10	ISSUED FOR PERMITTING

**CREEK VIEW APARTMENTS**  
 967 SOUTH UNION AVENUE  
 MIDVALE, UTAH



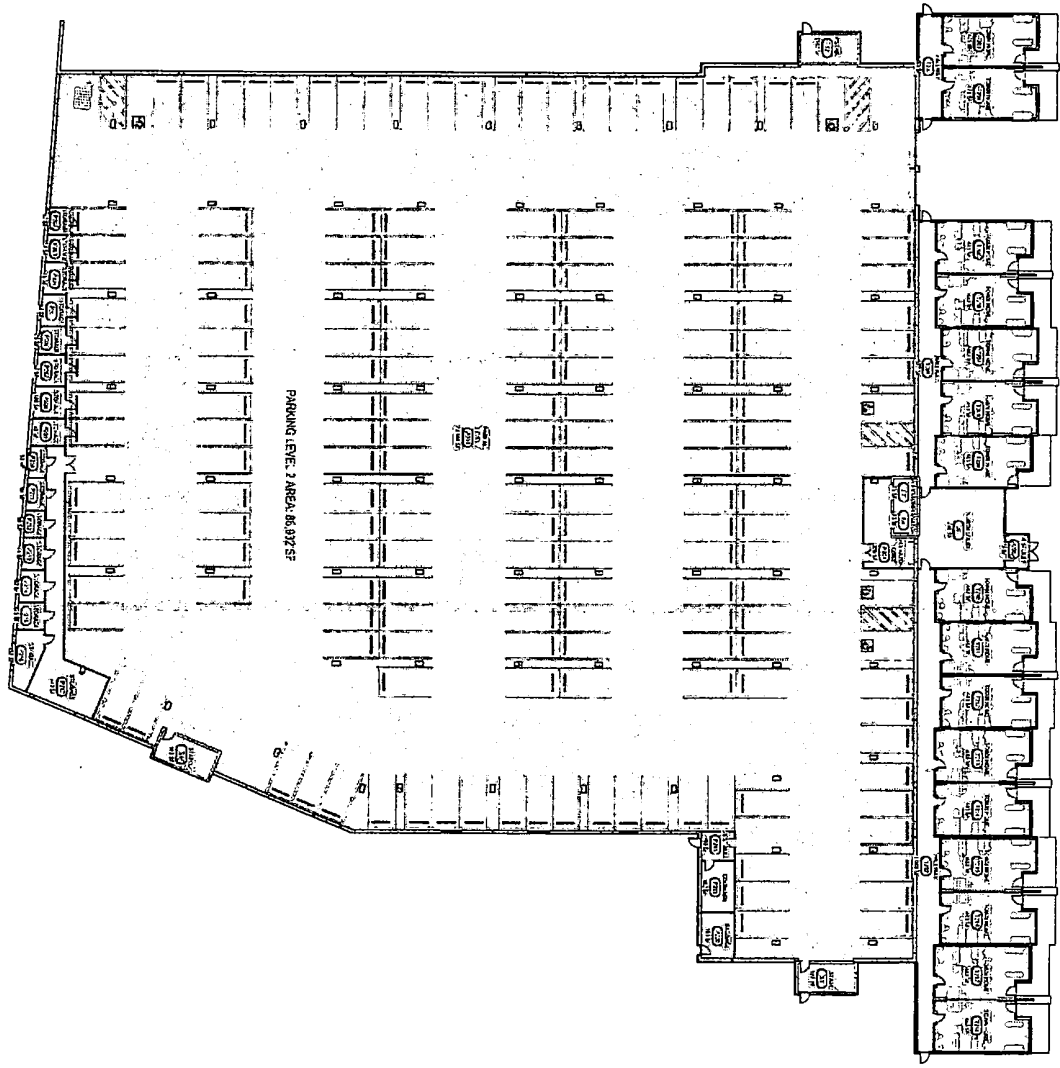
**McNEIL ENGINEERING**  
 Economic and Sustainable Design, Professional Team Effort and Trust

1115 South Sandy Parkway, Suite 200, Sandy, Utah 84070 801-225-7700 [www.mcneilengineering.com](http://www.mcneilengineering.com)

Civil Engineering • Consulting & Landscape Architecture  
 Structural Engineering • Land Surveying & MGS

**C1.01**  
 PRELIMINARY  
 SITE PLAN





PARKING LEVEL 2 AREA: 86,975 SF

**PARKING LEVEL 2 PARKING CALCULATIONS**

STANDARD STALLS	180
ACCESSIBLE STALLS	5
TOTAL STALLS	185

- BUILDING LEGEND**
- 1 BEDROOM
  - AMENITY
  - BUILDING
  - CIRCULATION
  - STORAGE

**CREEKVIEW APARTMENTS**  
Enter address here



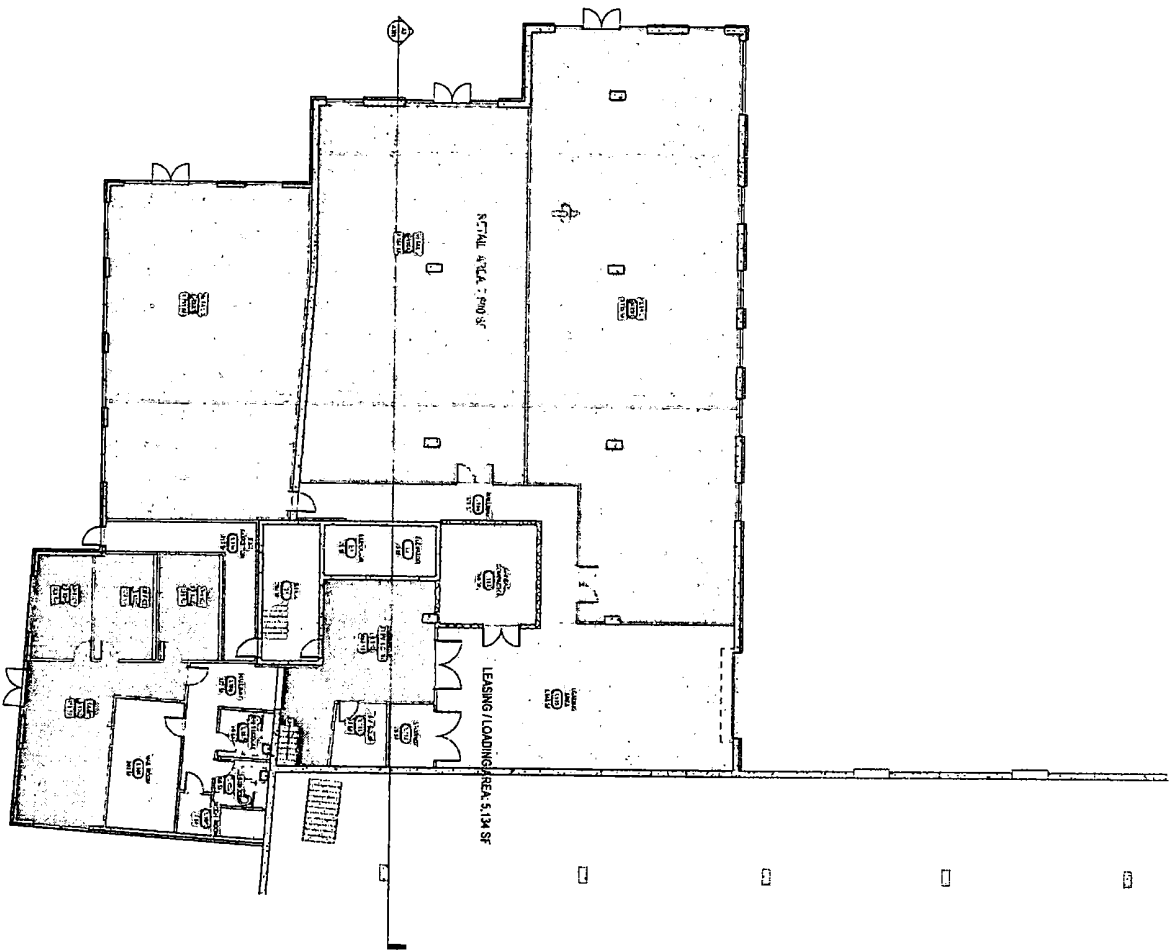
**BWA ARCHITECTS**  
1000 WEST 10TH AVENUE, SUITE 100  
DENVER, CO 80202  
303.733.1111  
WWW.BWA-ARCHITECTS.COM

**PARAMOUNT 1**  
RVA  
ARCHITECTS  
A098

NO.	DESCRIPTION	NO. OF STALLS	TOTAL
1	STANDARD	180	180
2	ACCESSIBLE	5	5
3	TOTAL		185



2 3 4 5 6 7



RETAIL LEASING LEVEL PARKING CALCULATIONS  
 STANDARD STALLS 18  
 ACCESSIBLE STALLS 2  
 TOTAL STALLS 20

- BUILDING LEGEND**
- AMENITY
  - BUILDING
  - CIRCULATION
  - LEASING
  - RESTROOM
  - RETAIL
  - STORAGE



1 1 2 3 4 5 6 7

REV	DATE	DESCRIPTION	BY	CHK

**CREEKVIEW APARTMENTS**  
 Enter address here

**BWA**  
 ARCHITECTS  
 1000 N. GARDNER ST.  
 SUITE 100  
 DENVER, CO 80202  
 (303) 733-1100  
 WWW.BWAARCHITECTS.COM

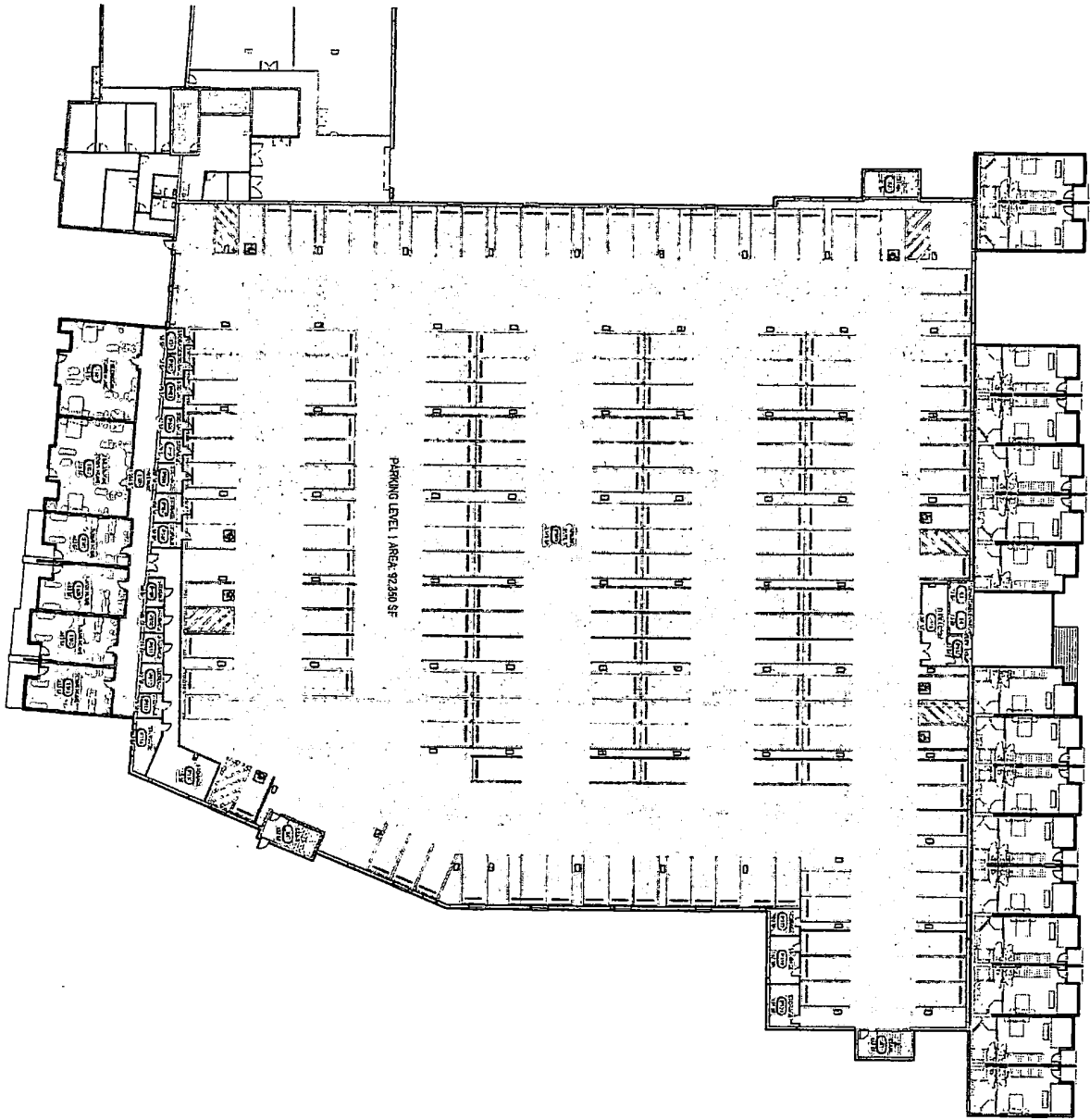
**SCALE:**  
 1/8" = 1'-0"

**DATE:**  
 10/15/10

**PROJECT:**  
 CREEKVIEW APARTMENTS  
 RETAIL LEASING PLAN

**NO.:**  
 A099





PARKING LEVEL 1 PARKING CALCULATIONS  
 STANDARD STALLS 179  
 ACCESSIBLE STALLS 8  
 TOTAL STALLS 187

- BUILDING LEGEND**
- 1 BEDROOM
  - 2 BEDROOM
  - BUILDING
  - CIRCULATION
  - STORAGE

**CREEKVIEW APARTMENTS**  
 Enter address here

NO.	DESCRIPTION	DATE	BY



1 2 3 4 5 6 7

**BWA**  
 ARCHITECTS  
 1200 N. 10TH ST.  
 SUITE 100  
 DENVER, CO 80202  
 PHONE: 303.733.1100  
 FAX: 303.733.1101  
 WWW.BWAARCHITECTS.COM

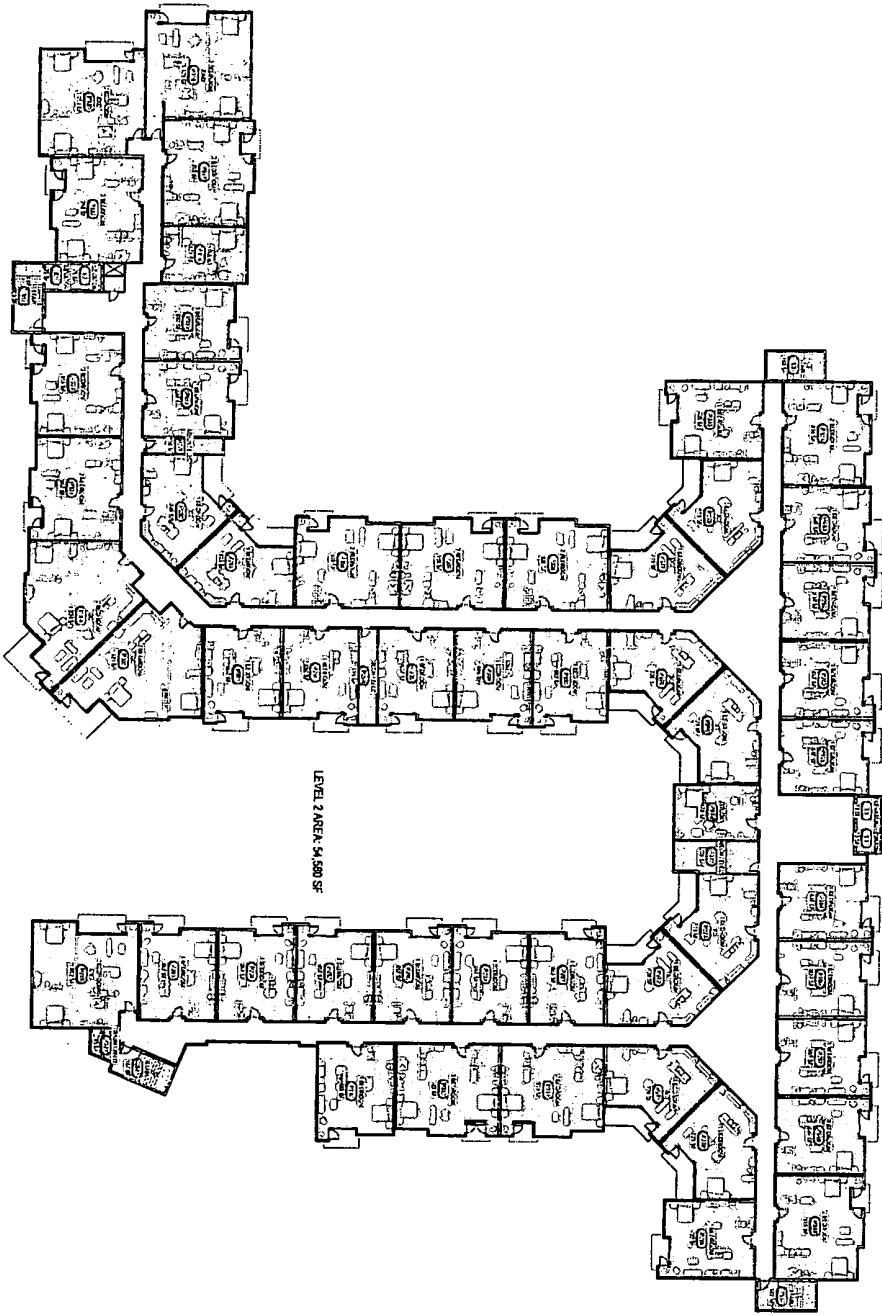
**ARCHITECT**  
 BWA  
 12/15/2011

**DATE**  
 12/15/2011

**PROJECT**  
 CREEKVIEW APARTMENTS  
 PHASE 1  
 PARKING LEVEL 1

**NO. 10780**  
**A100**





LEVEL 2 AREA: 54,500 SF

- BUILDING LEGEND**
- 1 BEDROOM
  - 2 BEDROOM
  - BUILDING
  - CIRCULATION
  - STUDIO

UNIT	TYPE	AREA (SF)	DATE
101	1 BR	1,100	10/10/10
102	2 BR	1,300	10/10/10
103	1 BR	1,100	10/10/10
104	2 BR	1,300	10/10/10
105	1 BR	1,100	10/10/10
106	2 BR	1,300	10/10/10
107	1 BR	1,100	10/10/10
108	2 BR	1,300	10/10/10
109	1 BR	1,100	10/10/10
110	2 BR	1,300	10/10/10
111	1 BR	1,100	10/10/10
112	2 BR	1,300	10/10/10
113	1 BR	1,100	10/10/10
114	2 BR	1,300	10/10/10
115	1 BR	1,100	10/10/10
116	2 BR	1,300	10/10/10
117	1 BR	1,100	10/10/10
118	2 BR	1,300	10/10/10
119	1 BR	1,100	10/10/10
120	2 BR	1,300	10/10/10

1 1 1 2 1 1 3 1 1 4 1 1 5 1 1 6 1 1 7

1 1 1 2 1 1 3 1 1 4 1 1 5 1 1 6 1 1 7

NO.	DESCRIPTION	DATE	BY

**CREEKVIEW APARTMENTS**  
Enter address here

**BWA ARCHITECTS**  
 1001 JORDAN ROAD  
 SUITE 100  
 FARMINGTON, CT 06030  
 TEL: 860.633.1111  
 FAX: 860.633.1112  
 WWW.BWAARCHITECTS.COM

**A102**

