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Midvale City
7505 South Holden Street
Midvale, Utah 84047

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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
MIDVALE CITY
7505 S HOLDEN ST
MIDVALE UT 84047
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**AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT
FOR
JORDAN BLUFFS PROJECT**

April 4, 2019

**AMENDED AND RESTATED
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FOR
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THIS AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (this “**Amended and Restated MDA**”) is made and entered into effective as of the ____ day of March, 2019, by and among Midvale City, a political subdivision of the State of Utah (the “**City**”), and Gardner Jordan Bluffs, L.C., a Utah limited liability company (the “**Master Developer**”), sometimes referred to as a “**Party**” or collectively as the “**Parties**”.

RECITALS

A. The capitalized terms used but not defined in these Recitals are defined in Section 1.2 below or elsewhere in this Amended and Restated MDA.

B. The City previously entered into that certain Master Development Agreement For The Jordan Bluffs Project dated December 1, 2004 (“**Original MDA**”). The City and Master Developer previously entered into that certain Amended Master Development Agreement For Jordan Bluffs Project dated September 5, 2017 (“**Amended MDA**”). The Original MDA and the Amended MDA are both amended and restated in their entirety by this Amended and Restated MDA.

C. A portion of the Jordan Bluffs Property (defined below) (such portion, the “**Wasatch Property**”) that was the subject of the Original MDA and Amended MDA has been sold to MOUNTAIN WEST CAPITAL PARTNERS, LLC, a Utah limited liability company and WASATCH JORDAN BLUFFS, LLC, a Utah limited liability company (collectively, “**Wasatch**”) and will be developed pursuant to a separate agreement. Master Developer is the owner of the Gardner Property (as defined herein) that is the subject of this Amended and Restated

MDA.

D. The Gardner Property is currently assigned the Jordan Bluffs (JB) Zone as set forth in §17-7-10 of the Midvale City Code (the “**JB Zone**”).

E. Master Developer and the City desire that the Gardner Property be developed in a unified and consistent fashion pursuant to the provisions of the JB Zone as supplemented by the Concept Plan and this Amended and Restated MDA.

F. Development of the Gardner Property as a mixed use project pursuant to this Amended and Restated MDA is acknowledged by the Council and the Parties to be consistent with LUDMA and the JB Zone and to operate to the benefit of the City, Master Developer and the general public.

G. The Parties acknowledge that development of the Gardner Property pursuant to this Amended and Restated MDA will result in significant planning and economic benefits to the City and its residents by, among other things, requiring orderly development of the Gardner Property, addressing environmental issues and concerns regarding the Gardner Property, providing public amenities and facilities for the benefit of the community, and increasing property tax, sales tax and other revenues to the City based on improvements to be constructed on the Gardner Property.

H. Development of the Gardner Property pursuant to this Amended and Restated MDA will also result in significant benefits to Master Developer by providing assurances to Master Developer that it will have the ability to develop the Gardner Property in accordance with this Amended and Restated MDA.

I. Master Developer and the City have cooperated in the preparation of this Amended and Restated MDA.

J. The Parties desire to enter into this Amended and Restated MDA to specify the

rights and responsibilities of Master Developer to develop the Gardner Property and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Amended and Restated MDA.

K. The Parties understand and intend that this Amended and Restated MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of, Utah Code Ann. §10-9a-102.

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 City and Master Developer hereby agree to the following:

TERMS

1. **Incorporation of Recitals and Exhibits/ Definitions.**

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” through and including “F” are hereby incorporated into this Amended and Restated MDA.

1.2. **Definitions.** As used in this Amended and Restated MDA, the words and phrases specified below shall have the following meanings:

1.2.1. **Amended and Restated MDA** means this Amended and Restated Master Development Agreement including all of its Exhibits.

1.2.2. **Applicant** means a Person submitting a Development Application for the Development of a Parcel.

1.2.3. **Buildout** means the completion of all of the development on the entire Property in accordance with this Amended and Restated MDA.

1.2.4. **City** means Midvale City, a political subdivision of the State of Utah.

1.2.5. **Central Community Park** means a park and other related recreational facilities as more fully described in §3.3.1 and Exhibit E.

1.2.6. **Concept Plan** means the concept plan creating smaller developable pods and depicting access including roads and trails, but not uses of density in any particular pod, for development of the Project, which has been approved by the City and is attached as Exhibit “B”, and constitutes the “concept plan” under the JB Zone.

1.2.7. **Council** means the elected City Council of the City.

1.2.8. **Default** means a material breach of this Amended and Restated MDA as specified herein beyond all applicable notice and cure periods.

1.2.9. **Development** means the development of a Parcel or a portion thereof pursuant to an approved Development Application.

1.2.10. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for Development of the Project.

1.2.11. **Gardner Property** means approximately 223 acres of land located in Midvale City, and more particularly described on Exhibit “A” attached hereto.

1.2.12. **Jordan Bluffs Property** means the approximately 265 acres of land located in Midvale City that was the subject of the Original MDA and the Amended MDA as more particularly described in Exhibit “D.”

1.2.13. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.*

1.2.14. **Master Developer** means Gardner Jordan Bluffs, L.C., a Utah limited liability company, and its assignees or transferees as permitted by this Amended and Restated MDA (other than a Subdeveloper or a Related Entity).

1.2.15. **Notice** means any notice to or from any Party to this Amended and Restated MDA.

1.2.16. **Parcel** means a parcel of the Gardner Property that is created by Master Developer to be sold or transferred to a Subdeveloper as a Subdivision or to a Related Developer.

1.2.17. **Phase** means the development of a portion of the Project at a point in a logical sequence as determined by Master Developer.

1.2.18. **Planning Commission** means the City's Planning Commission.

1.2.19. **Person** means any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.2.20. **Project** means the total development to be constructed on the Gardner Property pursuant to this Amended and Restated MDA with the associated public and private facilities, Phases and all of the other aspects approved as part of this Amended and Restated MDA.

1.2.21. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.

1.2.22. **Related Entity** is an entity related to Master Developer as more fully defined in Section 22.

1.2.23. **Subdeveloper** means a Person which purchases, ground leases or leases all or a portion of a Parcel for Development.

1.2.24. **Subdivision** means the division of any portion of the Gardner Property into developable parcels or lots pursuant to state law and/or the Zoning Ordinance.

1.2.25. **Subdivision Application** means the application to create a Subdivision.

1.2.26. **Wasatch Property** means approximately 40 acres of land located in Midvale described as Lot 1, "Jordan Bluffs Subdivision" recorded with the County Recorder for Salt Lake County, Utah on November 29, 2017 as Entry No. 12668463 in Book 2017P at Page 331.

1.2.27. **Zoning** means the zoning for the Project.

1.2.28. **Zoning Ordinance** means the City's Land Use and Development Ordinance adopted pursuant to LUDMA.

2. **Effect of Amended and Restated MDA.** This Amended and Restated MDA shall be the sole agreement between the Parties related to the Development of the Project except as it may be modified in writing by the agreement of the Parties (including pursuant to the terms of an Additional Development Agreement as provided herein).

3. **Development of the Project.**

3.1 **Project Development.** Development of the Project shall be in accordance with the JB Zone, the Concept Plan and this Amended and Restated MDA.

3.2 **Large Scale Master Plan Approval.** As part of this Amended and Restated MDA, the City has approved the Concept Plan for the Project which is attached hereto as Exhibit "B" and incorporated herein by this reference. The Parties acknowledge and agree

that Large Scale Master Plans shall be required for each of the development pods identified on Exhibit "B" in compliance with the requirements of the JB Zone.

3.3. Project Amenities.

3.3.1. **Central Community Park and Improvements.** As part of the consideration for this Amended and Restated MDA, Master Developer voluntarily agrees to design with the City's input, construct the "Required Park Improvements" as defined below and in Exhibit "F", and convey the Central Community Park Parcel via quit claim deed, at no cost to the City, which conveyance shall occur in phases, as discussed more fully below, no later than October 31, 2029, unless otherwise agreed to by the Parties. The Central Community Park Parcel shall consist of not less than fifteen (15) acres in the location as generally shown on Exhibit "E" (the "Central Community Park Parcel"). The area shown on Exhibit "E" may be modified by Master Developer with the approval of the City, provided any such modifications (a) will not decrease the acreage of the Central Community Park below fifteen (15) acres, and (b) will not decrease the width of the Central Community Park below one hundred and twenty five (125) feet. The Central Community Park Parcel shall be conveyed subject to a restriction that the Central Community Park Parcel may only be used as a public park and related amenities and for no other purpose. Master Developer shall cause the Central Community Park to be developed and improved in accordance with the requirements described on Exhibit "F" attached hereto and subject to all landscaping will be installed per site management plan. (the "**Required Park Improvements**"); provided, however, in no event will Developer be required to incur more than \$6,000,000 to improve the Park with the Required Park Improvements. The Required Park Improvements shall be completed by Master Developer in conjunction with the construction of each project phase with frontage adjacent to the Central Community Park Parcel and for the

entire width of the Central Community Park Parcel adjacent to such project phase. Plans for the park will be submitted with the Large-Scale Master Plan for each adjacent POD. The City will accept the Required Park Improvements in phases as the work is completed, but in no event shall the Required Park Improvements be completed later than October 31, 2029. , Maintenance of each portion of the Central Community Park Parcel shall be the responsibility of Master Developer until such time as Master Developer has completed the applicable portion of the Required Park Improvements and they have been inspected and accepted by the City, acceptance of which shall not be unreasonably withheld or delayed. After completion of each portion of the Required Park Improvements, acceptance by the City, and conveyance of such portion of the Central Community Park Parcel to the City, the City will be responsible, at the its sole cost and expense, for operating and maintaining such portion of the Central Community Park Parcel and all improvements thereon in a neat, clean and safe condition and in a manner consistent with open space being maintained by Master Developer and Subdevelopers within the Gardner Property.

3.3.2. Trail System Outside Central Community Park. Master Developer agrees to provide and construct, at no cost to the City, a minimum of three (3) trail connections through the Gardner Property to the Jordan River Parkway as generally depicted on Exhibit F. The Parties acknowledge and agree that the location of such trail connections will be defined as part of the approval process for the adjacent Pod areas for the purpose of providing a separated walkway for public access to the Jordan River Parkway. The trail connections shall comply with the following: (1) be constructed with a 10-foot wide concrete walkway surface, with bollard lighting; (2) have a minimum of 10 feet of landscaping on each side of the walkway, which landscaping can be part of required setbacks and development landscape features; (3) such

concrete walkway and lighting shall have a perpetual public use easement and will be maintained by the City. The trail connections shall be required to be completed in conjunction with the completion of the first project phase on the adjacent pod and the easement shall be conveyed to the City at such time as each trail section is completed, but, at Master Developer's election, may be completed prior to this time. The easements for the trail connections shall be subject to a restriction that such trail connections will only be used as a trail or open space and may only be relocated if agreed to by the City and the owner of the real property on which such trail connection is located.

3.3.3. **Wetlands and Slope Areas.** Master Developer will use good faith efforts to negotiate an agreement with Salt Lake County pursuant to which the Wetlands located on the Gardner Property, as generally depicted on Exhibit "B," would be conveyed to Salt Lake County to be operated and maintained by the County as part of their flood control system. In the event that Salt Lake County does not take ownership of and assume maintenance responsibility for the Wetlands, then and in that event Master Developer shall be responsible to continue to own and maintain the Wetlands located on the Gardner Property. The Slope Areas as depicted on Exhibit "B" shall continue to be owned and maintained by Master Developer.

3.4 **Approval Processes.** Development approval of the Project shall follow the applicable review processes as set forth in the JB Zone and Section 17-3 of the Midvale Municipal Code.

3.5 **Project Fees.** The Parties acknowledge that the City does not currently charge impact fees. The Parties further acknowledge and agree that in the event the City adopts impact fees at any time in the future the Project is entitled to a credit, because Master Developer will be providing the facilities necessary to service the proposed Development under the terms of

this Amended and Restated MDA, which might otherwise be financed by other means, and therefore no impact fees will be assessed by the City in connection with future development approval for the Project; however, the Project might be subject to any impact fees that might be assessed by third party service providers. The City retains the right to assess all other fees which are chargeable by the City on all similar developments.

3.6 Open Space Requirement. The City agrees that the combination of (a) donation and development of the Community Central Park Parcel in accordance with the provisions in Sections 3.3 hereof; (b) the construction of the trails in accordance with the Section 3.3.2 hereof; and (c) the preservation of the open space on the slope area and wetlands in accordance with Section 3.3.4 hereof, satisfies the open space requirements for the Project.

3.7 Limitation on Pod C. If Pod C is sold by Master Developer to a Subdeveloper that is not a Related Entity which Develops Pod C for residential use, the maximum number of residential units that may be constructed on such Pod will, unless otherwise agreed in writing by Master Developer, not exceed 162 units. The foregoing does not in any way constitute an approval by the City for the use of Pod C for 162 units and any such approvals for any number of units will be subject to complying with the provisions of this Agreement and the JB Zone.

4. **Public Facilities and Infrastructure.**

4.1 Compliance with City Construction Specifications. Master Developer and City, as the case may be, each with respect to its obligations for conveyance, construction, maintenance and repair, shall be responsible for complying with all applicable Federal, State and City laws, regulations and rules and the terms of this Amended and Restated MDA, including

bonding requirements for public facilities and infrastructure and the City Construction Specifications.

4.2 **Funding of On-site Infrastructure and Public Improvements.** Except as otherwise specifically provided herein, Master Developer shall be responsible for financing and construction of all on-site infrastructure and public improvements necessary to service the Project.

4.3 **Other Infrastructure and Utilities.** Master Developer and each Developer shall be responsible for complying with all applicable City, State, and Federal laws, regulations, and rules with respect to all other on-site infrastructure and utilities installed to service the Gardner Property, including electrical lines, natural gas lines, telecommunication and cable television lines, and so forth. The City agrees to use reasonable efforts to assist Master Developer and any applicable Developer(s) in the procurement and installation of other utility services for the Project. Master Developer or the applicable Developer shall install a specifically designated conduit for fiber optics within the portion of public roads constructed by Master Developer within the Gardner Property according to the design specifications set forth in Exhibit "C" attached hereto (the "**Fiber Optics Improvements**") at the time of and in conjunction with construction of streets and other public utilities within the Project. After the construction, inspection and acceptance, acceptance of which shall not be unreasonably withheld or delayed, by the City of the Fiber Optics Improvements (or any portion thereof), the City shall reimburse Master Developer or the applicable Developer for the costs of the Fiber Optics Improvements within thirty (30) days of the receipt of invoices that detail the costs incurred for such improvements. The Parties hereby recognize that any obligations of Master Developer or applicable Developer(s) with regard to the Fiber Optic Improvements shall be contingent upon

the continued funding of, and the City's continuing participation in, the Utah Telecommunications Open Infrastructure Agency (UTOPIA).

5. **Roads, Rights-of-Way and Pedestrian Access**

5.1 **Bingham Junction Boulevard.** Master Developer has previously dedicated through the recording of a plat the right-of-way for Bingham Junction Boulevard along the general alignment as shown in the Concept Plan attached as Exhibit B. The improvement of Bingham Junction Boulevard may be in phases in connection with the approval of development adjacent to the roadway. Master Developer agrees to contribute 50% of the cost for a traffic signal at the intersection of 700 West and Sandy Parkway/Bingham Junction Boulevard to be installed when warranted.

5.2 **Ivy Drive.** Master Developer has conveyed to the City the right-of-way for Ivy Drive along the general alignment as shown in the Concept Plan attached as Exhibit B. Master Developer agrees to install a traffic signal at the intersection of Ivy Drive and Bingham Junction Boulevard. Timing of the traffic signal installation shall be tied to completion of the sidewalks on the north side of Ivy Drive and the west side of Bingham Junction Boulevard between 7800 South and Ivy Drive, unless otherwise agreed to by the Parties.

5.3 **Other Public Rights-of-Way.** Master Developer may convey to the City certain other public rights-of-way as approved by the City, which approval shall not be unreasonably withheld or delayed. The City will only accept public rights-of-way that comply with the provisions of this Amended and Restated MDA and the City's Construction Specifications. It shall be the responsibility of Master Developer to construct such rights-of-way in accordance with the provisions of this Amended and Restated MDA and the City's Construction Specifications.

5.5 City's Obligation to Maintain and Repair Bingham Junction

Boulevard, Ivy Drive and Other Public Rights-of-Way. After conveyance, construction, completion, inspection and acceptance of Bingham Junction Boulevard, Ivy Drive and other public rights-of-way in the Project, as the case may be, the City shall be responsible to maintain, repair, and replace Bingham Junction Boulevard, Ivy Drive and such other public rights-of way, as the case may be, in accordance with City policies and standards applicable to similar roads and rights-of-way in the City.

6. Vested Rights and Reserved Legislative Powers.

6.1 Vested Rights Granted by Approval of this Amended and Restated

MDA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the City and Master Developer intend that this Amended and Restated MDA grants Master Developer the right to develop and construct the Project consistent with the uses and density as provided in the JB Zone, the general development layout as depicted in the Concept Plan and this Amended and Restated MDA. If an Additional Developer Agreement is entered into after the date hereof, if there is a conflict between the provisions of this Amended and Restated MDA and the Additional Development Agreement, the more specific provisions of the Additional Development Agreement shall, without the requirement of amending the provisions of this Amended and Restated MDA, control with respect to the portion of the Gardner Property subject to such Additional Development Agreement. The Parties further acknowledge that the Wasatch Property includes a density of 1200 residential dwelling units. Under the provisions of the JB Zone, the Gardner Property includes a density of 2300 residential dwelling units. However, the foregoing notwithstanding, in the event that Wasatch does not use all of the 1200 residential dwelling units of density allocated to the Wasatch Property by the time of approval of

the last final plan for that project and Wasatch notifies the City in writing that it has used all of the residential density that it intends to as part of that project, Master Developer shall automatically be vested with the right use any of those remaining residential dwelling units as part of this Project. The Parties intend that the rights granted to Master Developer under this Amended and Restated MDA are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that the JB Zone, the Concept Plan and this Amended and Restated MDA, grant to Master Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509. To the extent that any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed.

6.2 **Reserved Legislative Powers.** Subject to the provisions of §6.1 above, Master Developer and the City acknowledge that the City is legally restricted in its authority to limit its power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so legally limited. Notwithstanding the retained power of the City to enact legislation under its police powers, any such proposed legislative changes affecting the vested rights of the Project as an exception to the vested rights as set forth above must meet the compelling, countervailing public interest standard set forth in Utah Code Ann. §10-9a-509.

7. **Phasing.** Master Developer and / or its assignees may develop the Project in Phases as market conditions dictate at the discretion of Master Developer as long as each Phase provides for a logical extension of the road system, infrastructure and utilities necessary to service the Project, as approved by the City, in compliance with the terms of this Amended and Restated MDA and the other applicable ordinances and regulations of the City.

8. **Successors and Assigns of Master Developer in the Ownership or Development of Any Portion of the Project.**

8.1 **Binding Effect.** Except as otherwise provided herein, this Amended and Restated MDA shall be binding upon Master Developer and any successors and assigns of Master Developer in the ownership or development of any portion of the Project.

8.2 **Assignment and Transfer of Development Rights and Obligations.** It is contemplated that Master Developer may sell, or facilitate the sale of, all or a portion of the Gardner Property and assign and transfer the rights and obligations under this Amended and Restated MDA with respect to all or portions of the Project, and will transfer, sell, or facilitate the sale of, various portions of the Gardner Property to one or more Related Entities, third parties or developers who will develop subareas or phases of the Project. Master Developer shall be entitled to cause the sale or transfer of any portion of the Gardner Property and/or Project subject to the terms and conditions of this Amended and Restated MDA, without the prior written consent of the Midvale City Council. In the event the buyer or transferee of all or any portion of the Gardner Property enters into an agreement with Master Developer whereby Master Developer assigns, and the buyer or transferee assumes the obligations of Master Developer under this Amended and Restated MDA with respect to all or any portion of the Gardner Property transferred, and Master Developer desires to be released from all future obligations in connection with such Property under this Amended and Restated MDA, City shall have the right to approve such assignment and assumption agreement, which approval shall not be unreasonably withheld or delayed. The review by and approval of the City is intended to verify the ability of the proposed transferee or assignee to assume all of the obligations of Master Developer under the terms of this Amended and Restated MDA with respect to the applicable

portion of the Gardner Property or Project. No approval of assignment or assumption shall be required in connection with (i) an assignment by operation of law, such as including, but not limited to, merger, reorganization or foreclosure; (ii) an assignment to a Qualified Mortgagee; or (iii) an assignment to a wholly owned subsidiary or affiliate of Master Developer.

9. **Term of Agreement.** The term of this Amended and Restated MDA shall be until December 31, 2043. This Amended and Restated MDA shall also terminate automatically at Buildout.

10. **Tax Benefits.** The City acknowledges that Master Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Gardner Property to the City or to a charitable organization for open space. Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Master Developer by reason of the foregoing. The City shall reasonably cooperate with Master Developer to the maximum extent allowable under law to allow Master Developer to take advantage of any such tax benefits.

11. **City Obligations for Improvements.** In connection with the Project, the City agrees that it shall permit Master Developer and each Subdeveloper and Related Entity to connect to the City's utility lines, including, without limitation, water, sewer and storm drain.

12. **Upsizing/Reimbursements to Master Developer.** The City shall not require Master Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Master Developer are made to compensate Master Developer for the incremental or additive costs of such upsizing. For example, if an upsized to a water pipe size increases costs by

10% but adds 50% more capacity, the City shall only be responsible to compensate Master Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

13. **Consent Decree.** In connection with the Project, Master Developer and each Subdeveloper and Related Developer, as applicable, shall be required to comply with (a) the “Institutional Controls” set forth in Chapter 8.10 of the Midvale City Municipal Code, and (b) the Site Management Plan Former Sharon Steel Superfund Site Operable Unit 1, Midvale, Utah, dated May 19, 2017.

14. **Relationship of Parties and No Third-Party Rights.** This Amended and Restated MDA does not create any joint venture, partnership, undertaking, or business arrangement between the Parties hereto. Unless otherwise expressly stated herein, nothing in this Amended and Restated MDA creates any rights or benefits to third parties.

15. **Default.** Neither Party shall be in Default under this Amended and Restated MDA unless such Party fails to perform an obligation required under this Amended and Restated MDA within thirty (30) days after written notice is given to the defaulting Party by the other Party, reasonably setting forth the respects in which the defaulting Party has failed to perform such obligation. If the nature of the defaulting Party’s obligation is such that more than thirty (30) days are reasonably required for performance or cure, the defaulting Party shall not be in default if such Party commences performance within such thirty (30) day period (or, if such commencement is impossible to due Events of Force Majeure, as defined below , commences performance when the Events of Force Majeure terminate) and after such commencement diligently prosecutes the same to completion. **“Events of Force Majeure”**

means any event or circumstance beyond Master Developer's or the City's, as the case may be, reasonable control which delays or prevents the performance by Master Developer or City, as the case may be, of its obligations under this Amended and Restated MDA despite the Parties' best efforts to fulfill the obligation. The requirement that the Parties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring and (ii) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Events of Force Majeure" do not include financial inability of City or Master Developer to complete any obligation under the provisions of this Amended and Restated MDA.

16. Remedies. In the event of any legal action or defense between the Parties hereto arising out of or related to this Amended and Restated MDA, or any of the documents provided for herein, the prevailing Party or Parties shall be entitled in addition to the remedies available at law and equity, if any, awarded in such proceeding, to recover their costs and reasonable documented out of pocket attorney's fees, but not damages.

17. Mortgagee Protections.

17.1 Definitions. As used in this Section, each of the following terms shall have the indicated meaning:

a. "Mortgage" means a mortgage, or a deed of trust, or other security agreement recorded in the Official Records.

b. "Mortgagee" means the mortgagee under a mortgage, the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Gardner Property or any portion thereof in the Official Records.

c. “Official Records” means the official records of the Salt Lake County Recorder, State of Utah.

d. “Qualified Mortgagee” means a Mortgagee of which City has been given written notice, including such Mortgagee’s name and address. A Qualified Mortgagee shall be a Mortgagee of public record as evidenced by a title report delivered to the City.

17.2 **Obligations of Mortgagee.** Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Qualified Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Amended and Restated MDA.

a. Notices; Right to Cure. On delivering to Master Developer any notice, demand or other communication pursuant to the provisions of this Amended and Restated MDA, City shall at the same time deliver copies of such notice to each Qualified Mortgagee at the latest address provided to City by such Qualified Mortgagee. Although otherwise effective with respect to Master Developer, no notice delivered to Master Developer shall affect any rights or remedies of a Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to Master Developer, plus, in the case of monetary defaults, an additional thirty (30) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure (or commencement or completion of cure within the specified period is impossible due to an

Event of Force Majeure), each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee promptly commences such cure and thereafter diligently prosecutes such cure to completion.

b. Performance. A Qualified Mortgagee shall have the right to act for an in the place of Master Developer to the extent permitted by the applicable Mortgage or otherwise agreed to by Master Developer in writing. City shall accept performance by or on behalf of a Qualified Mortgagee as if the same had been performed by Master Developer. A Qualified Mortgagee shall have the right, to the extent Master Developer agrees in writing, to appear in a legal action or proceeding on behalf of Master Developer in connection with the Gardner Property.

c. Recognition. Within thirty (30) days of a written request therefor, together with evidence as City may reasonably require, that a proposed Qualified Mortgagee in fact meets the requirements of a Qualified Mortgagee as set forth herein, City agrees to execute, acknowledge and deliver to such Qualified Mortgagee an instrument stating that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this section.

d. Estoppel Certificate. Within thirty (30) days after a request by Master Developer, a Qualified Mortgagee, or a proposed Qualified Mortgagee, City shall issue a certificate confirming that: (i) this Amended and Restated MDA is in full force and effect; (ii) no default (or event which with the giving of notice of passage of time, or both) exists on the part of Master Developer or City under this Amended and Restated MDA; and (iii) such other matters pertaining to this Amended and Restated MDA as may

reasonably be requested. The Person requesting the certificate shall be entitled to rely on the certificate.

18. **Non-liability of Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Master Developer or any successor-in-interest or assignee of Master Developer in the event of any default or breach by the City or for any amount which may become due to Master Developer or its successors or assigns for any obligation arising out of the terms of this Amended and Restated MDA. No officer, representative, agent, or employee of Master Developer, any Related Entity or any Subdeveloper shall be personally liable to the City in the event of any default or breach by Master Developer, any Related Entity or any Subdeveloper, as applicable, or for any amount which may become due to City for any obligation arising out of the terms of this Amended and Restated MDA.

19. **Counterparts.** This Amended and Restated MDA may be executed in multiple counterparts, which together shall constitute one and the same document.

20. **Annual Status Report.** Master Developer and the staff of the City shall give an annual status report to the City Council with regard to the matters contemplated by this Amended and Restated MDA.

21. **Notices.**

a. **Notice Addresses.** All notices required or permitted under this Amended and Restated MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

To the Master Developer:

Gardner Jordan Bluffs, L.C.
Attn: Christian Gardner
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111

To the City:

Midvale City
Attn: Community Development Director
7505 South Holden Street
Midvale, UT 84047

b. **Effectiveness of Notice.** Except as otherwise provided in this Amended and Restated MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

i. Hand Delivery. Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or personally delivered as set forth herein on the same day and the sending Party has confirmation of transmission receipt of the Notice). If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

ii. Electronic Delivery. Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending Party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

iii. Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any Party may change its address for Notice under this Amended and Restated MDA by giving written Notice to the other Party in accordance with the provisions of this agreement.

22. **Additional Development Agreements Required.** In accordance with the provisions of the JB Zone, or as requested by a Subdeveloper or an entity related to Master Developer which is an owner of a Parcel (a “**Related Entity**”), a Large Scale Master Plan implemented through a separate development agreement between the City and such Subdeveloper or Related Entity relating only to the Parcel owned by such Subdeveloper or Related Entity (as applicable, an “**Additional Development Agreement**”), shall be required as a condition precedent to approval of all development within the Project, provided that (i) such Additional Development Agreement shall be consistent with the Concept Plan, the provisions of the JB Zone and fully subject to the terms of this Amended and Restated MDA but only to the extent related to the particular Parcel being developed and not the remaining portion of the Project, (ii) such Additional Development Agreement shall not be cross defaulted with this Amended and Restated MDA or any other Additional Development Agreement, (iii) such Additional Development Agreement shall be modified to reflect specific construction approvals for such Parcel, and (iv) this Amended and Restated MDA shall no longer be applicable to the Parcel subject to the Additional Development Agreement. Each Additional Development Agreement shall be entered into only after a Subdeveloper or Related Entity has obtained all approvals required by this Amended and Restated MDA and the other provisions of the JB Zone for construction.

23. **Binding Effect.** If Master Developer sells or conveys Parcels of lands to Subdevelopers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, and configurations as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by Master Developer and as set forth in this Amended and Restated MDA without any required approval, review, or consent by the City except as

otherwise provided herein.

24. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Amended and Restated MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Master Developer. The initial representative for the City shall be Kane Loader, City Manager and the initial representative for Master Developer shall be Christian Gardner, President. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Amended and Restated MDA and the development of the Project.

25. **Mutual Drafting.** Each Party has participated in negotiating and drafting this Amended and Restated MDA and therefore no provision of this Amended and Restated MDA shall be construed for or against either Party based on which Party drafted any particular portion of this Amended and Restated MDA.

26. **Applicable Law.** This Amended and Restated MDA is entered into in Salt Lake County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

27. **Venue.** Any action to enforce this Amended and Restated MDA shall be brought only in the Third District Court for the State of Utah, Salt Lake County.

28. **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.

29. **Severability.** If any provision of this Amended and Restated MDA is held by a

court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Amended and Restated MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Amended and Restated MDA shall remain in full force and affect.

30. **Entire Agreement.** This Amended and Restated MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

31. **Recordation and Running with the Land.** This Amended and Restated MDA shall be recorded in the chain of title for the Gardner Property. This Amended and Restated MDA shall be deemed to run with the land.

32. **Authority.** The Parties to this Amended and Restated MDA each warrant that they have all of the necessary authority to execute this Amended and Restated MDA.

Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Amended and Restated MDA lawfully binding the City pursuant to Resolution No. 2019-R-09 adopted by the City Council on March 19, 2019.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended and Restated MDA by and through their respective, duly authorized representatives as of the day and year first herein above written.

CITY:

Robert M. Hale

Robert M. Hale, Mayor

Attest:

Rori L. Andreason

Rori L. Andreason, MMC
City Recorder



Approved as to form:

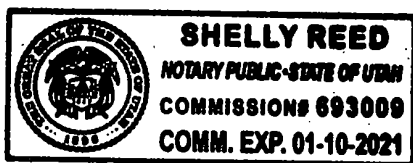
Elisa Garner
Elisa Garner, City Attorney

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

On this 5th day of April, 2019 personally appeared before me Robert M Hale, Mayor of Midvale City, who executed the foregoing instrument on behalf of Midvale City.

Shelly Reed
NOTARY PUBLIC
Residing at: SL County

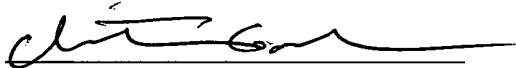
My Commission Expires:



DEVELOPER:

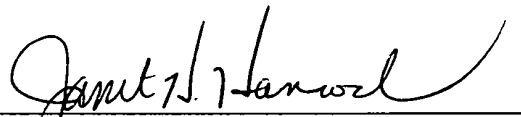
GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company, by its manager

KC Gardner Company, L.C., a Utah limited liability company

By: 
Name: Christian Gardner
Title: Manager

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

On this 4th day of April, 2019, personally appeared before me Christian Gardner, a Manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Gardner Jordan Bluffs, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company.


NOTARY PUBLIC
Residing at:

My Commission Expires:



TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Gardner Property
Exhibit "B"	Concept Plan
Exhibit "C"	Fiber Optics Improvements
Exhibit "D"	Legal Description of Jordan Bluffs Property
Exhibit "E"	Central Community Park Parcel
Exhibit "F"	Required Park Improvements and walkway locations (A full-size copy of Exhibit F, including photographs of amenities, is available for review in the Midvale City Community Development Department Office.)

Exhibit "A"

Legal Description of Property

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

Lot 2, "Jordan Bluffs Subdivision" recorded with the County Recorder for Salt Lake County, Utah on November 29, 2017 as Entry No. 12668463 in Book 2017P at Page 331.

Contains 11,494,170 Square Feet or 263.870 Acres

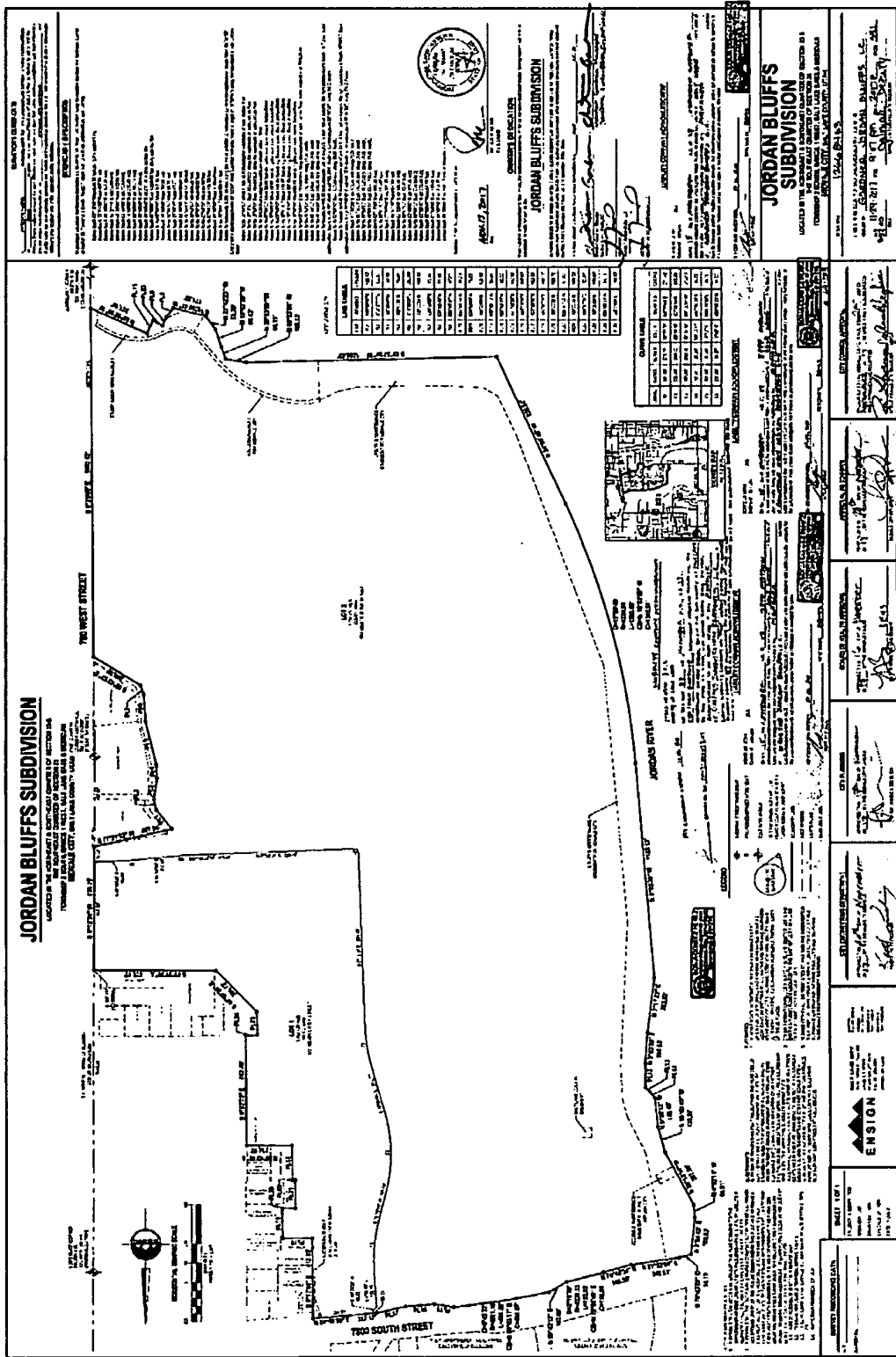


Exhibit "B"
Concept Plan

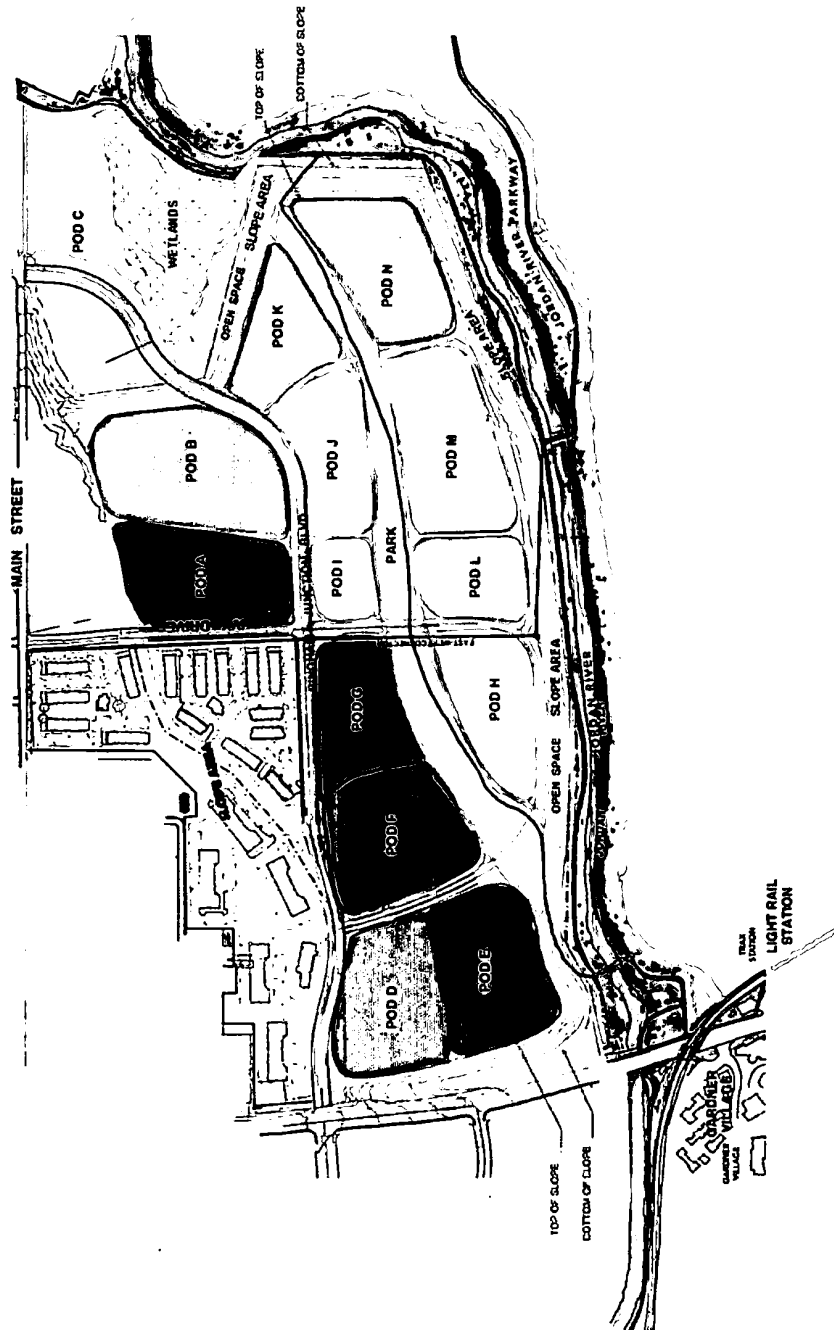


Exhibit "C"

Fiber Optic Improvements

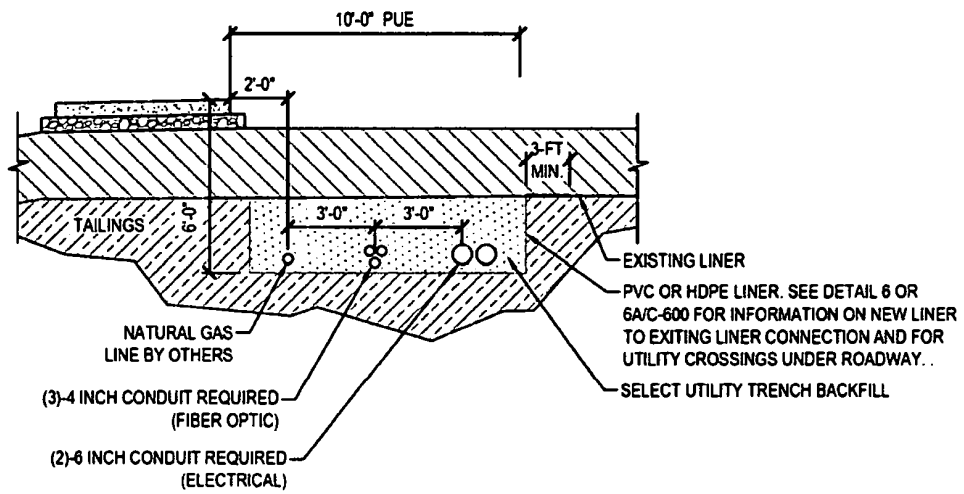


Exhibit "D"

Legal Description of Jordan Bluffs Property

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

Lots 1 and 2, "Jordan Bluffs Subdivision" recorded with the County Recorder for Salt Lake County, Utah on November 29, 2017 as Entry No. 12668463 in Book 2017P at Page 331.

Exhibit "E"

Central Community Park Parcel

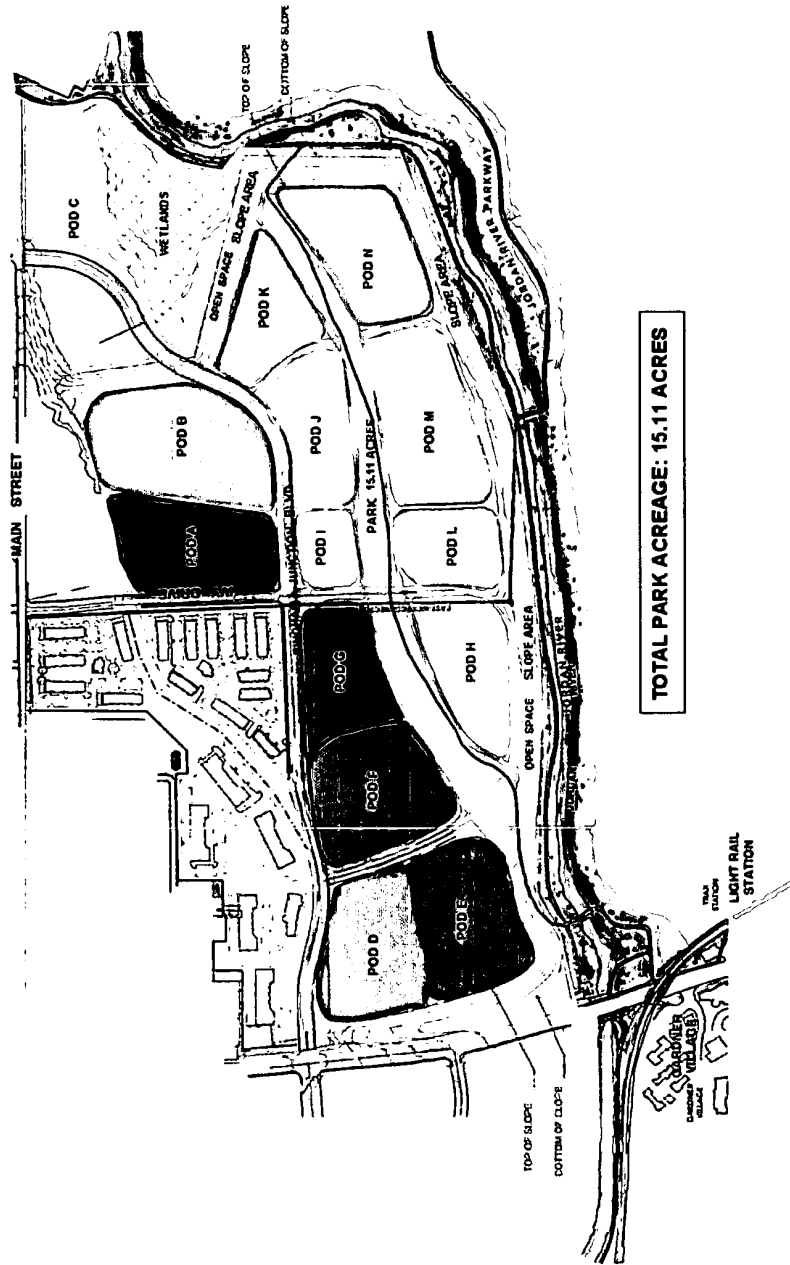
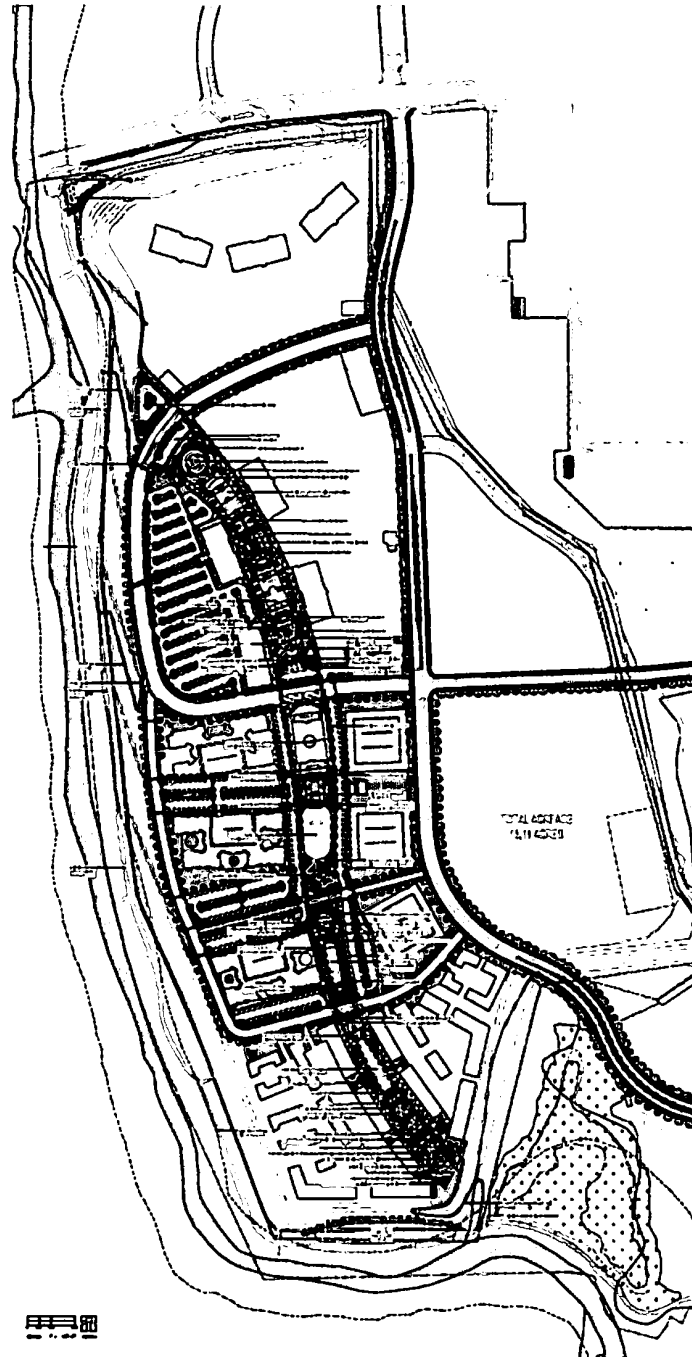


Exhibit "F"

Required Park Improvements and Exhibits



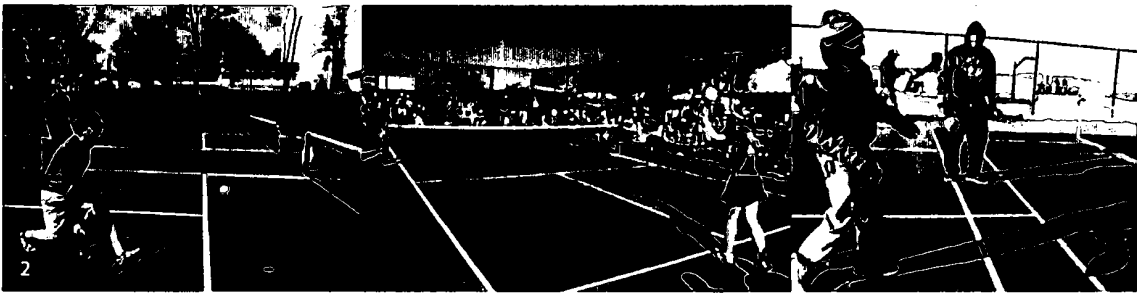
JORDAN BLUFFS OPEN SPACE MASTERPLAN



A full-size version of plan is available in Midvale Community Development Department Office



1 splash pad



2 pickle ball courts

jordan bluffs

midvale UT

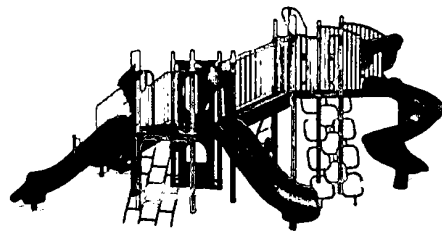
03.14.2019



3 basketball courts



4 pavilion



5

playgrounds - large and small

jordan bluffs

midvale UT

03.14.2019





6
mounded viewing area



7
gazebo



8
dog park



9
shade structure



10
tables and chairs

jordan bluffs midvale UT

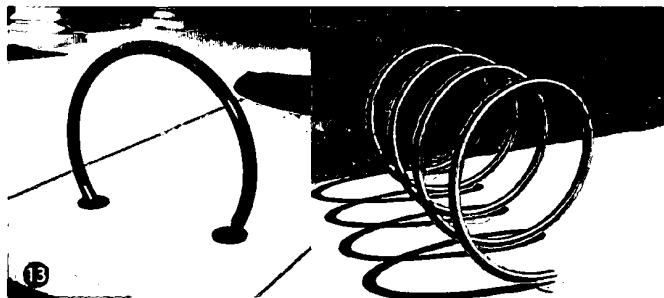
03 14 2019



11
counter height wall for eating at food truck plaza



12
bbq

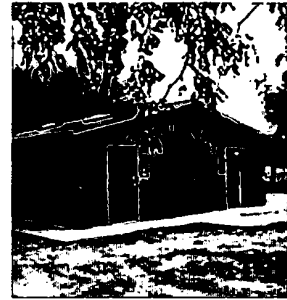
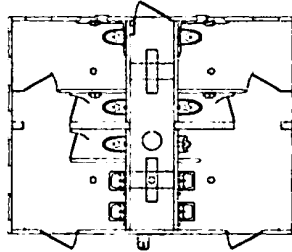
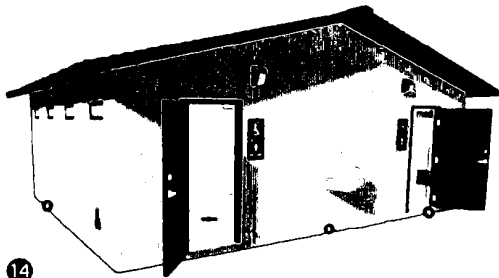


13
bike rack

jordan bluffs midvale UT

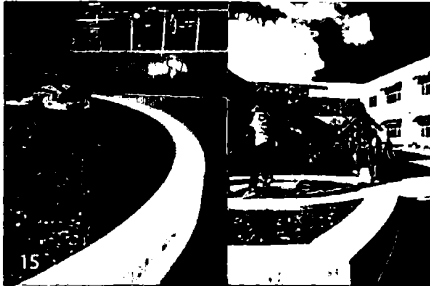
03 14 2019





14

restroom - pre-fabricated



15
seating walls



16
terraced seat walls

jordan bluffs

midvale, UT

03.14.2019

