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Russell Shirts Washington County Recorder
09/28/2017 12:26:20 PM Fee \$0.00 By STATE
OF UTAH SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

AGREEMENT

Devl. No.1129

This AGREEMENT (the "Agreement") is entered into this 7th day of September, 2017 (the "Effective Date"), between the STATE OF UTAH, through the SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (the "Trust Lands Administration"), and Dean T. Terry Investments L.L.C., a Utah limited liability company, 132 W Tabernacle, Bldg B, St. George, Utah 84770 (the "Terry").

RECITALS

A. The Trust Lands Administration owns and/or is the master developer of certain lands in Washington City, Utah known as the Sienna Hills Master Planned Community ("Sienna Hills").

B. Zoning and other requirements for Sienna Hills were set forth in the Planned Community Development Project Plan for Sienna Hills, a Planned Community Development, Washington, Utah (the "PCD").

C. Terry owns certain lands more particularly described in Exhibit A and generally depicted in Exhibit B (the "Terry Parcel"). The Terry Parcel was previously owned by the Trust Lands Administration and was conveyed to Terry and certain other entities pursuant to that certain Agreement to Exchange Real Property. The Terry Parcel was included in the PCD at the time of such conveyance and remains in the PCD as of the Effective Date.

D. Terry desires to re-zone the Terry Parcel as C-2 (the "Requested Rezone"), thereby removing the Terry Parcel from the PCD. The Trust Lands Administration has opposed the Requested Rezone, due to concerns regarding the permitted heights of buildings and signs that could negatively impact Sienna Hills.

E. On September 8, 2005, the Trust Lands Administration granted Terry and other entities that owned the Terry Parcel a slope easement (the "Slope Easement") for the purpose of constructing, maintaining and repairing an earthen-made slope to protect against erosion. The Slope Easement is located on those lands more particularly described in Exhibit C and generally depicted in Exhibit B (the "Slope Easement Parcel").

F. On July 5, 2006, the Trust Lands Administration dedicated certain lands to Washington City (the "City") as open space (the "Open Space Parcel"), as more particularly described in Exhibit D and generally depicted in Exhibit B. This dedication contained a restriction (the "Dedication Plat Restriction"), providing that title to the Open Space Parcel would automatically revert to the Trust Lands Administration, its successors and assigns if it was used for purposes other than as open space. The Dedication Plat Restriction allowed the installation of trail and related facilities, such as benches and landscaping.

G. The Trust Lands Administration has agreed to support Terry's Requested Rezone if Terry will agree to certain building and sign height limitations, as set forth in this Agreement. Terry will agree to these limitations if the Trust Lands Administration will amend the Slope Easement and the Dedication Plat Restriction to allow certain fill activities on the Slope Easement Parcel and Open Space Parcel, respectively.

AGREEMENT

1. Trust Lands Administration Support of Requested Rezone; Building and Sign Height Limitations. The Trust Lands Administration hereby agrees to support the Requested Rezone of the Terry Parcel when such request is before the Washington City Council (the "Council"), the Washington City Planning Commission (the "Commission"), or any other administrative entity with the authority to approve or reject the Requested Rezone, subject to those terms and conditions set forth in this Agreement. Such support shall be evidenced by oral representations of agents of the Trust Lands Administration at Council or Commission meetings, letters to the Council or Commission, or in any other way reasonably requested by Terry. In return for the Trust Lands Administration supporting the Requested Rezone, Terry hereby agrees that the following limitations shall apply to the development of the Terry Parcel: (a) no building erected on the Terry Parcel shall exceed fifty five feet (55') at any part of the building; and (b) no sign erected on the Terry Parcel shall exceed fifty feet (50'). These are the height limitations for commercial buildings and sign in the PCD as of the Effective Date, but such requirements shall survive any amendment of the PCD in the future. The obligations described in this Section 1 shall run with the land, and shall be binding on all future owners, successors, lessees, permittees, or assignees of the Terry Parcel. The Trust Lands Administration, its successor and assigns, shall have all remedies available in law to enforce these limitations.

2. Approval Contingencies. The Trust Lands Administration and Terry both hereby agree to request that the Council and/or Commission's approval of the Requested Rezone be contingent on the following conditions: (a) no building erected on the Terry Parcel shall exceed fifty five feet (55') at any part of the building; and (b) no sign erected on the Terry Parcel shall exceed fifty feet (50').

3. Slope Easement. If the Council approves the Requested Rezone subject to those limitations described in Section 2. of this Agreement, then (at Terry's written request) the Trust Lands Administration shall consent to Terry placing hardscape on the Slope Easement Parcel in accordance with this Agreement. The Trust Lands Administration shall be under no obligation to consent to such actions if the Requested Rezone is not approved by the Council or if the Requested Rezone is not subject to those limitations described in Section 2. If these conditions are met, Terry will place hardscape on the Slope Easement parcel to specifications required for such by the City. Terry will pay all costs associated with hardscaping the Slope Easement Parcel. Terry will maintain the Slope Easement Parcel at Terry's own expense and shall keep such area in a well maintained condition. The Trust Lands Administration will execute an amendment to the Slope Easement to allow for such actions in a reasonable period of time after Council approval and Terry's request.

4. Open Space Parcel. If the Council approves the Requested Rezone subject to those limitations described in Section 2 of this Agreement, then (at Terry's written request) the Trust Lands Administration shall work in good faith with the City and Terry to allow Terry to fill a specified portion of the Open Space Parcel (the "Open Space Fill Area") in accordance with specifications required for such fill by the City. The Trust Lands Administration shall be under no

obligation to take such actions if the Requested Rezone is not approved by the Council or if the Requested Rezone is not subject to those limitations described in Section 2. The location of the Open Space Fill Area is generally depicted in Exhibit E. If filling of the Open Space Parcel occurs pursuant to this Agreement, Terry shall also place hardscape on the Open Space Fill Area to specifications required for such by the City. Terry will pay all costs associated with filling and hardscaping the Open Space Fill Area. Terry will maintain the Open Space Fill Area at Terry's own expense and shall keep such area in a well maintained condition. The Trust Lands Administration and Terry acknowledge that the Open Space Parcel is owned by the City and that the City will have discretion as to whether or not it approves of such actions. If the City does approve of such, then the Trust Lands Administration shall work with the City to amend the Deed Plat Restriction to provide that fill and hardscaping material may be placed on the Open Space Fill Area. In such circumstances, the Deed Plat Restriction would still require the Open Space Parcel to be used as open space and would not allow any other improvements (other than trails and related facilities, such as benches and landscaping) to be constructed on the Open Space Parcel, with failure to comply resulting in the automatic reversion of the Open Space Parcel to the Trust Lands Administration.

5. **Events of Default.** In the event of a default or breach of any of the terms of this Agreement, either party may with thirty (30) days prior written notice seek damages for any and all violations or defaults with or without terminating this Agreement. In the event the non-breaching party deems the breach or default to constitute a threat to safety, life, or property, it may elect to intervene immediately, without notice, to remedy the breach or default, and the breaching party shall pay all costs in remedying the breach or default upon demand, together with interest thereon from the date of expenditure. Alternatively, the non-breaching party may immediately act itself to remedy the breach or default.

6. **Agreement Binding.** This Agreement shall be binding upon and inure to the benefit of the Trust Lands Administration, Terry, their successors and assigns.

7. **Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of Utah.

8. **Authority.** The individuals executing this Agreement hereby warrant and represent they are duly authorized to do so in the capacity stated, and to bind the entities for which they are executing this Agreement.

9. **No Partnership.** Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the Parties.

10. **Assignment.** Neither Terry nor the Trust Lands Administration shall assign this Agreement to anyone except with the prior written consent of the other party.

11. **Entire Agreement.** This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof, incorporates all prior agreements, and may only be modified by a subsequent writing duly executed by the parties.

12. **No Waiver.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless

executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its own benefit; *provided, however*, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

13. **Severability.** If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

14. **Notice.** Any notice contemplated herein shall be in writing and shall be deemed sufficient if deposited in the United States mail, postage prepaid and certified or registered, and addressed to those addresses first set forth herein.

IN WITNESS WHEREOF, the parties have entered into this Agreement.

STATE OF UTAH
SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION

DEAN T. TERRY INVESTMENTS L.L.C.



Rodger Mitchell, Assistant Director


By: DEAN T. TERRY INVESTMENTS LLC
Its: MANAGER

Approved as to form:



Michelle E. McConkie, Special Asst. Atty. Gen.

On the 27th day of September, 2017, personally appeared before me **Rodger Mitchell** who being by me duly sworn did say that he is the Assistant Director of the School and Institutional Trust Lands Administration of the State of Utah, and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 27th day of September, 2017.

Alan Russell Roe
Notary Public

My Commission expires:

05/06/21
(Date)

Residing at: Salt Lake
(County)



STATE OF Utah)
: ss.
COUNTY OF Washington

On the 27th day of September, 2017, personally appeared before me (name) Dean Thomas Terry, who being by me duly sworn did say that (s)he is the (title) Manager of Dean T. Terry Investments L.L.C., and who acknowledged that (s)he, being duly authorized, did execute the foregoing instrument on behalf of said Dean T. Terry Investments L.L.C.

Given under my hand and seal this 27th day of September, 2017.

SS
Notary Public

My Commission expires:

11-1-2020
(Date)

Residing at: Washington
(County)

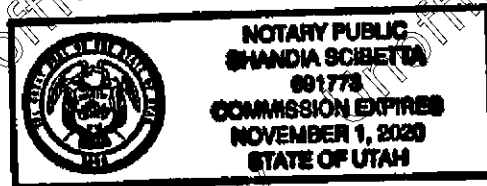


Exhibit A
Legal Description of Terry Parcel

Beginning at the Northeast corner of that property recorded with entry No 00825241, in book 1555, page 1702 in the office of the Washington County Recorder, in said county, State of Utah, said point also being an existing Bulloch Brothers rebar and cap, also being the Northeast corner of the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ of the SW $\frac{1}{4}$) of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, thence along the North Property line of said property also along the North line of the said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 12 North 88°00'39" West 566.12 feet to a point on the arc of a 1500.00 foot radius curve to the right, of which radius point bears South 29°21'38" East; thence Northeasterly 357.49 feet along said curve through a central angle of 13°39'18" to the point of tangency; thence North 74°17'46" East 141.77 feet to a point on the right-of-way line of Washington Parkway; thence along said right-of-way line in the following eight (8) courses: South 15°42'23" East 51.00 feet; thence North 74°17'37" East 155.65 feet to the point of curvature of a 55.50 foot radius to the right; thence Southeasterly 53.13 feet along said curve through a central angle of 54°51'11" to a point of reverse curvature of a 129.50 foot radius curve to the left, of which the radius point bears North 39°08'51" East; thence Southeasterly 34.90 feet along said curve through a central angle of 15°26'28" to the point of reverse curvature of a 85.50 foot radius curve to the right; from which the radius point bears South 23°42'23" West; thence Southeasterly 75.49 feet along the said curve through a central angle of 50°35'19" to the point of tangency; thence South 15°42'29" East 83.89 feet; thence South 74°17'39" West 7.00 feet; thence South 15°42'07" East 51.00 feet; thence leaving said right-of-way South 74°17'37" West 231.53 feet, to a point on the East line of said property, said point also being on the Center Section line of said Section 12; thence along said East property line and along said Center Section line North 1°03'28" East 90.38 feet to the point of beginning. Contains 2.58 acres.

Exhibit B
General Depiction of Terry Parcel (= Parcel 3), Slope Easement Parcel (=Easement in favor of Terry group), and Open Space Parcel

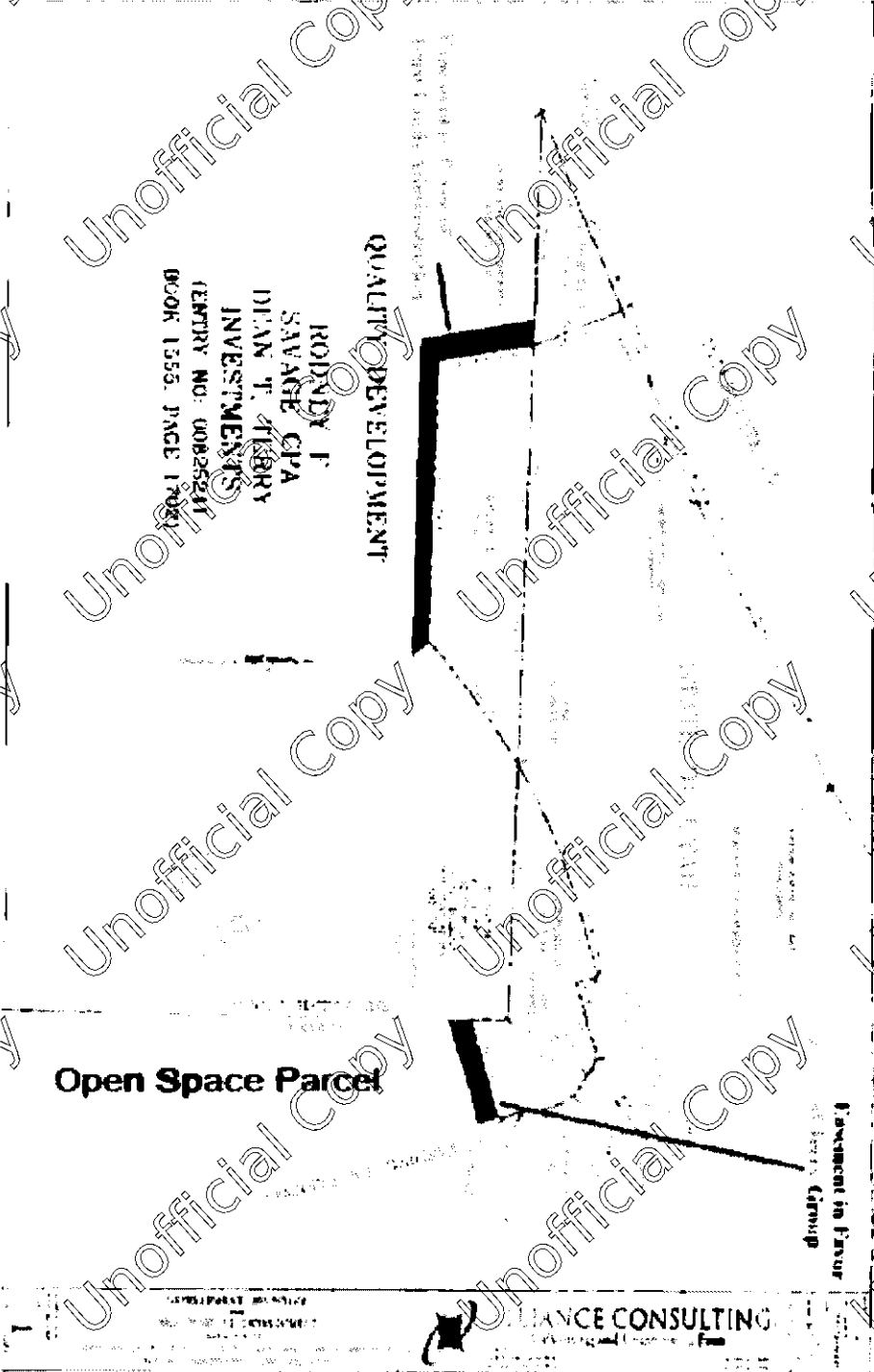


Exhibit C
Legal Description of Slope Easement Parcel

The Slope Easement extends 70 feet south from the south boundary of the following parcel (The Terry Parcel):

Beginning at the Northeast corner of that property recorded with entry. No 00825241, in book 1555, page 1702 in the office of the Washington County Recorder, in said county, State of Utah, said point also being an existing Bulloch Brothers rebar and cap, also being the Northeast corner of the Southeast Quarter of the Southwest Quarter (SE ¼ of the SW ¼) of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, thence along the North Property line of said property also along the North line of the said SE ¼ of the SW ¼ of said Section 12 North 88°00'39" West 566.12 feet to a point on the arc of a 1500.00 foot radius curve to the right, of which radius point bears South 29°21'38" East; thence Northeasterly 357.49 feet along said curve through a central angle of 13°39'18" to the point of tangency; thence North 74°17'46" East 141.77 feet to a point on the right-of-way line of Washington Parkway; thence along said right-of-way line in the following eight (8) courses: South 15°42'23" East 51.00 feet; thence North 74°17'37" East 155.65 feet to the point of curvature of a 55.50 foot radius to the right; thence Southeasterly 53.13 feet along said curve through a central angle of 54°51'11" to a point of reverse curvature of a 129.50 foot radius curve to the left, of which the radius point bears North 39°08'51" East; thence Southeasterly 34.90 feet along said curve through a central angle of 15°26'28" to the point of reverse curvature of a 85.50 foot radius curve to the right; from which the radius point bears South 23°42'23" West; thence Southeasterly 75.49 feet along the said curve through a central angle of 50°35'19" to the point of tangency; thence South 15°42'29" East 83.89 feet; thence South 74°17'39" West 7.00 feet; thence South 15°42'07" East 51.00 feet; thence leaving said right-of-way South 74°17'37" West 231.53 feet, to a point on the East line of said property, said point also being on the Center Section line of said Section 12; thence along said East property line and along said Center Section line North 1°03'28" East 90.38 feet to the point of beginning. Contains 2.58 acres.

Exhibit D
Legal Description of Open Space Parcel

Beginning at a point which is North 01 05'21" East 250.36 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian; running thence along the Center Section line North 01 05'21" East 1007.29 feet; thence North 74 17'34" East 232.21 feet to the point on the Washington Parkway Right-of-Way line, thence along said Washington Parkway for the following five (5) courses: South 15 42'10" East 284.87 feet to the point of curvature of a 1142.00 foot radius curve concave to the right; thence Southwesterly 519.73 feet along the arc of said curve through a central angle of 26 04'33" to the point of tangency; thence South 10 22'22" West 266.65 feet to the point of curvature of a 25.00 foot radius curve concave to the right; thence Southwesterly 34.91 feet along the arc of said curve through a central angle of 80 00'00" to the point of tangency; thence North 89 37'38" West 270.98 to Center Section line, said point also being the point of beginning.

Exhibit E
General Depiction of Open Space Fill Area
(Shown on this map as Proposed Easement)

