



W2283086

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ERNEST D ROWLEY, WEBER COUNTY RECORDER
07-AUG-07 201 PM FEE \$1.00 DEP KKA
REC FOR: OGDEN CITY

**AMENDED AGREEMENT FOR DEVELOPMENT OF LAND
AT 189 WEST 7TH STREET, OGDEN CITY, UTAH**

This amended agreement for development of land, hereinafter referred to as "the AGREEMENT," entered into this 2nd day of August, 2007, between Ogden City, a Utah municipal corporation, hereinafter referred to as "the CITY," and Mr. Paul Stuart, a private individual, hereinafter referred to as "DEVELOPER."

RECITALS

WHEREAS, in furtherance of the objectives of the Ogden City General Plan, the CITY has considered an application for a zone change on certain real property located at approximately 201 West 7th Street, in Ogden City, which property is hereinafter referred to as the "SUBJECT AREA," from its present zoning of Single-Family Residential (R-1-6) to Commercial (C-3/CO), in accordance with the provisions and requirements of Chapter 19-39 of the CITY's zoning ordinance;

WHEREAS, DEVELOPER has presented to the CITY a general proposal for development in the SUBJECT AREA, which provides for development in a manner consistent with the Ogden City General Plan;

WHEREAS, DEVELOPER represents that it is the owner of the real property located in the SUBJECT AREA;

WHEREAS, DEVELOPER desires approval by the City Council of the (C-3/CO) zoning for the SUBJECT AREA;

WHEREAS, the CITY is willing to grant the approval of such rezoning subject to DEVELOPER agreeing to certain requirements and restrictions of use and development within the SUBJECT AREA, which requirements and restrictions are intended to:

1. Eliminate potential uses otherwise allowed under the C-3 zone, the development of which would not be consistent with the General Plan, and
2. Provide protection to surrounding property and associated property values;

WHEREAS, the CITY believes that the development in the SUBJECT AREA pursuant to the terms of this AGREEMENT is in the vital and best interests of the City and the health, safety, morals, and welfare of it's residents;

WHEREAS, DEVELOPER agrees and desires to proceed with the development and use of the SUBJECT AREA subject to the terms and conditions of this AGREEMENT.

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NOW, THEREFORE, each of the parties hereto, for and in consideration of the premises and agreement of the other party hereto, does hereby covenant and agree as follows:

**ARTICLE 1
DEFINITIONS**

The following terms have the meaning and content set forth in this ARTICLE I, wherever used in this AGREEMENT:

- 1.01 "CITY". The "CITY" shall mean Ogden City, a Utah municipal corporation. The principle office of the CITY is located at 2549 Washington Boulevard, Ogden City, Utah 84401.
- 1.02 "CONCEPT PLAN". The "CONCEPT PLAN" is the plan depicting the proposed development along with certain conditions and restrictions of development by the Ogden City Planning Commission and Ogden City Council, pursuant to the terms of this AGREEMENT, attached hereto as Attachment "B" and made a part of this AGREEMENT by this reference. Attachment B-1 depicts the concept plan presented by the DEVELOPER, which proposed plan is made subject to the conditions and restriction imposed herein, the conditions of the required conditional use permit and all other ordinance requirements. Attachment B-2 is intended to depict additional landscaping requirements as provided herein. Attachment B-3 is intended to depict building elevations as described herein. The CONCEPT PLAN is not intended to depict the final site plan, which will need to be altered in order to comply with the requirements of the conditional use permit and any applicable zoning regulations.
- 1.03 "DEVELOPER". "DEVELOPER" shall mean Mr. Paul Stuart, a private individual, or his successors and assigns.
- 1.04 "PROPOSED DEVELOPMENT". The "PROPOSED DEVELOPMENT" includes the development of the SUBJECT AREA and the construction of self storage bays (personal storage units) as generally reflected on the CONCEPT PLAN.
- 1.05 "SUBJECT AREA". The "SUBJECT AREA" shall mean the parcel or parcels of real property situated in the SUBJECT AREA, more particularly shown on the map and described in the SUBJECT AREA legal description, attach hereto as Attachment "A", containing approximately 1.3 acres.

**ARTICLE II
CONDITIONS PRECEDENT**

- 2.01 This AGREEMENT shall not take effect until:
- A. The Ogden City Council has approved the AGREEMENT as a condition of such rezoning of the SUBJECT AREA to (M-1/CO) and the Mayor has executed this AGREEMENT on behalf of the CITY;
 - B. DEVELOPER demonstrates to the satisfaction of the City Attorney that it is the sole owner of the SUBJECT AREA for the purpose of binding the owners, their successors and assigns to the terms of this AGREEMENT, by delivering to the CITY a copy of the title policy or other documentation verifying that DEVELOPER is the sole owner of the property.

**ARTICLE III
DEVELOPER'S COVENANTS
REGARDING FUTURE DEVELOPMENT AND USE**

- 3.01 DEVELOPER, and its successors and assigns, hereby waive the right to use or occupy the land comprised of the SUBJECT AREA or to use, occupy or erect thereon any building or structure designed, erected, altered, used or occupied for any use not reasonably related to the following uses:
- A. A facility of personal storage units and;
 - B. Any accessory uses necessary and incidental to the above use.
- 3.02 DEVELOPER hereby waives the right to use, occupy or erect upon the SUBJECT AREA any STRUCTURE designed, erected, altered, used or occupied which does not comply with the following site development standards:
- A. The construction of buildings and other improvements shall be sensitive to the adjacent properties
 - 1. Buildings should be designed to be not more than 1 story or a maximum height of 17'.
 - 2. The roof shall be flat with not more than a 1.5/12 pitch.

3. The principle building material shall be brick on the north and east sides. The west and south sides shall be mainly split faced CMU (block).
 4. The roof shall be green colored metal.
 5. The proposed internal access on the concept plan shall meet the Fire Marshall's approval.
 6. There shall be a minimum 10' wide landscaped setback to the west and south. There shall be a 20' landscaped setback along the north side. The landscaping to be as indicated in attachment B-2
- B. The DEVELOPER shall install grass and shrubs along the 7th Street frontage.
- C. Additional trees and shrubs as approved by the Planning Commission should be added along 7th Street and around the periphery in order to provide a visual buffer to the buildings.
- D. Vehicular access to the property by the public shall be restricted as follows:
1. All access will come from 7th Street
- E. Unless a more restrictive requirement is imposed for development in the C-3 zone, the following additional standards shall apply in the review and approval of the site plan and/or any conditional use permit:
1. Interior lighting of the site will be lighting on the building and shall face downward and away from adjacent properties
 2. Two outdoor light poles shall be allowed. One shall be at the northeast gate and one at the northwest gate of the 7th Street entrances.
 3. The light poles shall not exceed 14 feet, and shall be directed onto the SUBJECT AREA.
 4. Only one freestanding monument sign not exceeding eight feet (8') in height shall be allowed along the 7th Street frontage.
 5. Lighting placed on the buildings shall be residential in style and shall be directed away from the adjacent dwellings.
 6. The design and construction materials of the monument sign structure shall use brick that matches the building's.

7. No signage shall be internally illuminated.
8. No generators may be installed outdoors within the SUBJECT AREA.
9. All dumpsters shall be located on the east side of the buildings and behind the front entry ways.

ARTICLE IV CITY'S UNDERTAKINGS

If this Agreement is approved by the Ogden City Council as provided in Section 2.01, the zoning on the SUBJECT AREA from its present zoning of R-1-6 to the (C-3/CO) zoning over the entire SUBJECT AREA shall be approved by ordinance of the Ogden City Council subject only to the terms and conditions of this Agreement. Upon execution of this Agreement by the Mayor and DEVELOPER, such rezoning shall immediately take effect.

ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF THE CITY

- 5.01 CITY Approval Required. The development plans, and any changes thereto, must be approved by the CITY pursuant to the requirements of the City zoning ordinance and all other applicable provisions of the Ogden City Municipal Code. In addition to any standards, requirements, or regulations imposed by City ordinance, the development plans shall also be reviewed by the CITY to determine compliance with the terms of this AGREEMENT and the CONCEPT PLAN approved herein. This approval is in addition to any required CITY approval which is directed to zoning, engineering or structural matters or compliance with building codes and regulations or applicable City, State or Federal law relating to land use or construction standards. The CITY's determination, respecting compliance with the terms of this AGREEMENT and the CONCEPT PLAN approved herein, shall be final; provided that DEVELOPER reserves all rights as to the appeal of any administrative determinations of the CITY.
- 5.02 Issuance of Permits. DEVELOPER shall have the sole responsibility for obtaining and/or seeing that all necessary permits are obtained and shall make application for such permits directly to the Ogden City Community Development Department and other appropriate departments and agencies. DEVELOPER shall timely submit and, prior to the date scheduled for construction, obtain building permit(s), and engineering permits as required, and thereafter diligently prosecute such work as is authorized in such permits. Failure to timely file and to diligently pursue the issuance of all permits shall be a breach of this AGREEMENT and grounds for termination of this AGREEMENT at the option of the CITY and the exercise of the remedies contained herein.

- 5.03 CITY Obligations Conditional. The obligations of the CITY, as set forth in this AGREEMENT, are subject to the condition that DEVELOPER shall not be in default of it's obligations hereunder at any time; provided that obligations of CITY will continue upon DEVELOPER's cure of any such default in accordance with paragraph 6.01.
- 5.04 Completion Date. DEVELOPER agrees for itself, and it's successors and assigns, to promptly begin and diligently prosecute to completion, the PROPOSED DEVELOPMENT of the SUBJECT AREA, through the obtaining of all necessary building and engineering permits, and after the issuance of such permits the subsequent construction of the improvements thereon, and that such permits shall be obtained and such construction shall in any event commence within two (2) years of the date of this Agreement and, once commenced, be diligently pursued and shall be completed no later than three (3) years from the date of this Agreement.
- 5.05 Access to the SUBJECT AREA. The CITY, for the purpose of inspection, and whenever and to the extent necessary, to carry out the purposes of this and other sections or provisions of the AGREEMENT shall be permitted access to the SUBJECT AREA, so long as the same shall not unreasonably interfere with the use and development of the SUBJECT AREA consistent with the terms and conditions of this Agreement.

ARTICLE VI REMEDIES

- 6.01 Remedies Upon Default or Breach. In the event of any default in or breach of this AGREEMENT, or any of its terms or conditions, either party hereto or any permitted successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to cure or remedy such default of breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said thirty (30) day period, the party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such breach and shall continue diligently thereafter to cure or remedy such breach or default in a timely manner. In case such action is not taken, or diligently pursued, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to:
- A. Cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; or

- B. Terminate this AGREEMENT. In the event that DEVELOPER is the defaulting party, upon termination, the CITY may institute proceedings to change the zoning to the zoning designations that existed prior to the changing of the zoning to (C-3/CO).
- 6.02 Additional Remedies of CITY. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that (unless due to the provisions of Section 6.04, below) if DEVELOPER fails to commence construction within two (2) years of the date of this Agreement, the CITY shall have the right, but not the obligation, at the sole discretion of the CITY to terminate this Agreement and the CITY may institute proceedings to change the zoning to the zoning designation that existed prior to the changing of the zoning to R-1-6.
- 6.03 Waiver of Objection and Hold Harmless. If CITY institutes proceedings to change the zoning to the original zoning designation in accordance with the provisions of this Agreement, DEVELOPER, its successors and assigns, hereby waives any objection to the zone change and hereby releases, indemnifies and holds the CITY harmless from any actions that may be brought by DEVELOPER, its successors and assigns, in respect of any such zoning change.
- 6.04 Enforced Delay Beyond Parties Control. For the purposes of any other provisions of this AGREEMENT, neither the CITY nor DEVELOPER, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the preparation of the SUBJECT AREA for development, the seeking or obtaining of permits, or beginning and completion of construction of improvements, or progress in respect thereto, in the event the enforced delay in the performance of such obligations are due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or unforeseeable delays of contractor or subcontractors due to such causes.
- 6.05 Extension by the CITY. The CITY, in writing, may extend the time for DEVELOPER's performance of any term, covenant, or condition of this AGREEMENT or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the parties provided, however, that any such extension or permissive curing of any particular default shall not operate to eliminate any of DEVELOPER's obligations and does not constitute a waiver of the CITY's right with respect to any other term, covenant or condition of this AGREEMENT or any other default in, or breach of, this AGREEMENT.

**ARTICLE VII
GENERAL PROVISIONS**

- 7.1 Assignability. DEVELOPER shall not assign this AGREEMENT or any rights or interests herein without the prior written consent of the CITY, except that, upon notice to the CITY, DEVELOPER shall have the right to assign and transfer this AGREEMENT and its rights and obligations hereunder to an entity controlled by or under common control with DEVELOPER, so long as any such entity shall consent in writing to be bound by the terms of this AGREEMENT. Any assignee approved by the CITY shall consent in writing to be bound by the terms of this AGREEMENT as a condition of the assignment. DEVELOPER shall not transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this AGREEMENT separate from DEVELOPER's interest in the SUBJECT AREA.
- 7.2 Successors and Assigns of DEVELOPER. This AGREEMENT shall be binding upon DEVELOPER and its successors and assigns and where the term "DEVELOPER" is used in this AGREEMENT, it shall mean and include the successors and assigns of DEVELOPER except that the CITY shall have no obligation under this AGREEMENT to any unapproved, or otherwise unauthorized, successor or assign of DEVELOPER.
- 7.3 Reserved Legislative Powers. Nothing in this AGREEMENT shall limit the future exercise of the police power by the CITY in enacting zoning, subdivision development and related land use plans, policies, ordinances and regulations after the date of this AGREEMENT.
- 7.4 Minimum Zoning Standards and Vested Rights. It is not the intention of this Agreement to waive any existing minimum zoning standards, or to restrict the ability of the CITY Council to enact additional standards in the future. The only vested right obtained by DEVELOPER in the approval of this Agreement as part of the rezoning, is the right under the terms and conditions of this Agreement, to apply for site plan approval and building permits.
- 7.5 No Joint Venture or Partnership. This AGREEMENT does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto.
- 7.6 Third Party Beneficiaries. Any claims of third party benefits under this AGREEMENT are expressly denied.
- 7.7 Agreement to Run With the Land. This AGREEMENT shall be recorded against the property referred herein as the SUBJECT AREA. The AGREEMENT contained herein

shall be deemed to run with the land and shall be binding on all successors in the ownership of SUBJECT AREA.

7.8 Integration. This AGREEMENT contains the entire agreement 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.

7.9 Authority. The parties represent that each has the requisite authority to enter into this AGREEMENT and that the same has been duly authorized by all necessary or appropriate corporate or regulatory action.

IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be duly executed on its behalf and DEVELOPER has caused the same to be duly executed on its behalf, on and as of the day and year first written above.

CITY: OGDEN CITY CORPORATION,
a Municipal Corporation

By: Matthew R. Godfrey
Matthew R. Godfrey, Mayor

ATTEST:

Cindi Mansell
Cindi Mansell, City Recorder



APPROVED AS TO FORM:

[Signature]
City Attorney

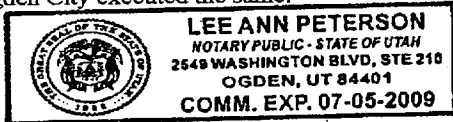
DEVELOPER: Mr. Paul Stuart, a
private individual

By: Paul Stuart
Name/Title: OWNER

ACKNOWLEDGMENTS

STATE OF UTAH)
 :SS
COUNTY OF WEBER)

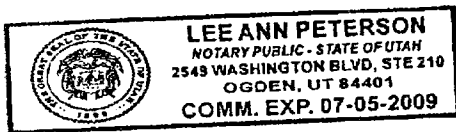
On this 2nd day of August, 2007 personally appeared before me, Matthew R. Godfrey and Cindi Mansell, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that they are respectively the Mayor and City Recorder of Ogden City, a municipal corporation, and that the foregoing document was signed by them in behalf of said Ogden City, and that said Ogden City executed the same.



Notary Public Lee Ann Peterson

STATE OF UTAH)
 :SS
COUNTY OF WEBER)

On this 3rd day of July, 2007, Mr. Stuart personally appeared before me and being by me duly sworn did say that he is the applicant, and that the foregoing instrument was signed on behalf of said individual, and he acknowledged to me that said company executed the same.



Notary Public Lee Ann Peterson

LENDER CONSENT TO DEVELOPMENT AGREEMENT

The undersigned beneficiary hereby consents to the recording of this development agreement for the herein described property and agrees that the deed of trust dated June 11, 2003, and recorded on June 19, 2003 as Entry No. 1949346, in Book 2388, at Page 2192 shall hereafter be subject to all of the terms and conditions of this Development Agreement.

DATED this ___ day of _____, 2007

ZIONS FIRST NATIONAL BANK

By: _____ *N/A* _____
Name/Title: _____

STATE OF UTAH)
 :SS
COUNTY OF WEBER)

On this ___ day of _____, 2007, personally appeared before me _____, who being by me duly sworn did say that he is the _____ of Zions First National Bank, a Utah corporation, and that the foregoing instrument was signed on behalf of said corporation, and he/she acknowledged to me that said corporation executed the same.

Notary Public

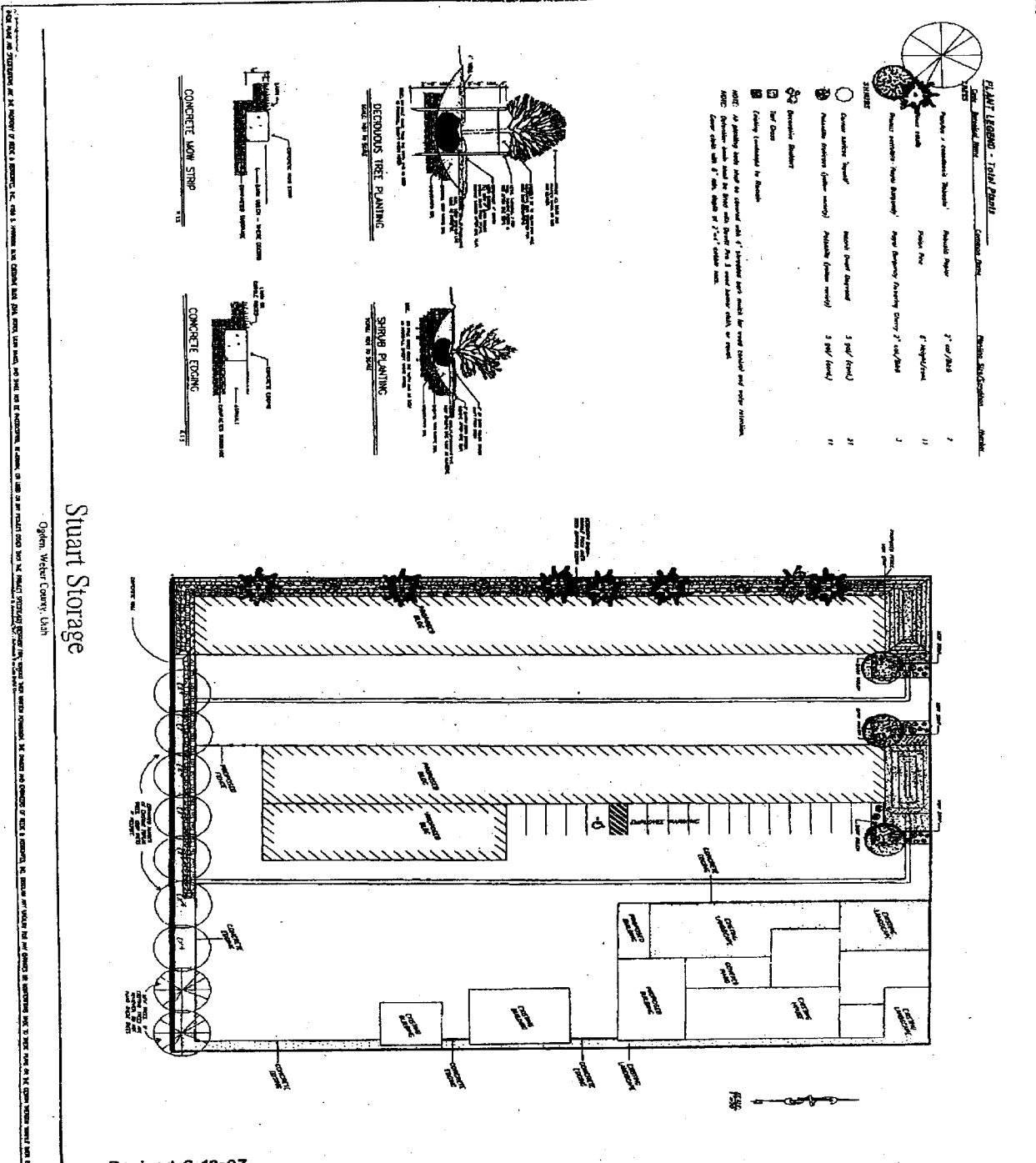
**ATTACHMENT A
("SUBJECT AREA")**

12-091-0090 ✓

PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH,
RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY: BEGINNING AT A
POINT 771.54 FEET NORTH AND 1130 FEET WEST OF THE SOUTHEAST CORNER
OF SAID QUARTER SECTION; RUNNING THENCE NORTH 0D50'23" EAST 330.00
FEET, THENCE NORTH 89D09'45" WEST 172 FEET, THENCE SOUTH 00D50'23"
WEST 330 FEET, THENCE SOUTH 89D07'07" EAST 172 FEET TO THE POINT OF
BEGINNING.

EXCEPTING THAT PORTION WITHIN THE STREET.

ATTACHMENT B
("CONCEPT PLAN")



Stuart Storage
Ogden, Weber County, Utah

THIS PLAN AND SPECIFICATIONS ARE THE PROPERTY OF REEVE & ASSOCIATES, INC. AND ARE LOANED TO YOU FOR YOUR INFORMATION ONLY. THEY ARE NOT TO BE REPRODUCED, COPIED, OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF REEVE & ASSOCIATES, INC. ANY CHANGES TO THIS PLAN MUST BE APPROVED BY REEVE & ASSOCIATES, INC. IN WRITING. THE OWNER AND CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AND STATE AUTHORITIES.

Revised 3-12-07

	<p>Reeve & Associates, Inc.</p> <p>LANDSCAPE ARCHITECTS</p>
<p>DATE: _____</p> <p>PROJECT: _____</p>	<p>LANDSCAPE PLAN</p>