

40

**MASTER DEVELOPMENT AGREEMENT
FOR
Mountain View Office and Self Storage Area**

June 24, 2020

**WHEN RECORDED, RETURN TO:
Herriman City Recorder
5355 West Herriman Main Street
Herriman, UT 84096**

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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
HERRIMAN
5355 W HERRIMAN MAIN ST
HERRIMAN UT 84096
BY: DSA, DEPUTY - MA 40 P.

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Herriman City Recorder
5355 West Herriman Main Street
Herriman, UT 84096

**MASTER DEVELOPMENT AGREEMENT
FOR
Mountain View Office and Self Storage Area**

THIS MASTER DEVELOPMENT AGREEMENT (MDA) is made and entered as of the 24th day of June 2020, by and between Herriman City, a Utah municipality, and Sunrise 3 LLC, a Utah limited liability company.

RECITALS

- A. The capitalized terms used in this MDA and in these Recitals are defined in Section 1.2 below.
- B. Master Developer owns and is developing the Property.
- C. Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the General Plan and Zoning Ordinance.
- D. The Parties acknowledge that development of the Property pursuant to this MDA will result in significant planning and economic benefits to the City and its residents by, among other things, requiring orderly development of the Property and increasing property tax and other revenues to the City based on improvements to be constructed on the Property.
- E. The Parties desire to enter into this MDA to specify the rights and responsibilities of Master Developer to develop the Property as expressed in this MDA and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this MDA.
- F. The Parties understand and intend that this MDA is a “development agreement” within the

meaning of, and entered into pursuant to the terms of UTAH CODE ANN. §10-9a-101 (2019) *et seq.*

G. On June 17, 2020, the City approved an amendment to the General Plan for (1) 10.22± acres of property located approximately at 5101 W 11800 South from “Parks and Recreation” to “Commercial,” and (2) 11.14± acres of property located approximately at 12000 S Black Powder Drive from “Open Space” to “Light Industrial/Business Park.”

H. On June 17, 2020, the City approved an amendment to the Zoning Map for (1) 10.22± acres of property located approximately at 5101 W 11800 South from “A-1 Agricultural Zone” to “C-2 Commercial Zone” with zoning conditions; and (2) 11.14± acres of property located approximately at 12000 S Black Powder Drive from “A-1 Agricultural Zone” to “M-1 Manufacturing Zone” with zoning conditions.

I. The City finds that this MDA and proposed land use plan, as shown in Exhibit “E” on the North Office Area map and Exhibit “F” on the South Self Storage Area map, conforms with the General Plan and Zoning Map with zoning conditions as amended by the City.

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, Master Developer hereby agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. **Incorporation.** The foregoing Recitals and Exhibits “A” - “F” are hereby incorporated into this MDA.

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

- 1.2.1. **Act** means the Land Use, Development, and Management Act, UTAH CODE ANN. § 10-9a-101 (2020), *et seq.*
- 1.2.2. **Addendum No. 1** means the attachment hereto that contain the terms of this MDA that are unique to the Project.
- 1.2.3. **Administrator** means the person designated by the City as the Administrator of this MDA.
- 1.2.4. **Applicant** means a person or entity submitting a Development Application.
- 1.2.5. **Buildout** means the completion of all of the development on the entire Project in accordance with the approved plans.
- 1.2.6. **City** means Herriman City, a Utah municipality.
- 1.2.7. **City Consultants** means those outside consultants employed by the City in various specialized disciplines such as traffic, hydrology, or drainage for reviewing certain aspects of the development of the Project.
- 1.2.8. **City's Future Laws** means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending upon the provisions of this MDA.
- 1.2.9. **City's Vested Laws** means the ordinances, policies, standards, and procedures of the City in effect as of the date of this MDA, a digital copy of which is attached as Exhibit "D."
- 1.2.10. **Council** means the elected City Council of the City.
- 1.2.11. **Default** means a material breach of this MDA as specified herein.

- 1.2.12. **Denied** means a formal denial issued by the final decision-making body of the City for a particular type of Development Application but does not include review comments or “redlines” by City staff.
- 1.2.13. **Development** means the development of a portion of the Property pursuant to an approved Development Application.
- 1.2.14. **Development Application** means a complete 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.
- 1.2.15. **Development Report** means a report containing the information specified in Sections 3.5 or 3.6 submitted to the City by Master Developer for a Development by Master Developer or for the sale of any Parcel to a Subdeveloper or the submittal of a Development Application by a Subdeveloper pursuant to an assignment from Master Developer.
- 1.2.16. **Final Plat** means the recordable map or other graphical representation of land prepared in accordance with UTAH CODE ANN. § 10-9a-603 (2020), or any successor provision, and approved by the City, effectuating a Subdivision of any portion of the Project.
- 1.2.17. **General Plan** means the General Plan for the entire Project to be developed on the Property, as shown on Exhibit “B.”
- 1.2.18. **Master Developer** means Sunrise 3 LLC and its assignees or transferees as permitted by this MDA.
- 1.2.19. **MDA** means this Master Development Agreement, including all of its Exhibits and Addendum No. 1.
- 1.2.20. **Notice** means any Notice to or from any Party to this MDA that is either required or permitted to be given to another Party.

- 1.2.21. **Open Space** shall have the meaning specified in Section 10-20-6.J of the City's Vested Laws.
- 1.2.22. **Outsourc[e][ing]** means the process of the City contracting with City Consultants or paying overtime to City employees to provide technical support in the review and approval of the various aspects of a Development Application as is more fully set out in this MDA.
- 1.2.23. **Parcel** means a portion of the Property that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision that is not an individually developable lot as specified in Section 6.9.
- 1.2.24. **Party/Parties** means, in the singular, either Master Developer or the City; in the plural, both of Master Developer and the City.
- 1.2.25. **Planning Commission** means the City's Planning Commission.
- 1.2.26. **Project** means the total development to be constructed on the Property pursuant to this MDA with the associated public and private facilities, and all of the other aspects approved as part of this MDA.
- 1.2.27. **Property** means the real property owned and to be developed by Master Developer more fully described in Exhibit "A."
- 1.2.28. **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.
- 1.2.29. **Subdeveloper** means a person or an entity not "related" (as defined by Section 165 of the Internal Revenue Code) to Master Developer, which purchases a Parcel for development.
- 1.2.30. **Subdivision** means the division of any portion of the Project into developable lots pursuant to State Law and the Zoning Ordinance.

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

1.2.32. **Zoning Map** means the map of the zoning for the Property, as shown on Exhibit “C.”

1.2.33. **Zoning Ordinance** means the City’s Land Development Code adopted pursuant to the Act that was in effect as of the date of this MDA as a part of the City’s Vested Laws.

2. **Development of the Project.**

2.1. **Compliance with this MDA.** Development of the Project shall be in accordance with the City’s Vested Laws, the City’s Future Laws (to the extent that these are applicable as otherwise specified in this MDA), the Zoning Map, and this MDA.

3. **Zoning and Vested Rights.**

3.1. **Zoning.** The City has rezoned the Property with zoning conditions as shown on the Zoning Map in Exhibit “C.”

3.2. **Vested Rights Granted by Approval of this MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this MDA grants Master Developer all rights to develop the Project in fulfillment of this MDA, the City’s Vested Laws and the Zoning Map except as specifically provided herein. The Parties specifically intend that this 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 (2020).

3.3. **Exceptions.** The restrictions on the applicability of the City’s Future Laws to the Project as specified in Section 3.2 are subject to only the following exceptions:

3.3.1. **Master Developer Agreement.** City’s Future Laws that Master Developer agrees in writing to the application thereof to the Project;

3.3.2. **State and Federal Compliance.** City’s Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and

regulations affecting the Project;

3.3.3. Codes. Herriman City Development Standards, Engineering Requirements and Supplemental Specifications for Public Works (Sixth Edition, 2011) and any new editions or replacement thereof and any City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual on Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

3.3.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated; or,

3.3.5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

3.3.6. Impact Fees. Impact Fees or modifications thereto, which are lawfully adopted and imposed by the City. Master Developer and Subdeveloper agree that the impact fees imposed on the Master Developer by the City meet all requirements of the U. S. Constitution, Utah Constitution, law and applicable statutes, including but not limited to UTAH CODE ANN. § 11-36a-101 (2019) *et seq.*

3.3.7. Planning and Zoning Modification. Changes by the City to its planning principles and

design standards such as architectural or design requirements, setbacks or similar items so long as such changes do not work to reduce the Maximum Residential Units, are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

3.3.8. Processing of Development Applications. Changes in the City's Future Laws that relate to the processing of Development Applications, which are generally applicable across the entire City to the respective Zones within the Project and do not materially and unreasonably increase the costs of any Development.

3.3.9. Compelling, Countervailing Interest. Laws, rules, or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to UTAH CODE ANN. § 10-9a-509(1)(a)(i) (2020).

4. **Term of Agreement.** The term of this MDA shall be until December 31, 2024. This MDA shall also terminate automatically at Buildout. Sections 4.2 and 4.6 of Addendum No. 1 shall survive any termination and the obligations therein shall continue as specified therein. Sections 5.5, 5.6, 5.7, 5.8, 10, 11, 16, 21, 22 and 23 shall also survive but only as necessary to enforce the provisions of Sections 4.2 and 4.6.

5. **Processing of Development Applications.**

5.1. **Outsourcing of Processing of Development Applications.** Within fifteen (15) business days after receipt of a Development Application and upon the request of Master Developer, the City and Master Developer will confer to determine whether the City desires to Outsource the review of any aspect of the Development Application to ensure that it is processed on a timely basis. If the City determines that Outsourcing is appropriate, then the City shall promptly estimate the reasonably anticipated differential cost of Outsourcing

in the manner selected by the Master Developer or Subdeveloper in good faith consultation with the Master Developer or Subdeveloper (either overtime to City employees or the hiring of a City Consultant). If the Master Developer or a Subdeveloper notifies the City that it desires to proceed with the Outsourcing based on the City's estimate of costs, then the Master Developer or Subdeveloper shall deposit in advance with the City the estimated differential cost and the City shall then promptly proceed with having the work Outsourced. Upon completion of the Outsourcing services and the provision by the City of an invoice (with such reasonable supporting documentation as may be requested by Master Developer or Subdeveloper) for the actual differential cost (whether by way of paying a City Consultant or paying overtime to City employees) of Outsourcing, Master Developer or the Subdeveloper shall, within ten (10) business days pay or receive credit (as the case may be) for any difference between the estimated differential cost deposited for the Outsourcing and the actual cost differential.

5.2. Acceptance of Certifications Required for Development Applications. Any Development Application requiring the signature, endorsement, certification or stamping by a person holding a license or professional certification required by the State of Utah in a particular discipline shall be so signed, endorsed, certified or stamped signifying that the contents of the Development Application comply with the applicable regulatory standards of the City. The City should endeavor to make all of its redlines, comments, or suggestions at the time of the first review of the Development Application unless any changes to the Development Application raise new issues that need to be addressed.

5.3. Independent Technical Analyses for Development Applications. If the City needs technical expertise beyond the City's internal resources to determine impacts of a

Development Application such as for structures, bridges, water tanks, and other similar matters which are not required by the City's Vested Laws to be certified by such experts as part of a Development Application, the City may engage such experts as City Consultants with the actual and reasonable costs being the responsibility of Applicant. The City Consultant undertaking any review by the City required or permitted by this MDA shall be selected from a list generated by the City for each such City review pursuant to a "request for proposal" process or as otherwise allowed by City ordinances or regulations. The Applicant may, in its sole discretion, strike from the list of qualified proposers any of such proposed consultants so long as at least three (3) qualified proposers remain for selection. The anticipated cost and timeliness of such review may be a factor in choosing the expert. The actual and reasonable costs being the responsibility of the Applicant.

5.4. City Denial of a Development Application. If the City denies a Development Application, the City shall provide a written determination advising the Applicant of the reasons for the denial including specifying the reasons the City believes that the Development Application is not consistent with this MDA, and/or the City's Vested Laws (or, if applicable, the City's Future Laws).

5.5. Meet and Confer regarding Development Application Denials. The City and Applicant shall meet within fifteen (15) business days of any Denial to resolve the issues specified in the Denial of a Development Application.

5.6. City Denials of Development Applications Based on Denials from Non-City Agencies. If the City's denial of a Development Application is based on the denial of the Development Application by a Non-City Agency, the Applicant shall appeal any such

denial through the appropriate procedures for such a decision and not through the processes specified below.

5.7. Mediation of Development Application Denials.

5.7.1. Issues Subject to Mediation. Issues resulting from the City's Denial of a Development Application that the parties are not able to resolve by "Meet and Confer" shall be mediated and include the following:

- (i) the location of On-Site Infrastructure, including utility lines and stub outs to adjacent developments,
- (ii) right-of-way modifications that do not involve the altering or vacating of a previously dedicated public right-of-way,
- (iii) interpretations, minor technical edits or inconsistencies necessary to clarify or modify documents consistent with their intended purpose of the Development Standards, and
- (iv) the issuance of building permits.

5.7.2. Mediation Process. If the City and Applicant are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the City and Applicant are unable to agree on a single acceptable mediator, they shall each, within ten (10) business days, appoint their own representative. These two representatives shall, between them, choose the single mediator. The Applicant shall pay the fees of the chosen mediator. The chosen mediator shall, within fifteen (15) business days, review the positions of the parties regarding the mediation issue, and promptly attempt to mediate the issue between the parties. If the parties are unable to reach an agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator's

opinion shall not be binding on the parties.

5.8. Arbitration of Development Application Objections.

5.8.1. Issues Subject to Arbitration. Issues regarding the City's Denial of a Development Application that are subject to resolution by scientific or technical experts such as traffic impacts, water quality impacts, pollution impacts, etc. are subject to arbitration.

5.8.2. Mediation Required Before Arbitration. Prior to any arbitration, the parties shall first attempt mediation as specified in Section 5.7.

5.8.3. Arbitration Process. If the City and Applicant are unable to resolve an issue through mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator, they shall each, within ten (10) business days, appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. The Applicant shall pay the fees of the chosen arbitrator. The chosen arbitrator shall, within fifteen (15) business days, review the positions of the parties regarding the arbitration issue, and render a decision. The arbitrator shall ask the prevailing Party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator, and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's or Applicant's position was not only incorrect but was also maintained unreasonably and not in good faith, then the arbitrator may order the City or Applicant to pay the arbitrator's fees.

5.9. **Parcel Sales.** The City acknowledges that the precise location and details of the public improvements, lot layout and design, and any other similar item regarding the development

of a particular Parcel may not be known at the time of the creation of or sale of a Parcel. Master Developer may obtain approval of a Subdivision as is provided in UTAH CODE ANN. § 10-9a-103(57)(c)(v) (2020) that does not create any individually developable lots in the Parcel without being subject to any requirement in the City's Vested Laws to complete or provide security for any Public Infrastructure at the time of such subdivision. The responsibility for completing and providing security for completion of any Public Infrastructure in the Parcel shall be that of the Master Developer or a Subdeveloper upon a subsequent re-Subdivision of the Parcel that creates individually developable lots. However, the construction of improvements shall not be allowed until Master Developer or Subdeveloper complies with the City's Vested Laws.

6. **Addendum No. 1.** Addendum No. 1 contains the provisions of this MDA that are unique to the development of the Project.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this MDA, Master Developer may at any time, choose to submit a Development Application for all of the Project under the City's Future Laws in effect at the time of the Development Application so long as Master Developer is not in current breach of this agreement.

8. **Public Infrastructure.**

8.1. **Construction by and Master Developer.** Master Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of the Development Application.

8.2. **Bonding.** If and to the extent required by the City's Vested Laws, unless otherwise provided by Chapter 10-9a of the Utah Code as amended, security for any Public

Infrastructure is required by the City Applicant shall provide it in a form acceptable to the City as specified in the City's Vested Laws. Partial releases of any such required security shall be made as work progresses based on the City's Vested Laws.

9. Upsizing/Reimbursements to Master Developer.

9.1. **Upsizing.** 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 upsizing 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. An acceptable financial arrangement for the upsizing of improvements means reimbursement agreements, payback agreements, and impact fee credits and reimbursements.

10. Default.

10.1. **Notice of Default.** If Master Developer or a Subdeveloper or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party. If the City believes that the Default has been committed by a Subdeveloper, then the City shall also provide a courtesy copy of the Notice to Master Developer.

10.2. **Contents of the Notice of Default.** The Notice of Default shall:

10.2.1. Specific Claim. Specify the claimed event of Default;

10.2.2. Applicable Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this MDA that is claimed to be in Default;

- 10.2.3. Materiality. Identify why the Default is claimed to be material; and
- 10.2.4. Optional Cure. If the City chooses, in its discretion, it may propose a method and time for curing the Default, which shall be of no less than thirty (30) days duration.
- 10.3. **Meet and Confer, Mediation, Arbitration**. Upon the issuance of a Notice of Default, the Parties shall engage in the “Meet and Confer” and “Mediation” processes specified in Sections 5.6 and 5.7. If the claimed Default is subject to Arbitration as provided in Section 5.8, then the parties shall follow such processes.
- 10.4. **Remedies**. If the parties are not able to resolve the Default by “Meet and Confer” or by Mediation, and if the Default is not subject to arbitration then the Parties may have the following remedies, except as specifically limited in 10.9:
- 10.4.1. Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.
- 10.4.2. Security. The right to draw on any security posted or provided in connection with the Project and relating to the remedying of the particular Default.
- 10.4.3. Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project in the case of a default by Developer, or in the case of a default by a Subdeveloper, development of those Parcels owned by the Subdeveloper until the Default has been cured.
- 10.5. **Public Meeting**. Before the City may impose any remedy in Section 10.4, the Party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.
- 10.6. **Emergency Defaults**. Anything in this MDA notwithstanding, if the City Council finds on the record that a default materially impairs a compelling, countervailing interest of the

City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City, then the City may impose the remedies of Section 10.4 without the requirements of Sections 10.5. The City shall give Notice to Master Developer and/or any applicable Subdeveloper of any public meeting at which an emergency default is to be considered, and the Developer and/or any applicable Subdeveloper shall be allowed to address the City Council at that meeting regarding the claimed emergency Default.

10.7. Extended Cure Period. If any Default cannot be reasonably cured within thirty (30) days, then such cure period shall be extended so long as the defaulting Party is pursuing a cure with reasonable diligence.

10.8. Default of Assignee. Default of any obligations assumed by an assignee shall not be deemed a default of Master Developer.

10.9. Limitation on Recovery for Default – No Damages. Notwithstanding anything within this MDA, no Party shall be entitled to any claim for any monetary damages as a result of any breach of this MDA and each Party waives any claims thereto except that the City may seek payment of any unpaid outsourcing fees pursuant to Section 5.1 and any independent technical analysis pursuant to Section 5.3. The sole remedy available to Master Developer or any Subdeveloper shall be that of specific performance.

11. Notice Requirements. All notices required or permitted under this 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 Master Developer:

Sunrise 3, LLC
Attn.: Mr. Nate Shipp
14034 S 145 East Street, Suite 204
Draper, UT 84020
nate@daiutah.com

To Herriman City:

Herriman City
Attn: City Manager
5355 W Herriman Main Street
Herriman, UT 84096
bwood@herriman.org

With a Copy to:

Bruce R. Baird
Attn: Bruce R. Baird, PLLC
2150 S 1300 East Street, Suite 500
Salt Lake City, UT 84106
bbaird@difficultdirt.com

With a Copy to:

Herriman City
Attn: City Attorney
5355 W Herriman Main Street
Herriman, UT 84096
candrizzi@herriman.org

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

11.1.1. Hand Delivery. Its actual receipt, if delivered personally or by courier service

11.1.2. 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 on the date that the mailing or personal delivery occurs.

11.1.3. 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 MDA by giving written Notice to the other Party in accordance with the provisions of this Section.

12. **Headings.** The captions used in this MDA are for convenience only and are not intended to be substantive provisions or evidences of intent.

13. **No Third-Party Rights/No Joint Venture.** This MDA does not create a joint venture relationship, partnership, or agency relationship between the City, Master Developer. Further, the parties do not intend this MDA to create any third-party beneficiary rights. The Parties acknowledge that this MDA refers to a private development and that the City has no interest in, responsibility for or duty to any third parties concerning any improvements to the Property

or unless the City has accepted the dedication of such improvements at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City’s.

14. **Assignability.** The rights and responsibilities of Master Developer under this MDA may be assigned in whole or in part, respectively, by Master Developer with the consent of the City as provided herein.

14.1. **Sale of Lots.** Master Developer’s selling or conveying lots in any approved Subdivision or Parcels to builders, end-users, or Subdevelopers, shall not be deemed to be an “assignment” subject to the above-referenced approval by the City unless specifically designated as such an assignment by Master Developer.

14.2. **Related Entity.** Master Developer’s transfer of all or any part of the Property to any entity “related” to Master Developer (as defined by regulations of the Internal Revenue Service in Section 165), Master Developer’s entry into a joint venture for the development of the Project or Master Developer’s pledging of part or all of the Project as security for financing shall also not be deemed to be an “assignment” subject to the above-referenced approval by the City unless specifically designated as such an assignment by the Master Developer. Master Developer shall give the City Notice of any event specified in this subsection within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

14.3. **Notice of Assignment.** Master Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such

Notice shall include providing the City with all necessary contact information for the proposed assignee.

- 14.4. **Time for Objection.** Unless the City objects in writing within twenty (20) business days of Notice, the City shall be deemed to have approved of and consented to the assignment.
- 14.5. **Partial Assignment.** If any proposed assignment is for less than all of Master Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this MDA to which the assignee succeeds. Upon any such approved partial assignment, Master Developer shall not be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations herein.
- 14.6. **Denial.** The City may only withhold its consent if the City is not reasonably satisfied with the assignee's financial ability to perform the obligations of Master Developer, proposed to be assigned, or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or in the process of being cured in a manner acceptable to the City. Any refusal of the City to accept an assignment shall be subject to the "Meet and Confer" and "Mediation" processes specified in Sections 5.6 and 5.7. If the refusal is subject to Arbitration as provided in Section 5.8, then the Parties shall follow such processes.
- 14.7. **Assignees Bound by MDA.** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MDA as a condition precedent to the effectiveness of the assignment.
15. **Binding Effect.** If Master Developer sells or conveys a Parcel of land to a Subdeveloper or related party, the Parcel so sold and conveyed shall bear the same rights, privileges, and

configurations 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 MDA without any required approval, review, or consent by the City except as otherwise provided herein.

16. **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.
17. **Severability.** If any provision of this MDA is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this MDA shall remain in full force and affect.
18. **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.
19. **Time is of the Essence.** Time is of the essence to this MDA, and every right or responsibility shall be performed within the times specified.
20. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this 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 the Master Developer. The initial representative for the City shall be the Community

Development Director. The initial representative for Master Developer shall be Nate Shipp. 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 MDA and the development of the Project.

21. **Applicable Law.** This 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.
22. **Venue.** Any action to enforce this MDA shall be brought only in the Third District Court for the State of Utah, Salt Lake City Division.
23. **Entire Agreement.** This 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.
24. **Mutual Drafting.** Each Party has participated in negotiating and drafting this MDA; therefore, no provision of this MDA shall be construed for or against any Party based on which Party drafted any particular portion of this MDA.
25. **Recordation and Running with the Land.** This MDA shall be recorded in the chain of title for the Project. This MDA shall be deemed to run with the land. The data disk of the City's Vested Laws, Exhibit "E," shall not be recorded in the chain of title. A secure copy of Exhibit "E" shall be filed with the City Recorder, and each Party shall also have an identical copy.
26. **Authority.** The Parties to this MDA each warrant that they have all of the necessary authority to execute this MDA. Specifically, on behalf of the City, the signature of the City Manager of the City is affixed to this MDA lawfully binding the City pursuant to Ordinance No. 2020-____ adopted by the City on June 24, 2020.

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

Approved as to form and legality:

C. C. Ci
City Attorney

Attest:

[Signature]
City Recorder

MASTER DEVELOPER
Sunrise 3 LLC

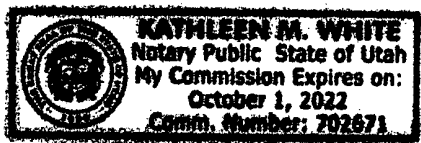
By: [Signature]
Its: Manager



SUNRISE 3 LLC ACKNOWLEDGMENT

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

On the 26 day of June, 2020, personally appeared before me Nathaniel Shipp, who being by me duly sworn, did say that he is the Manager of Sunrise 3 L.L.C., a Utah limited liability company and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.



[Signature]
NOTARY PUBLIC

My Commission Expires: 10-1-2022

Residing at: West Jordan

CITY

Herriman City

Brett Wood

By: Brett Geo. Wood

Its: City Manager

CITY ACKNOWLEDGMENT

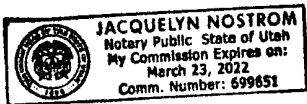
STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 29 day of June, 2020 personally appeared before me Brett Wood, who being by me duly sworn, did say that he is the City Manager of Herriman City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said City Manager acknowledged to me that the City executed the same.

Jacquelyn Nostrom
NOTARY PUBLIC

My Commission Expires: March 23, 2022

Residing at: Salt Lake County



ADDENDUM NO. 1

TERMS

1. Definitions.

1.1 **Incorporation.** The capitalized terms used in this Addendum No. 1 shall have the meanings set forth in the MDA unless otherwise specified herein.

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

1.2.1. Additional Dedicated Land means that parcel of land located at approximately 5101 West 118000 South in Herriman, Utah, and described in Exhibit "A" as "Additional Dedicated Land" and shown in Exhibit "C."

1.2.2. North Office Area means that Parcel of land located at approximately 5101 W 11800 South in Herriman, Utah, and described in Exhibit "A" as "North Office Area" and shown in Exhibit "C."

1.2.3 Middle Park Area means that parcel of land located at approximately 12000 S Black Powder Drive in Herriman, Utah, which is described in Exhibit "A" as "Middle Park Area" and shown in Exhibit "C."

1.2.4. South Self Storage Area means that Parcel of land located at approximately 11999 S Black Powder Drive in Herriman, Utah, which is described in Exhibit "A" as "South Self Storage Area" and shown in Exhibit "C."

2. Development of the North Office Area.

The North Office Area shall be developed in compliance with the C-2 Zone, as shown

on the Zoning Map, and all standards specified in the City's Vested Laws, including, but not limited to, subdivision regulations, design standards, and screening requirements. As a zoning condition, the following land uses otherwise allowed in the C-2 Zone shall not be permitted: "Congregate living facility," "Golf Course," "Resource recycling collection point," "School, charter," "School, elementary, middle or high," "Utility, major," "Utility substation," "Alcoholic beverage: Airport lounge," "Bed and breakfast homestay," "Brewery," "Daycare/preschool center," "Kennel," "Fireworks stand," "Model home sales," "Temporary building," "Transportation service" and "Laundry services."

2.2 Alignment of Northwest Entrance. The proposed entrance from 11800 South to the North Office Area, as shown on Exhibit "E," shall be aligned with Vadiana Drive in South Jordan, restricted to right-in-right-out movement only, and subject to compliance with all City standards.

2.3 Existing Vinyl Fence. The existing vinyl fence, as shown on Exhibit "E" shall be allowed to remain and shall hereafter be maintained by Master Developer.

2.4 Existing Road. The existing City Right of Way, as shown on Exhibit "E," will continue to be owned by the City. The City shall allow Master Developer to install an appropriate irrigation system and grass. Master Developer shall thereafter maintain the grass. The City may install a trail on the existing City Right of Way, which shall, thereafter, be maintained by the City. Any future use

of the existing City Right of Way will be determined as a part of the site plan or subdivision for the North Office Area.

3. **Dedication of the Middle Park.** Upon the execution of this MDA, Master Developer shall donate to the City by a Utah standard form Special Warranty Deed the Middle Park as-is, where-is with no representations or warranties except that the title shall be free from all financial encumbrances and Master Developer shall be responsible for any property or greenbelt or rollback taxes prorated to the time of transfer.

4. **Development of South Self Storage Area.**

4.1 The South Self Storage Area shall be developed in compliance with the M-1 Zone, as shown on the Zoning Map, and all standards specified in the City's Vested Laws, including, but not limited to, subdivision regulations, design standards, and screening requirements. As a zoning condition, land uses shall be limited to "Self Service Warehouse" and "Recreational Vehicle Storage Yard" with a maximum building height of thirty feet (30').

4.2 **Timing.** The City shall not issue a permit for any land use or structure in the South Self Storage Area until (1) the Utah Department of Transportation (UDOT) has issued an access permit from Mountain View Corridor (MVC) to the South Self Storage Area, (2) vehicular access from MVC has been constructed, and paid for by Master Developer in compliance with UDOT and City standards, (3) subdivision plats have been recorded for the North Office Area and the South Self Storage Area, (4) all required fees have been paid to the City as per Vested Laws, and (5) a building permit for a professional office building in the North

Office Area containing at least 10,000 square feet of occupiable floor area has been issued for construction. At that time, Master Developer may develop and build the entire South Self Storage Area.

4.3 Perimeter Wall. The South Self Storage Area shall have walls along the perimeter of the site as specified in Exhibit “F.”

4.4 Emergency Access. Access from the South Self Storage Area to Black Powder Road, as shown on Exhibit “F,” shall be for emergency purposes only by a “crash gate” specified by the Unified Fire District, which shall be maintained by Master Developer.

4.5 Access from Mountain View. Access from Mountain View Corridor to the South Self Storage Area, as shown on Exhibit “F,” shall be a public street and shall be designed to allow for safe stacking of entering vehicles. The City shall apply to UDOT for the access and shall use reasonable efforts to obtain such access.

4.6 Maintenance. Master Developer shall be responsible for the maintenance and snowplowing of the entrance, public street, and stacking area from the Mountain View Corridor to the South Self Storage Area. If Master Developer fails to properly maintain or snowplow the entrance, public street, and stacking area, the City may consider that failure to be a Default and exercise the Default provision of Section 10 of the MDA. Any dispute regarding such maintenance or snowplowing shall be subject to the dispute resolution and default provisions of the MDA. This maintenance obligation shall survive the termination of this MDA and shall be perpetual as long as the entrance, public street, and stacking area exists for vehicle access to the South Self Storage Area.

5. Dedication of the Additional Dedicated Land. Upon the execution of this MDA, Master Developer shall donate to the City by a Utah standard form Special Warranty Deed the Additional Donated Land as-is, where-is with no representations or warranties except that the title shall be free from all financial encumbrances and Master Developer shall be responsible for any property or greenbelt or rollback taxes prorated to the time of transfer.

TABLE OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	General Plan Map
Exhibit "C"	Zoning Map
Exhibit "D"	City's Vested Laws
Exhibit "E"	North Office Area
Exhibit "F"	South Self Storage Area

Exhibit A
Legal Description

NORTH OFFICE AREA DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER AND A POINT IN THE EXISTING SOUTHERLY RIGHT OF WAY LINE OF 11800 SOUTH STREET, SAID CORNER IS S89°39'15"E ALONG THE SECTION LINE 1338.90 FEET AND S0°20'45"W 36.70 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 25; THENCE S0°20'47"W (S0°20'45"W BY RECORD) 976.64 FEET ALONG THE EASTERLY BOUNDARY LINE OF SAID ENTIRE TRACT; THENCE N37°28'06"W 484.81 FEET; THENCE N89°50'58"W 336.07 FEET; THENCE N28°02'09"W 87.61 FEET; THENCE N36°49'35"W 251.12 FEET; THENCE N53°10'27"E 16.51 FEET; THENCE N53°10'25"E 46.61 FEET; THENCE N49°50'40"E 161.13 FEET; THENCE ALONG THE ARC OF A 1045.89 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS: S33°33'24"E) 527.32 FEET THROUGH A CENTRAL ANGLE OF 28°53'15" (CHORD: N70°53'13"E 521.75 FEET); THENCE ALONG THE ARC OF A 966.54 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS: S3°01'20"E) 54.84 FEET THROUGH A CENTRAL ANGLE OF 3°15'03" (CHORD: N88°36'11"E 54.83 FEET); THENCE S89°17'47"E 107.12 FEET TO THE POINT OF BEGINNING.

CONTAINS: 10.22 ACRES±

MIDDLE PARK AREA DESCRIPTION:

A PARCEL OF LAND, BEING A PART OF AN ENTIRE PARCEL IDENTIFIED BY SALT LAKE COUNTY AS TAX ID. NUMBER 26-25-200-042, SITUATE IN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE NORTHEAST CORNER OF SAID ENTIRE PARCEL, BEING 1,324.03 FEET SOUTH 00° 23'53" WEST ALONG THE SECTION LINE AND 1,239.70 FEET NORTH 89° 36'07" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 25; AND RUNNING THENCE SOUTH 37° 06'25" EAST 932.00 FEET ALONG THE EASTERLY BOUNDARY LINE OF SAID ENTIRE PARCEL; THENCE SOUTH 52° 53'35" WEST 257.24 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE OF MOUNTAIN VIEW CORRIDOR; THENCE ALONG SAID EXISTING EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE THE FOLLOWING THREE (3) COURSES: (1) NORTHWESTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 6,512.00 FEET (RADIUS BEARS: S56°48'42"W) A DISTANCE OF 123.40 FEET THROUGH A CENTRAL ANGLE OF 01°05'09" (CHORD: N33°43'53"W 123.40 FEET); THENCE (2) NORTH 33°26'30" WEST 583.69 FEET; THENCE (3) NORTH 36°49'35" WEST 110.80 FEET TO THE WESTERLY BOUNDARY LINE OF SAID ENTIRE PARCEL; THENCE ALONG SAID WESTERLY BOUNDARY LINE NORTH 00°20'47" EAST 220.71 FEET TO THE NORTHWEST CORNER OF SAID ENTIRE PARCEL; THENCE ALONG THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE PARCEL SOUTH 89°38'37" EAST 98.14 FEET TO THE POINT OF BEGINNING.

CONTAINS: 4.88 ACRES±

SOUTH STORAGE AREA DESCRIPTION:

A PARCEL OF LAND, BEING A PART OF AN ENTIRE PARCEL IDENTIFIED BY SALT LAKE COUNTY AS TAX ID. NUMBER 26-25-200-042, AND ALL OF PARCEL IDENTIFIED BY SALT LAKE COUNTY AS TAX ID. NUMBER 26-25-400-068, SITUATE IN THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A EAST CORNER OF SAID ENTIRE TRACT OF LAND, WHICH IS 213.04 FEET SOUTH 00°23'50" WEST ALONG THE SECTION LINE AND 61.41 FEET NORTH 89°36'10" WEST FROM THE EAST QUARTER CORNER OF SAID SECTION 25, SAID POINT IS 607.49 FEET RADIALLY DISTANT SOUTHEASTERLY FROM THE MOUNTAIN VIEW CORRIDOR RIGHT OF WAY CONTROL LINE OPPOSITE APPROXIMATE ENGINEER STATION 1154+84.16; AND RUNNING THENCE SOUTH 00°15'37" WEST (SOUTH BY RECORD) 1053.66 FEET ALONG THE EASTERLY BOUNDARY LINE OF SAID ENTIRE TRACT TO A POINT ON THE EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE OF MOUNTAIN VIEW CORRIDOR; THENCE ALONG SAID EXISTING EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE THE FOLLOWING TWO (2) COURSES: (1) NORTH 21°20'31" WEST 247.60 FEET TO THE BEGINNING OF A CURVE; THENCE (2) NORTHWESTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 6,512.00 FEET (RADIUS BEARS: S71°13'13"W) A DISTANCE OF 1,637.59 FEET THROUGH A CENTRAL ANGLE OF 14°24'30" CHORD: N25°59'02"W 1,633.28 FEET; THENCE N52°53'35"E 257.24 FEET; THENCE S37°06'25"E 735.17 FEET; THENCE S37°04'59"E 268.31 FEET TO THE POINT OF BEGINNING.

CONTAINS: 11.14 ACRES±

ADDITIONAL DEDICATED LAND DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID TRACT OF LAND CONSISTING OF PARCEL 131:2S:

BEGINNING AT THE SOUTHEAST CORNER OF SAID ENTIRE TRACT, SAID CORNER IS S89°39'15" E ALONG THE SECTION LINE 1338.91 FEET AND S0°20'47" W 1410.59 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 25, SAID POINT IS 320.50 FEET PERPENDICULARLY DISTANCE EASTERLY FROM THE MOUNTAIN VIEW CORRIDOR RIGHT OF WAY CONTROL LINE OPPOSITE APPROXIMATE ENGINEER STATION 1172+93.95; AND RUNNING THENCE S0°20'47" W 133.23 FEET ALONG THE EASTERLY BOUNDARY OF SAID ENTIRE TRACT TO A POINT ON THE EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE OF MOUNTAIN VIEW CORRIDOR; THENCE ALONG SAID EXISTING EASTERLY RIGHT OF WAY AND LIMITED ACCESS LINE THE FOLLOWING TWO (2) COURSES: N36°49'35" W 808.20 FEET; THENCE N28°02'09" W 305.00 FEET; THENCE S89°50'58" E 38.40 FEET; THENCE S37°00'51" E 980.36 FEET TO THE POINT OF BEGINNING.

CONTAINS: 1.75 ACRES±

Exhibit B General Plan Map

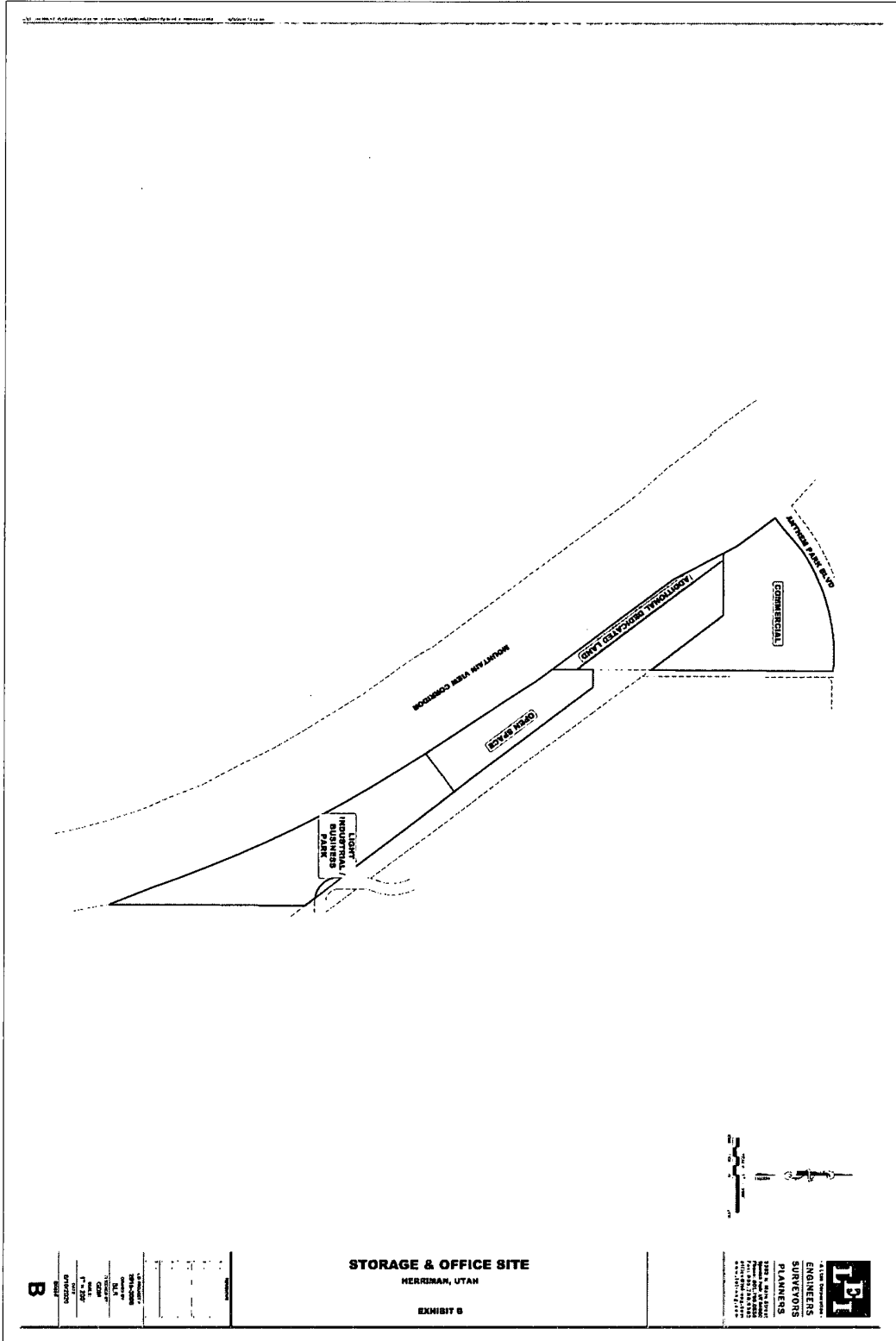


Exhibit C Zoning Map

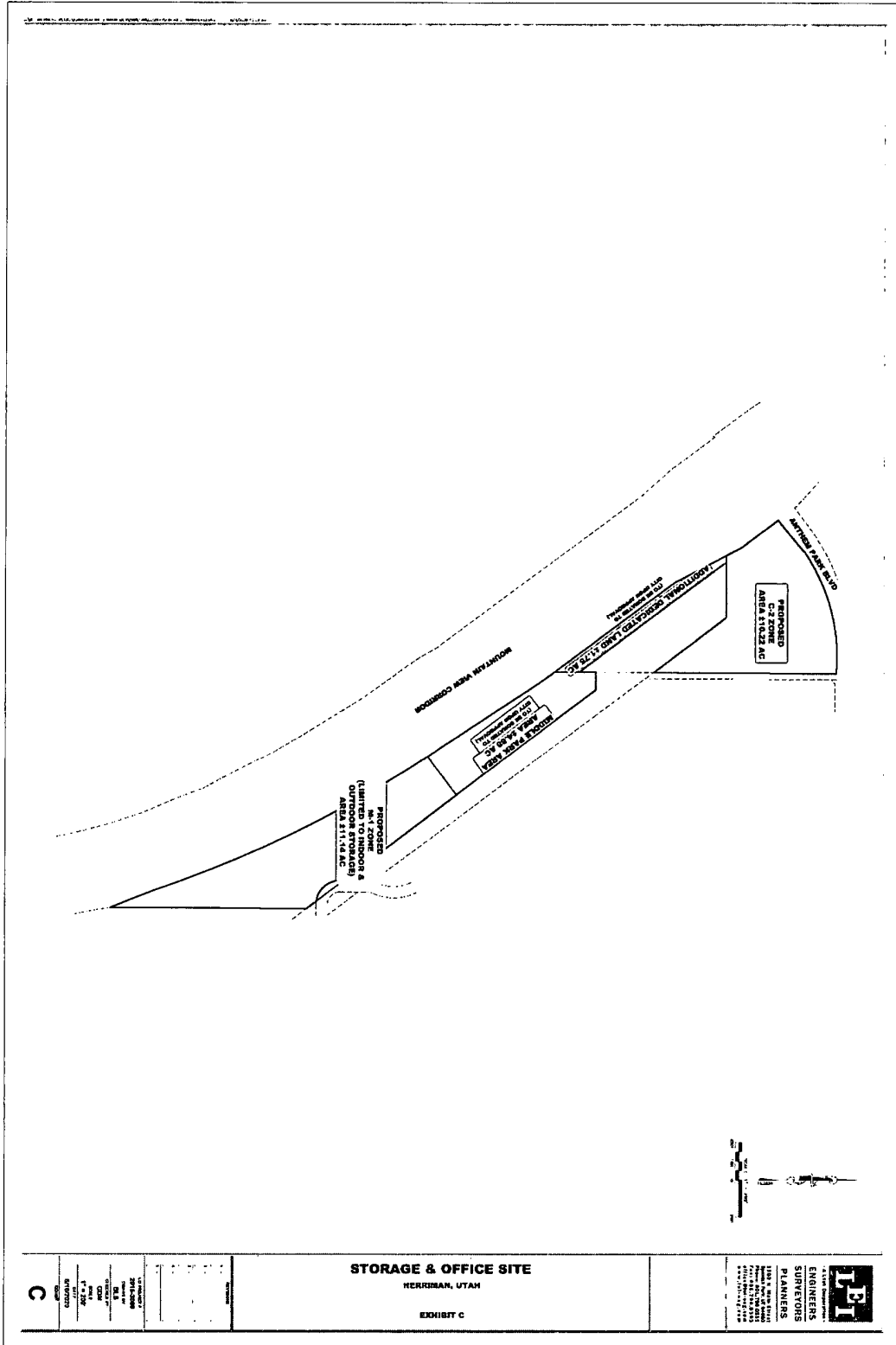
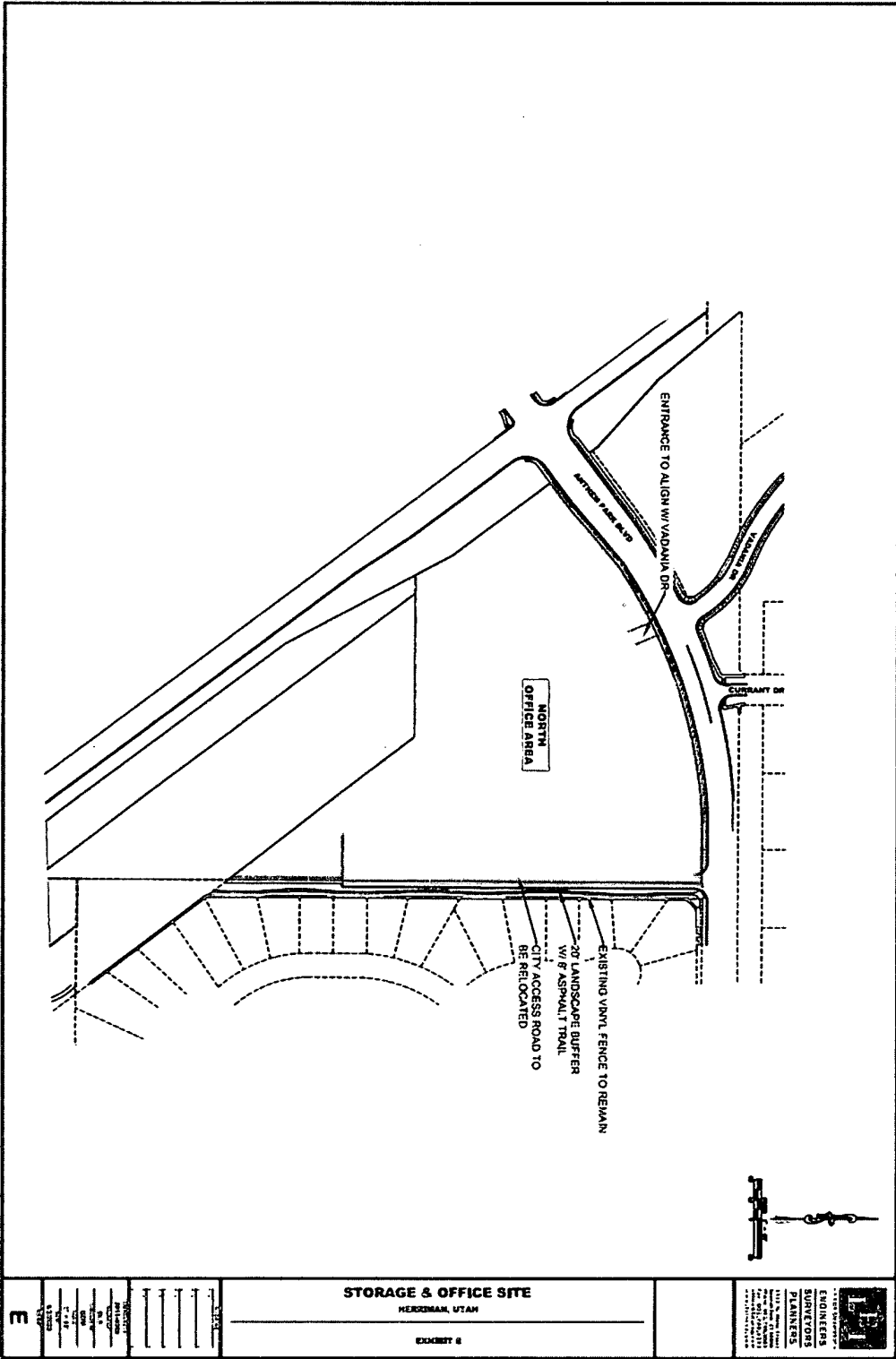


Exhibit D
City's Vested Laws

A digital copy of Herriman City's vested laws has been provided to the Developer.

Developer commits to comply with these vested laws.

Exhibit E North Office Area




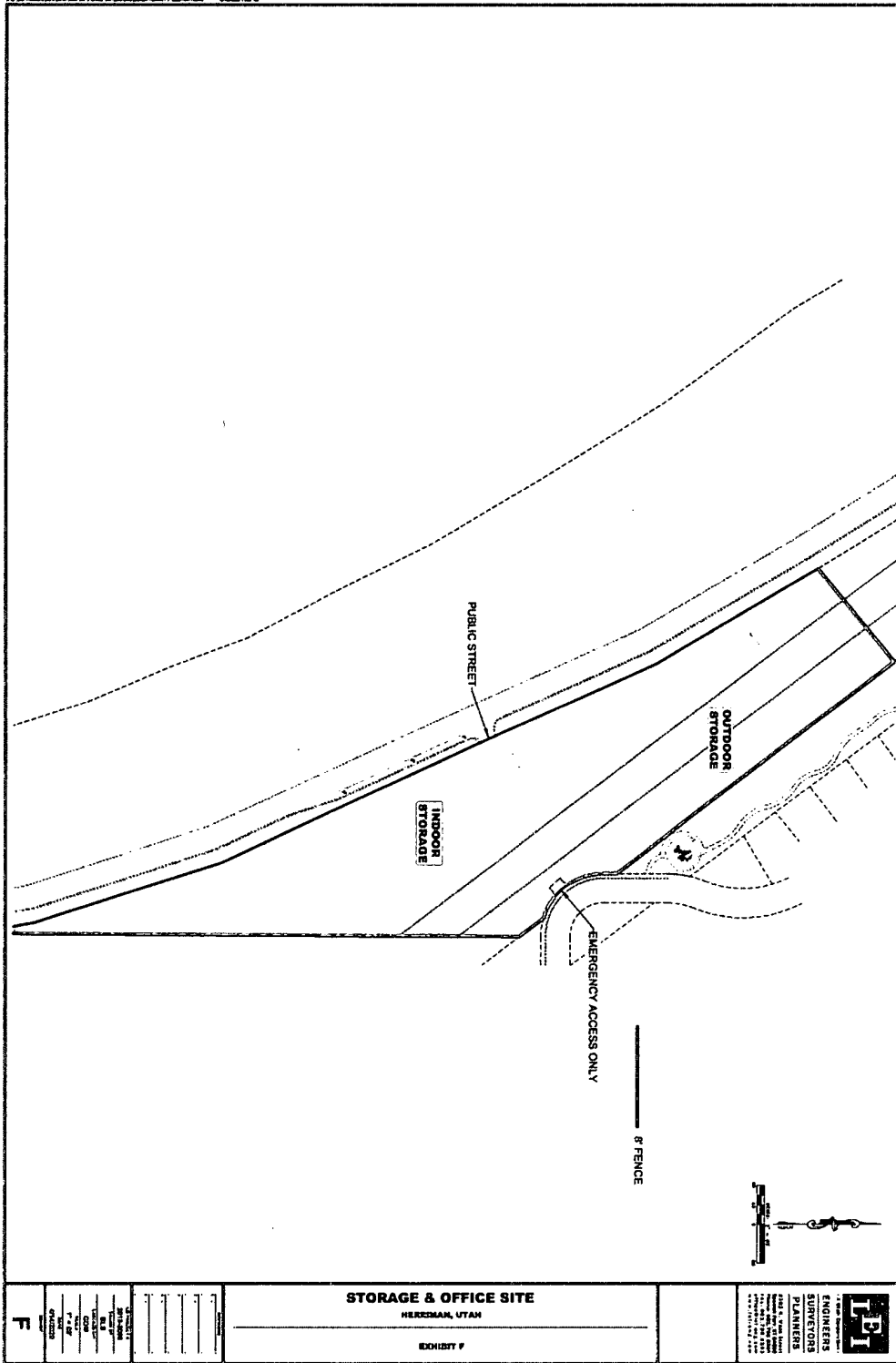

E	STORAGE & OFFICE SITE HERRINGMAN, UTAH EXHIBIT E	 ENGINEERS SURVEYORS PLANNERS <small>1111 N. 2000 E. SUITE 100 MIDWINTER, UTAH 84401 PHONE: 435-735-1111 FAX: 435-735-1112 WWW: WWW.HERRINGMANUTAH.COM</small>
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Exhibit F South Self Storage Area



F		STORAGE & OFFICE SITE HERRIMAN, UTAH EXHIBIT F	 L&J ENGINEERS SUPERVISORS PLANNERS <small>1000 W. 1000 S. SUITE 100 HERRIMAN, UTAH 84743 (801) 288-1111 FAX (801) 288-1112</small>
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