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DOC # 20160014777

Agreement Page 1 of 14
Russell Shirts Washington County Recorder
04/28/2016 01:51:20 PM Fee \$ 0.00
By HURRICANE CITY

When Recorded Return to:
Hurricane City
147 N. 870 West
Hurricane, UT 84737



Parcel ID#: H-3-1-33-4371

Legal Description: See exhibit "A"

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on March 9, 2016, by and between the Hurricane City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and Zion Village Development, Inc, a Utah Corporation, hereinafter referred to as "Developer", (each of the foregoing individually a "Party" and collectively the "Parties").

Recitals

A. CAC Capital, LLC, a Utah limited liability Corporation, owns approximately 11.4 acres of real property generally located on the east side 2170 West, between 100 North and 600 North, in Hurricane, Utah (the "Property"), which is more fully described in Exhibit "A" attached hereto and incorporated herein, and further known as Zion Village Townhomes. CAC Capital, LLC and Developer are owned by the same principals. CAC Capital, LLC has granted Developer the exclusive right to acquire the property described above.

B. In furtherance of the City General Plan land use and development policy, Developer submitted an application to have the Property rezoned from RM-2 to Residential Resort (collectively, the "Rezoning Request") to allow development of the Property as provided under City's land use ordinances (the "Project").

F. In consideration of City's approval of the Rezoning Request, Developer agrees to perform offsite improvements per the approved plans for 2170 West Extension, Project# 15-059-01 and onsite improvements per signed construction drawings for Zion Village Townhomes Phase 1 as approved by City and applicable utility departments and agencies.

G. On August 13, 2015, after a duly noticed public hearing, City's Planning Commission recommended approval of Developer's Rezoning Request, subject to execution of a development agreement for the completion of 2170 West Road, and forwarded such request to City's City Council for consideration.

H. On September 3, 2015, City's City Council approved Developer's Rezoning Request subject to approval of a Development Agreement for the completion of 2170 West Road.

I. To assure development of the Project in accordance with Developer's

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representations to City, Developer and City each desire to enter into this Agreement and are willing to abide by the terms and conditions set forth herein.

J. Acting pursuant to its legislative authority under Utah Code Annotated § 10-9a-102, et seq., and after all required public notice and hearings, City's City Council, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Development and Management Act, (ii) City's General Plan, and (iii) City's land use ordinances (collectively, the "Public Purposes"). As a result of such determination, City has elected to process the Rezoning Request and the subsequent development authorized thereunder in accordance with the provisions of this Agreement and has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security and general welfare of the inhabitants and taxpayers of Hurricane City.

Agreement

Now, therefore, in consideration of the premises recited above and the terms set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. **Development.** Development on the Property shall be subject to the terms of this Development Agreement, hereinafter referred to as "Agreement".

2. **Zone Change and Permitted Uses.** Subject to the terms of this Agreement, the zoning classifications on the Property shall be RESIDENTIAL RESORT, as shown in Exhibit "B" attached hereto and incorporated herein. Land uses allowed pursuant to such zoning classifications shall be governed by applicable provisions of Title 10 of the Hurricane City Code as existing on the date of this Agreement except to the extent this Agreement is more restrictive.

3. **Other Applicable Code Provisions.** The Parties acknowledge that in order to proceed with development of the Project, Developer shall comply with Titles 9 and 10 of the Hurricane City Code and other requirements generally applicable to development in Hurricane City (collectively, "City's Land Use Ordinances") except as otherwise provided in this Agreement.

4. **Reserved Legislative Powers - Vested Rights.** Nothing in this Agreement shall limit the future exercise of City's police powers in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify the requirements of the Resort zones as existing on the date of this Agreement unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of

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Logan, 617 P.2d 388 (Utah, 1988), or successor case law or statute. Any such proposed change affecting Developer's rights shall be of general application to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

5. Special Conditions Applicable to Project Development. In the event Developer elects to undertake the Project, the special conditions set forth in Subparagraphs A to C below shall be applicable to development of the Project and shall be implemented as provided in this Paragraph 5.

A. _____ Developer agrees to construct the Project consistent with the Construction Plans approved for 2170 West Extension, and the approved Zion Village Townhomes Phase 1 construction drawings for the first 28 units with common area amenities including, but not limited to, a swimming pool, spa, and clubhouse. The townhomes will be developed for vacation rental and/or personal residential use. The remaining phases will be constructed as generally depicted on the preliminary site plan approved with the zone change.

B. Developer agrees to complete the 2170 West Extension work as called out per final approved plan. This work includes the installation of a culinary water system improvement on behalf of the City. The City has agreed to credit Developer the system improvement share of the cost to install the water system per a separately executed Reimbursement Agreement.

6. Commencement of Construction. Developer shall not commence any development activity or construct any Project improvement on any portion of the Property until a subdivision plat, site plan, or any other permit required by City's Land Use Ordinances for such development activity ("Project Permit") is approved by City in accordance with City's Land Use Ordinances and the terms of this Agreement.

Construction Mitigation. Developer shall provide the following construction mitigation measures, all to the reasonable satisfaction of City's Engineer, in addition to the usual construction impact mitigation measures required by City. The following measures shall be undertaken pursuant to an approved Project Permit for any portion of the Property.

A. Developer shall incorporate reasonable limits of disturbance, vegetation protection, and revegetation plans for all construction, including construction of public improvements.

B. Developer shall utilize construction staging and, where possible as reasonably determined by City, on-site batch plants, and materials stockpiling and recycling to keep all excavated materials on one (1) or more sites during construction of

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infrastructure on the Property. The location of such areas shall be approved by City prior to construction.

C. Developers shall route construction traffic to minimize traffic impacts on City roads and residential areas by requiring construction traffic to use roads approved by City.

D. Developer shall mitigate dust throughout construction, pursuant to Rule R-307-205 of the Utah Administrative Code, applicable City ordinances, and any other applicable statute or regulation.

E. Developer shall take reasonable measures to protect existing infrastructure improvements from abuse or damage while new infrastructure improvements are being constructed.

8. **Project Phasing and Timing.** Upon City approval of a Project Permit, Developer may proceed to construct that portion of the Project at one time or in phases as may be reasonably approved by City.

9. **Time of Approval.** Any approval required by City's Land Use Ordinances and this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures under City's Land Use Ordinances.

10. **Issuance of a Building Permit.** No building permit shall be issued for a building in the Project until such time that all improvement to 2170 West Street are completed to a point where City agrees that all emergency access and fire protection requirements are met.

11. **Certificate of Occupancy.** No certificate of occupancy for any unit within the Project shall be issued by the City until such time that: (a) all subdivision improvements for the Phase under construction are fully completed and accepted by City, and (b) all improvements to 2170 West Street are completed in accordance with this agreement and preliminarily approved and accepted by City. In addition, no certificate of occupancy for any building beyond Building 5, in Phase 1 of Zion Village Townhomes as shown on Sheet 2 of the final plat of Zion Village Townhomes P.U.D. Phase 1, dated 10-27-2015 unless clubhouse and pool are completed and have a certificate of occupancy.

12. **12. Bonding.** Developer agrees to obtain a performance or other bond in the amount of \$ 825,000, an amount equal to 110% of the estimated cost of the clubhouse and pool improvements shown on the approved site plan for Phase 1 of Zion Village Townhomes, naming City as an obligee and containing such terms and conditions as are acceptable to City, guaranteeing completion of said clubhouse and pool improvements in accordance with this Agreement. Said bond shall further provide that in the event that said clubhouse and pool are not completed within three (3) years of the date of this agreement

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or prior to submittal for Phase 2 of Zion Village Townhomes, whichever shall come first, City shall be entitled to proceed against the developer and/or bond surety in accordance with this Agreement and/or bond for completion of said clubhouse and pool as shown on approved site plan.

13. **On-Site Property Manager.** Developer agrees that a property manager will be located on-site to manage resort rentals from the date of granting of a certificate of occupancy for any unit in Project.

14. **Term.** This Agreement shall continue in force and effect until all public and private infrastructure improvements in the Project have been constructed and accepted as complete by City and certificates of occupancy have been issued for all buildings and/or dwelling units in the Project; provided, however, that this Agreement shall become null and void if (i) initial construction, pursuant to a final subdivision plat, does not begin within two (2) years of the date of this Agreement, or (ii) construction and development cease for a period of ten (10) consecutive years after the completion of Phase 1 during the term of the Agreement. Upon the happening of either of such events, all approvals or development rights and obligations of City shall lapse unless extended by City's City Council for such period of time as City may deem appropriate under the circumstances. Upon the termination of this Agreement, the Parties shall, at the request of either Party, execute an appropriate recordable instrument confirming that this Agreement has been fully performed, terminated, or lapsed as provided in this Paragraph 10.

11. **Successors and Assigns.**

A. **Change in Developer.** This Agreement shall be binding on the successors and assigns of Developer. A purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project or any portion thereof (a "Transfer") the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to a Transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the Transfer. In such event, the buyer or transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred.

B. **Individual Lot Sales.** Notwithstanding the provisions of Subparagraph 11A, a transfer by Developer of a lot located on the Property within a recorded

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subdivision shall not be deemed a Transfer as set forth above, and in such event, developer shall be released from any further obligations under this Agreement pertaining to such lot so long as Developer has complied with this Agreement to the extent the Agreement applies to such lot.

12. Default.

A. Events of Default. Upon the happening of one or more of the following events or conditions Developer or City, as applicable, shall be in default ("Default") under this Agreement:

1. A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

2. A determination by City made upon the basis of substantial evidence that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

3. A Transfer of the Property, or any portion thereof, which violates the provisions of Paragraph 11 of this Agreement.

4. Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

1. Upon the occurrence of Default, the non-defaulting Party shall give the other Party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. If the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting Party takes action to begin curing such Default with such thirty (30) day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting Party may declare the other Party to be in breach of this Agreement and may take the action specified in Paragraph 12(C) herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

2. Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or

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reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

C. Breach of Agreement. Upon Default as set forth in Subparagraphs 12A and 12B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a Default by the City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

13. **General Terms and Conditions.**

A. Title and Authority. Developer expressly warrants and represents to City that Developer (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Developer. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands City is relying on these representations and warranties in executing this Agreement.

B. Recording of Agreement. No later than ten (10) days after this Agreement has been executed by City, this Agreement shall be recorded in its entirety, at Developer's expense, in the official records of Washington County, Utah.

C. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

D. Time of Performance. Time shall be of the essence with respect to the duties imposed on the Parties under this Agreement. Unless a time limit is specified for the performance of such duties each Party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

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E. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

F. State and Federal Law; Invalidity. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction this Agreement shall be null and void.

G. Enforcement. The Parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

H. No Waiver. Failure of a 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 time said right or any other right it may have hereunder. No officer, official or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

I. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of City's City Council taken with the same formality as the vote approving this Agreement.

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J. No Waiver of Governmental Immunity. Nothing in this Agreement is intended to, or shall be deemed, a waiver of City's governmental immunity.

K. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein.

L. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the Parties as follows (or to such other address as the receiving Party shall have notified the sending Party in accordance with the provisions hereof):

If to Developer: Zion Village Development, Inc.
3445 South 670 East Circle
St. George, UT 84790

If to City: Hurricane City
c/o City Manager
147 North 870 West
Hurricane, Utah 84737
Fax No: (435) 635-2184

With a copy to: Fay Reber, Esq.
260 West St. George Blvd, #205
St. George, Utah 84770 City of Hurricane
Fax No: (435) 628-7680

M. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the Parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

N. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other Party within seven (7) days of receipt of said facsimile copy.

O. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any activity connected with the Project, including

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approval of the Project; the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relates to the Project; or which arises out of claims for personal injury, including health, and claims for property damage.

1. The agreements of Developer in this Paragraph 13(C) shall not be applicable to any claim arising by reason of the negligence or intentional tort actions of City.

2. City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each Party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

P. No Monetary Damages Relief Against City. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to monetary damage claims from Developer for any breach thereof except as set forth herein. As such, the Parties agree that specific performance, as may be determined by the court, is the intended remedy for any breach of this Agreement. In the event specific performance is not available as a remedy to Developer for the City's breach hereof, then Developer shall be entitled to pursue any and all remedies at law or equity.

Q. Institution of Legal Action. Consistent with the provisions of Subparagraph P above, in addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fifth District Court, State of Utah, or in the Federal District Court for the District of Utah.

R. Relationship of Parties - Third Party Beneficiaries. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the Parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

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S. Annual Review. City may review progress pursuant to this Agreement at least once every twelve (12) months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in Paragraph 12 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute a Default under this Agreement.

T. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Attest:

HURRICANE CITY, a political subdivision of the State of Utah

[Signature]
City Recorder

By: [Signature]
Mayor

DEVELOPER,

By: [Signature]
Curtis Cerenzie, President
Zion Village Development, Inc.

State of California
County of San Diego

On this 29th day of February in the year 2016 before me Alma D. Vera, a notary public, personally appeared Curtis Cerenzie, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

[Signature]
Notary Public

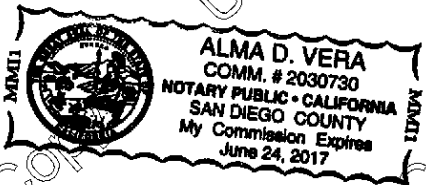
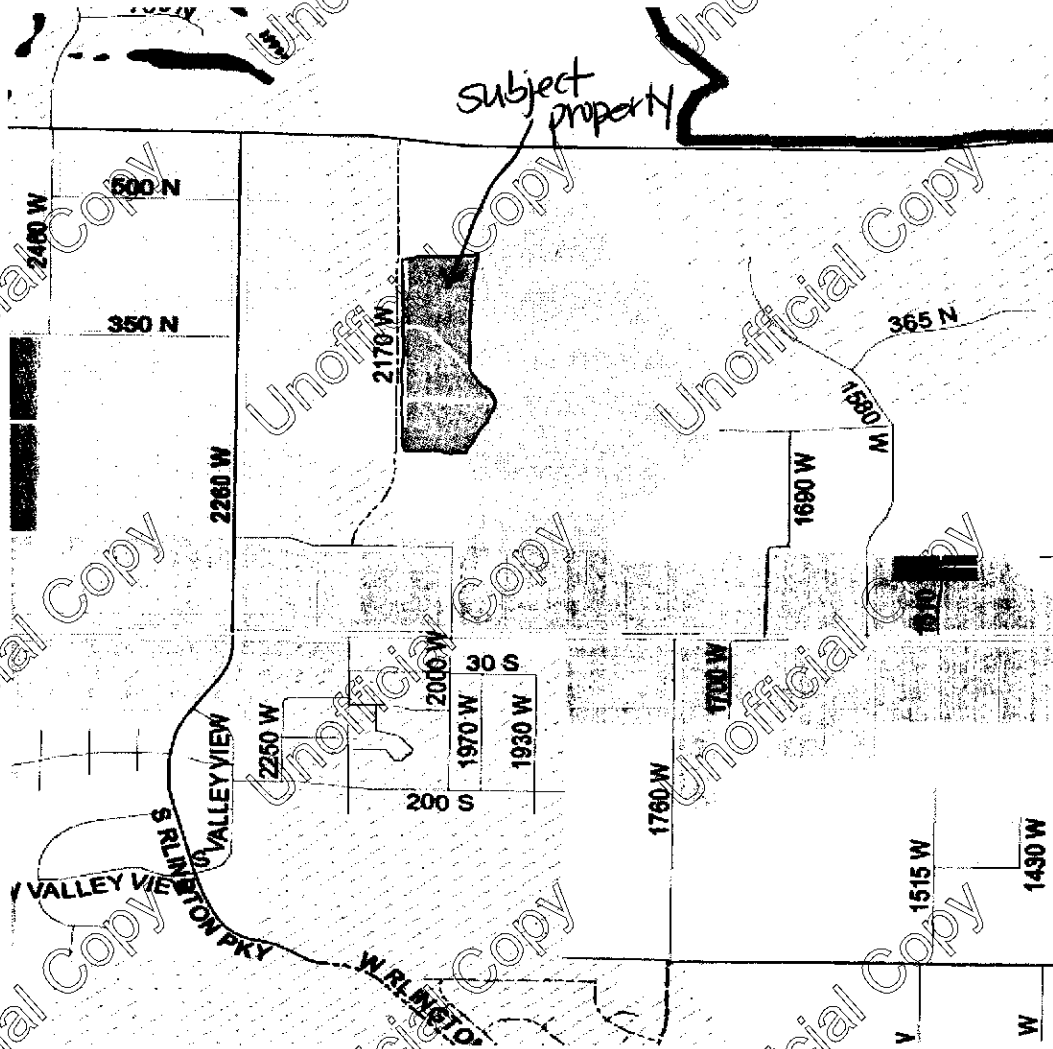


Exhibit "A"

TODD GETZ DESCRIPTION:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 33, TOWNSHIP 41 SOUTH, RANGE 13 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE N00°04'05"E, ALONG THE SECTION LINE, 605.29 FEET; THENCE N90°00'00"E, 433.00 FEET TO THE POINT OF BEGINNING SAID POINT BEING LOCATED ON THE EAST LINE OF 2170 WEST STREET; THENCE N00°04'05"E, ALONG SAID LINE, 1,290.67 FEET; THENCE DEPARTING SAID LINE AND RUNNING S89°47'55"E, 379.09 FEET; THENCE S05°12'05"W, 357.90 FEET; THENCE S01°47'55"E, 409.99 FEET; THENCE S41°10'55"E, 122.44 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 160.00 FEET, AND A CENTRAL ANGLE OF 67°39'00"; THENCE SOUTHERLY ALONG SAID CURVE, 188.91 FEET; THENCE S26°28'05"W, 285.34 FEET; THENCE N89°48'32"W, 337.30 FEET TO THE POINT OF BEGINNING. CONTAINING 11.41 ACRES.

Exhibit "B"



Zoning Classification

	A-10: Agricultural - 1 Unit Per 10 Acres		RR: Recreational Resort Zone
	A-5: Agricultural - 1 Unit Per 5 Acres		PC: Planned Commercial
	RA-1: Residential Agricultural - 1 Unit Per Acre		HC: Highway Commercial
	RA-2: Residential Agricultural - 2 Units Per Acre		NC: Neighborhood Commercial
	R1-15: Residential - 1 Unit Per 15,000 Sq. Ft. Lot		GC: General Commercial
	R1-10: Residential - 1 Unit Per 10,000 Sq. Ft. Lot		BMP: Business/Manufacturing Park
	R1-8: Residential - 1 Unit Per 8,000 Sq. Ft. Lot		M-1: Light Industrial
	R1-6: Residential - 1 Unit Per 6,000 Sq. Ft. Lot		M-2: Heavy Industrial
	RM-1: Multi-Family - 6 Units Per Acre		Public Facilities
	RM-2: Multi-Family - 10 Units Per Acre		PDO: Planned Development Overlay
	RM-3: Multi-Family - 15 Units Per Acre		OS: Open Space
	MHRY: Mobile Home - RV		APO: Agricultural Protection Overlay