

Ordinance 2020-21

SHORT TITLE:

An ordinance amending Provo City Code relating to permitted uses and yard requirements of the M1 Light Manufacturing Zone. Citywide application. (PLOT20200117)

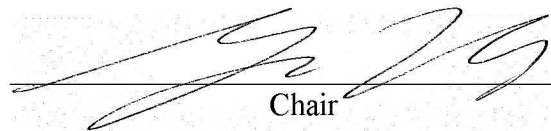
I

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	FOR	AGAINST	OTHER
CW 1	DAVID SEWELL	✓		
CW 2	DAVID SHIPLEY	✓		
CD 1	BILL FILLMORE	✓		
CD 2	GEORGE HANDLEY	✓		
CD 3	SHANNON ELLSWORTH	✓		
CD 4	TRAVIS HOBAN	✓		
CD 5	DAVID HARDING	✓		
TOTALS		7	0	

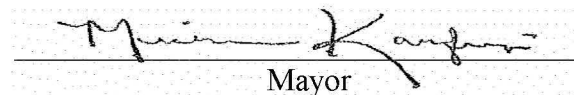
This ordinance was passed by the Municipal Council of Provo City, on the 16<sup>th</sup> day of June 2020, on a roll call vote as described above. Signed this 30th day of June 2020.

  
Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 30th day of June 2020.

  
Mayor

Ordinance 2020-21

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the 1st day of July 2020, with a short summary being published on the 20<sup>th</sup> day of June 2020, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2020-21.



*Amanda Grambrack*  
City Recorder

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ORDINANCE 2020-21.

AN ORDINANCE AMENDING PROVO CITY CODE RELATING TO PERMITTED USES AND YARD REQUIREMENTS OF THE M1 LIGHT MANUFACTURING ZONE. CITYWIDE APPLICATION. (PLOT20200117)

WHEREAS, it is proposed that Provo City Code Sections 14.27.020 and 14.27.080 be amended to add facilities related to the sale of combustible petroleum products as permitted uses and to add the sale of flammable petroleum products as a conditional use in the M1 Zone, as well as allowing the Development Services Director to modify yard requirements in the M1 Zone;

WHEREAS, on April 22, 2020, the Planning Commission held a duly noticed public hearing to consider the proposed amendment, and after such meeting, the Planning Commission recommended approval to the Municipal Council by a vote of 7:0; and

WHEREAS, on May 5, 2020, May 19, 2020, and June 16, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council’s consideration; and

WHEREAS, after considering the Planning Commission's recommendation and facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code should be amended as described herein and (ii) the proposed amendment reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The Mayor is hereby authorized to negotiate and execute an agreement in form substantially similar to the draft attached hereto as Exhibit C, an executed copy of which shall be attached hereto as Exhibit D after execution.

PART II:

Provo City Code Section 14.27.020 is hereby amended as set forth in Exhibit A. The effective date of this amendment shall be the date of final execution of the agreement described in Part I.

PART III:

Provo City Code Section 14.27.080 is hereby amended as set forth in Exhibit B. The effective date of this amendment shall be the date of final execution of the agreement described in Part I.

PART IV:

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A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. Except as otherwise stated in Parts II and III, this ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

E. Notwithstanding any provision or language to the contrary in this ordinance, if the agreement authorized in Part I has not been fully executed by the necessary parties within one year from the date of the Municipal Council's approval of this ordinance, the entire ordinance shall expire, becoming null and void as if it had never been approved.

END OF ORDINANCE.



EXHIBIT A

71 **14.27.020**

72 **Permitted Uses.**

73 (1) Those uses or categories of uses as listed herein, and no others, are permitted in the M1 zone.

74 (2) All uses listed herein are listed by number as designated in the Standard Land Use Code  
75 published and maintained by the Planning Commission. Specific uses are identified by a four-digit  
76 number in which all digits are whole numbers. Classes or groupings of such uses permitted in the  
77 zone are identified by a four-digit number in which the last one (1) or two (2) digits are zeros.

78 (3) All such classes listed herein and all specified uses contained within them in the Standard Land  
79 Use Code will be permitted in the M1 zone subject to the limitations set forth herein.

80 (4) *Permitted Principal Uses.* The following principal uses and structures, and no others, are  
81 permitted in the M1 zone:

Use No.	Use Classification
2150	Bakery products
2170	Confectionery and related products
2185	Bottling and canning soft drinks and carbonated waters
2200	Textile mill products (except 2296 tire cord and fabric)
2300	Apparel and other finished products made from fabrics, leather, etc. (except 2361 leather tanning and finishing)
2500	Furniture and fixtures
2640	Converted paper and paperboard products (except containers and boxes)
2700	Printing, publishing, and allied industries
2844	Perfumes, cosmetics, and other toilet preparations
2893	Printing ink

Use No.	Use Classification
3120	Rubber footwear
3210	Flat glass
3220	Glass and glassware (pressed or blown)
3250	Pottery and related products
3270	Cut stone and stone products
3427	Office machines (small)
3430	Miscellaneous machinery
3492	Cutlery, hand tools, and general hardware
3500	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks (except film manufacturing)
3900	Miscellaneous manufacturing (except 3993 matches and 3995 morticians' goods)
4100	Railroads, rapid-rail transit, and street railway transportation (except 4116 railroad equipment and maintenance yards and 4123 rapid rail transit and street railway equipment maintenance yards)
4600	Automobile parking (4603 - Recreational vehicle storage yards, subject to storage yards, subject to Section <a href="#">14.34.350</a> , Provo City Code)
4700	Communications (except 4712 telephone relay towers, microwave or other, 4722 telegraph transmitting and receiving stations, 4732 radio transmitting stations and towers, 4742 television transmitting stations and relay towers [including satellite], and 4752 radio and television transmitting facilities only)
4811	Electric transmission right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)

Use No.	Use Classification
4821	Gas pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity)
4824	Gas pressure control stations
4831	Water pipeline right-of-way (identifies areas where the surface is devoted exclusively to the right-of-way of the activity.
4835	Irrigation distribution channels
4836	Water pressure control stations and pumping plants
4837	Water utilities or irrigation company office
4841	Sewage pipeline right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4844	Sewage pumping stations
4846	Sewage company office
4853	Refuse disposal company office
4862	Gas and electric utility company office
4863	Water and electric utility company office
4864	Combination utilities right-of-way (identifies areas where surface is devoted exclusively to right-of-way activity)
4873	Storm drain or right-of-way (predominantly covered pipes or boxes)
4900	Miscellaneous transportation, communication, and utilities
<del>5100</del>	<del>Wholesale trade (except 5150 farm products, 5182 farm machinery and equipment, 5191 metals and minerals [except petroleum products and scrap], 5192 petroleum bulk stations and terminals, 5193 scrap and waste materials, and 5199 other wholesale trade, NEC)</del>
5110	Motor Vehicles and Automotive

Use No.	Use Classification
5120	Drugs, Chemicals, and Allied Products
5130	Dry Goods and Apparel
5140	Groceries and Related Products
5160	Electrical Goods
5170	Hardware, Plumbing, Heating Equipment, and Supplies
5180	Machinery, Equipment, and Supplies (except 5182 farm machinery and equipment)
5192	Petroleum bulk stations and terminals (only as to the sale of petroleum products listed in the International Fire Code as combustible liquid classifications Class II, IIIA, and IIIB and only on property east of 200 East, north of 600 South, west of 300 East, and south of 500 South)
5194	Tobacco and tobacco products
5195	Beer, wine, and distiller alcoholic beverages
5196	Paper, paper products, and kindred supplies
5197	Furniture-commercial home furnishings
5198	Lumber and construction materials
5200	Building materials, hardware, farm equipment, and supplies
5513	Farm and construction vehicles
5591	Marine craft and accessories
5592	Aircraft and accessories
5593	New and used house trailers and campers
6214	Industrial laundry services
6297	Athletic clubs, body building studios, spas, aerobic centers, (no gymnasiums)
6310	Advertising services
6330	Duplicating, mailing, stenographic, and office services

Use No.	Use Classification
6340	Dwelling and other building services
6370	Warehousing or storage services (except 6371 farm products, warehousing/storing, except stockyards, 6372 stockyards)
6390	Business services (except 6396 trading stamp services and 6399 other business services, NEC)
6400	Repair services (except blacksmiths and horse shoeing) (6419 – Auto towing yards, subject to Section 14.34.350, Provo City Code)
6420	Electrical appliance repair
6600	Contract construction services (not open construction storage yards)
6714	Operations centers (not open storage yards)
6800	Educational services
7415	Roller Skating and Skate Boarding (subject to the standards of Section 14.34.370, Provo City Code)
8221	Veterinarian services
8222	Animal hospital services (except large animals)
8290	Other agricultural-related activities (arborist, horticultural and landscaping services)

82 (5) *Permitted Accessory Uses*. Accessory uses and structures are permitted in the M1 zone provided  
83 they are incidental to, and do not substantially alter, the character of the principal use or structure.  
84 Such permitted accessory uses and structures include, but are not limited to, the following:

85 (a) Accessory buildings such as garages, carports, equipment storage buildings, and supply  
86 storage buildings which are customarily used in conjunction with and incidental to a principal  
87 use or structure permitted in the M1 zone;

88 (b) Storage of materials used for construction of buildings, including the contractor's temporary  
89 office, provided that such use is on the building site or immediately adjacent thereto, and

90 provided further that such use shall be permitted only during the construction period and thirty  
91 (30) days thereafter; and

92 (c) Caretaker dwellings, provided that such dwellings comply with the supplementary  
93 development standards for caretaker dwellings set forth in Section [14.34.220](#), Provo City Code.

94 (d) Natural or manufactured gas storage or distribution points; provided the storage tank  
95 does not exceed 500 gallons.

96 (6) *Conditional Uses*. The following uses and structures are permitted in the M1 zone only after a  
97 Conditional Use Permit has been issued, and subject to the terms and conditions thereof.

Use No.	Use Classification
2113	Poultry and small game dressing and packing (except slaughtering)
2120	Dairy products
2132	Canning – specialty foods
2133	Canning – fruits, vegetables, preserves, jams, etc.
2137	Frozen fruits, fruit juices, vegetables, etc.
2431	Millwork (includes blinds, shutters, doors, moldings, screens)
2811	Industrial inorganic chemicals (includes air separation facilities)
2821	Plastic materials, synthetic resins, and nonvulcanizable elastomers
2830	Drugs (except cannabis production establishments)
3140	Miscellaneous plastic products
3190	Miscellaneous fabricated rubber products
3360	Nonferrous foundries (small item casting only)
3424	Metal working machinery and equipment (tool and dye shops, machine shops, etc.)
3498	Fabricated wire products



Use No.	Use Classification
4200	Motor vehicle transportation
4392	Heliport (pad only without maintenance facilities)
4715	Low power radio communication towers and antennas (subject to Section <a href="#">14.34.420</a> , Provo City Code)
4814	Electricity regulating substations
4815	Electric utility company office
4818	Small generation
4819	Other electric utility, NEC
<del>4823</del>	<del>Natural or manufactured gas storage; distribution points</del>
4825	Gas company office
4829	Other gas utilities, NEC
4832	Water treatment plants (purification)
4834	Water storage as part of a utility system (covered including water storage standpipes)
4839	Other water utilities or irrigation, NEC
4845	Water reclamation plants, sludge drying beds etc.
4849	Other sewage disposal, NEC
4855	Refuse disposals
4861	Combination utilities company storage yards and equipment storage
4869	Combination utilities, NEC
4872	Debris basin (a dam and basin for intercepting debris)
4874	Spreading grounds (area for percolating water into underground)
4890	Other utilities, NEC

Use No.	Use Classification
5192	<p>Petroleum bulk stations and terminals for the sale of petroleum products in flammable classifications Class IA, IB, and IC of the International Fire Code (only on property east of 200 East, north of 600 South, west of 300 East, and south of 500 South) subject to the following conditions:</p> <ul style="list-style-type: none"> <li>- The site must have frontage on an arterial or collector street</li> <li>- All flammable liquids must be clearly marked and adhere to all applicable regulatory code requirements</li> <li>- All flammable liquids must be located a minimum of 25 feet from any property line</li> </ul>
5199	Miscellaneous wholesale trade
5511	New and used car sales
5512	Motor vehicles, automobiles (used only)/retail trade
5530	Gasoline service stations
5711	Furniture, home furnishings, and equipment (only in conjunction with an attached warehousing operation)
5713	Draperies, curtains, and upholstery
5811	Restaurants
6399	Miscellaneous business services
6520	Legal services
6591	Accounting, auditing, book-keeping services
6722	Police protection and related activities, branch (office only)
6815	Day nursery or child care center
6900	Miscellaneous service organizations (subject to the standards of Section <a href="#">14.34.390</a> , Provo City Code)

Use	Use Classification
No.	
7396	Dance halls (subject to the standards of Section <a href="#">14.34.370</a> , Provo City Code)

## EXHIBIT B

98 **14.27.080**

99 **Yard Requirements.**

100 The following minimum yard requirements shall apply in the M1 zone:

101 (1) *Front Yard.* Each lot or parcel in the M1 zone shall have a front yard of not less than ten (10) feet,  
102 unless used for parking, in which case it shall be not less than thirty (30) feet, of which at least ten  
103 (10) feet shall be landscaped;

104 (2) *Side Yard.* No requirement, except as provided in Subsections (3), (4), and (5) of this Section, and  
105 except where adjoining a residential zone, school, or park, in which case a side yard of not less than  
106 twenty (20) feet shall be required;

107 (3) *Side Yard - Corner Lots.* On corner lots, the side yard contiguous with the street shall be not less  
108 than fifteen (15) feet in width, and shall not be used for vehicular parking. Said area shall be  
109 appropriately landscaped except those portions devoted to access and driveway use;

110 (4) *Side Yard - Driveway.* See Section [14.37.100](#), Provo City Code;

111 (5) *Side Yard - Accessory Building.* An accessory building may be located on a side property line if,  
112 and only if, all of the following conditions are met:

113 (a) The accessory building has no openings on the side which is contiguous to the property  
114 line, and the wall of said building adjacent to the property line has a two (2) hour fire-retardant  
115 rating; and

116 (b) The accessory building has facilities for the discharge of all roof drainage onto the lot or  
117 parcel on which it is erected;

118 (6) *Rear Yard.* No requirement except as may be dictated by off-street parking requirements or by  
119 the provisions of the International Building Code as adopted by Provo City; and

120 (7) *Rear Yard - Accessory Building.* An accessory building may be located on a rear property line if,  
121 and only if, the following conditions are met:

122 (a) The accessory building has no openings on the side which is contiguous to the property  
123 line, and the wall of said building adjacent to the property line has a two (2) hour fire-retardant  
124 rating; and

125 (b) The accessory building has facilities for the discharge of all roof drainage onto the lot or  
126 parcel on which it is erected.

127 Notwithstanding the foregoing minimum yard requirements, the Development Services Director may  
128 modify the requirements on a finding that deviation from the requirements would result in a more  
129 efficient use of the land and that the modifications would not create undue hardship on any  
130 surrounding property or use.

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132 EXHIBIT C

133 **LAND USE AND SITE IMPROVEMENT AGREEMENT**  
134 **FOR**  
135 **OWEN D. CHRISTENSEN INVESTMENT CO., LLC and CREST DISTRIBUTING, INC. d/b/a**  
136 **CHRISTENSEN OIL COMPANY**  
137 **(Located at 595 South 200 East, Provo, Utah)**  
138

139 THIS LAND USE AND SITE DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into  
140 as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and among the CITY OF PROVO, a Utah  
141 municipal corporation, hereinafter referred to as “City,” and OWEN D. CHRISTENSEN INVESTMENT CO, LLC  
142 f/k/a Owen D. Christensen Investment Company, LP and CREST DISTRIBUTING, INC. d/b/a CHRISTENSEN  
143 OIL COMPANY, hereinafter collectively referred to as “Owner.” The City and Owner are hereinafter collectively  
144 referred to as “Parties.”

145 **RECITALS**

146 A. Owner is the owner of approximately 2.58 acres of land located within the City of Provo as is  
147 more particularly described on EXHIBIT 1, attached hereto and incorporated herein by reference (the “Property”).

148 B. On the Property, Owner has operated a petroleum bulk oil station and terminal since the early  
149 1950s. Petroleum bulk oil stations and terminals are listed as Land Use #5192 in the City’s standard land use code.  
150 When Owner began its petroleum bulk oil station and terminal business, that use was a legally conforming land use.

151 C. Adjacent to the Property there are single family residences. Having residences and a petroleum  
152 bulk oil station and terminal so close together is a less than ideal situation and can create problems for both uses.

153 D. The Property is zoned M1(Light Manufacturing Zone). At some point, Land Use #5192 was  
154 removed from the M1 zone. This made Owner’s business a legally non-conforming use.

155 E. Owner desires to have its business of selling petroleum products which are listed in the  
156 International Fire Code, 2018 Edition, as combustible liquid classifications Class II, IIIA, and IIIB a permitted use in  
157 the M1 zone. Owner also desires to have its business of selling petroleum products in flammable classifications  
158 Class IA, IB, and IC of the International Fire Code, 2015 Edition a conditional use in the M1 zone.

159 F. City desires that the residential uses adjacent to the Property are safer by removing manufactured  
160 and natural gas storage tanks and distribution facilities as conditional uses from the M1 zone. Manufactured and  
161 natural gas storage tanks and distribution facilities are listed as Land Use #4823 in the City’s standard land use code.

162 G. Both Parties desire that the use of the Property is safe and complies with all appropriate safety  
163 codes and regulations.

164 H. The Parties propose that Provo City Code Sections 14.27.020 and 14.27.080 be amended to add  
165 facilities related to the sale of combustible petroleum products as permitted uses and to add the sale of flammable  
166 petroleum products as a conditional use in the M1 Zone and to remove manufactured and natural gas storage tanks  
167 and distribution facilities as a conditional Use in the M1 zone.

168 I. On May 5, 2020, May 19, 2020, and June 16, 2020, the Municipal Council met to ascertain the  
169 facts regarding this matter and receive public comment, which facts and comments are found in the public record of  
170 the Council’s consideration.

171 J. On \_\_\_\_\_, the City Council approved Ordinance \_\_\_\_\_, amending the M1  
172 zone (the “Zoning Ordinance”), set forth in EXHIBIT 2, attached hereto and incorporated herein by reference, which  
173 will govern the development and use of the Property.



174 K. Owner is willing to use and improve the Property in a manner that is consistent with the Site Plan  
175 set forth on EXHIBIT 3 (“Site Plan”), attached hereto and incorporated herein by reference, which is in harmony  
176 with and intended to promote the long range policies, goals, and objectives of the City’s general plan, zoning,  
177 development regulations and safety regulations in order to receive the benefit of having certain uses legally  
178 conforming under the terms of this Agreement as more fully set forth below.

179 L. The City Council accepted Owner’s proffer to enter into this Agreement to memorialize the intent  
180 of Owner and City and decreed that the effective date of the Zoning Ordinance be the date of the execution and  
181 delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the  
182 Utah County Recorder.

183 M. The City Council further authorized the Mayor of the City to execute and deliver this Agreement  
184 on behalf of the City.

185 N. The City has the authority to enter into this Agreement pursuant to Utah Code Section  
186 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Owner for the  
187 purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement  
188 and in accordance with applicable City Ordinances.

189 O. This Agreement is consistent with, and all preliminary and final plats within the Property are  
190 subject to and shall conform with, the City’s General Plan, Zoning Ordinances, and Subdivision Ordinances, and  
191 any permits issued by the City pursuant to City Ordinances and regulations.

192 P. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the  
193 Owner to use and improve the Property as expressed in this Agreement and the rights and responsibilities of the City  
194 to allow and regulate such use and improvement pursuant to the requirements of this Agreement.

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

197 R. The Parties intend to be bound by the terms of this Agreement as set forth herein.

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199

## AGREEMENT

200 NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and  
201 valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Owner hereby  
202 agree as follows:

203 1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as  
204 a substantive part hereof.

205 2. Zoning. The Property shall be used and improved in accordance with (i) the requirements of the  
206 M1(Light Manufacturing Zone), (ii) all Federal, State, and local safety regulations and codes, and (iii) this  
207 Agreement. The Owner shall not use or improve the Property in a manner that deviates from the requirements of the  
208 M1 zone or this Agreement.

209 3. Governing Standards. The Zoning Ordinance and this Agreement establish Owner’s rights,  
210 including the use, intensity and improvements for the Property. The Property shall be used and improved by the  
211 Owner in accordance with the Zoning Ordinance and this Agreement. Any Owner submittals must comply with, the  
212 Zoning Ordinance and this Agreement.

213 4. Additional Specific Owner Obligations. As an integral part of the consideration for this  
214 Agreement, the Owner voluntarily agrees as follows:

215 a. No flammable liquids, as defined in the International Fire Code, 2018 Edition, shall be  
216 stored within the most northern storage warehouse (“North Storage Warehouse”) as designated on the Site  
217 Plan with the exception of those liquids normally used for maintenance of vehicles within the shop building  
218 and gasoline in vehicles used for the distribution of dry goods.

219 b. Owner shall apply for a building permit to install an automatic fire sprinkler system  
220 approved by the Provo City Fire Department in the North Storage Warehouse within 90 days of the  
221 Effective Date of this Agreement. Within 12 months of City approval of the building permit, Owner shall  
222 install the fire sprinkler system. If a fire sprinkler system has not been installed by that date, Owner shall  
223 not store any combustible liquids as defined in the International Fire Code, 2018 Edition within the North  
224 Storage Warehouse.

225 c. The addition of any storage tanks or structures to the Property will require City’s  
226 approval. Owner shall seek City’s approval by applying for a minor project plan which shall be subject to  
227 administrative review.

228 d. Any new storage tanks or structures installed on the Property in the lube storage area as  
229 shown on the Site Plan shall not exceed the tallest point of what is referred to as the “drum” warehouse  
230 which is 21 feet 9 inches above grade. New storage tanks shall be installed within a containment basin  
231 approved by the Provo City Fire Department.

232 e. Plastic lube totes containing combustible liquids as defined in the International Fire  
233 Code, 2018 Edition shall be stored inside a fully enclosed structure to be constructed in a location as shown  
234 on the Site Plan that is designed with a containment basin approved by the Provo City Fire Department.  
235 This structure shall not exceed the tallest point of the “drum” warehouse as defined in 4.d. above. Within  
236 180 days of the Effective Date of this Agreement, Owner shall apply for a building permit for the structure.  
237 Until the structure is completed, plastic lube totes may continue to be stored outside but may not be stacked  
238 more than two totes high. The structure will be completed within 18 months of the date of City approval of  
239 the building permit. After that date, no plastic lube totes shall be stored outside whether the storage  
240 structure is completed or not.

241 f. Despite 4.e. above, empty plastic lube totes may continue to be stored outside on the  
242 Property in the empty tote storage overflow area as shown on the Site Plan. Empty plastic lube totes may  
243 not be stacked more than two totes high.

244 g. Owner specifically agrees to abandon any and all claims to any non-conforming use  
245 rights in the M1 zone that it may have as of the date of this Agreement.

246 h. Petroleum products in flammable classifications Class IA, IB, and IC of the International  
247 Fire Code, 2015 Edition, shall only be located on the Property only as designated on the Site Plan. Any  
248 new storage tanks installed on the Property in the flammable liquids area shall not exceed the height of the  
249 tallest existing storage tank in the flammable liquids area.

250 5. Construction Standards and Requirements. All construction of improvements on the Property at  
251 the direction of the Owner shall be conducted and completed in accordance with the City ordinances, including, but  
252 not limited to setback requirements, building height requirements, lot coverage requirements and all off-street  
253 parking requirements of the M1 zone.

254 6. Vested Rights and Reserved Legislative Powers.

255 a. Vested Rights. As of the Effective Date, Owner shall have the vested right to use and  
256 improve the Property in accordance with the uses, maximum permissible densities,  
257 intensities, and general configuration of development established by the Zoning Ordinance  
258 and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in  
259 existence on the Effective Date. The Parties intend that the rights granted to Owner under this



260 Agreement are contractual and also those rights that exist under statute, common law and at  
261 equity. The Parties specifically intend that this Agreement grants to Owner “vested rights” as  
262 that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.

263 i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the  
264 use and improvement of the Property will be required to comply with future changes  
265 to City Laws that do not limit or interfere with the vested rights granted pursuant to  
266 the terms of this Agreement. The following are examples for illustrative purposes of  
267 a non-exhaustive list of the type of future laws that may be enacted by the City that  
268 would be applicable to the Property:

269 1. Owner Agreement. Future laws that Owner agrees in writing to the  
270 application thereof to the Property;

271 2. Compliance with State and Federal Laws. Future laws which are generally  
272 applicable to all properties in the City and which are required to comply  
273 with State and Federal laws and regulations affecting the Property;

274 3. Safety Code Updates. Future laws that are updates or amendments to  
275 existing building, plumbing, mechanical, electrical, dangerous buildings,  
276 drainage, or similar construction or safety related codes, such as the  
277 International Building Code, the International Fire Code, the APWA  
278 Specifications, AAHSTO Standards, the Manual of Uniform Traffic  
279 Control Devices or similar standards that are generated by a nationally or  
280 statewide recognized construction/safety organization, or by the State or  
281 Federal governments and are required to meet legitimate concerns related to  
282 public health, safety or welfare; or,

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

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

290 6. Impact Fees. Impact Fees or modifications thereto which are lawfully  
291 adopted, imposed and collected.

292 b. Reserved Legislative Powers. The Owner acknowledges that the City is restricted in its  
293 authority to limit its police power by contract and that the limitations, reservations and  
294 exceptions set forth herein are intended to reserve to the City all of its police power that  
295 cannot be so limited. Notwithstanding the retained power of the City to enact such legislation  
296 of the police powers, such legislation shall not modify the Owner’s vested right as set forth  
297 herein unless facts and circumstances are present which meet the exceptions to the vested  
298 rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development,  
299 and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of*  
300 *Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of  
301 vested rights recognized under state or federal law.

302 7. Default. An “Event of Default” shall occur under this Agreement if any party fails to perform its  
303 obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty  
304 (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the  
305 foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long

306 as that party commences to cure the default within that 60-day period and diligently continues such cure in good  
307 faith until complete.

308 a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall  
309 have the right to exercise all of the following rights and remedies against the defaulting party:

310 1. All rights and remedies available at law and in equity, including injunctive  
311 relief, specific performance, and termination, but not including damages or attorney's fees.

312 2. The right to withhold all further approvals, licenses, permits or other rights  
313 associated with the use or improvement of the Property pertaining to the defaulting party as  
314 described in this Agreement until such default has been cured.

315 3. The right to draw upon any security posted or provided in connection with the  
316 Property by the defaulting party.

317 The rights and remedies set forth herein shall be cumulative.

318 8. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in  
319 writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return  
320 receipt requested, postage prepaid, to such party at its address shown below:

321 To the Owner: Owen D. Christensen Investment Co, LLC/Crest Distributing, Inc.  
322 Attn: Todd Christensen  
323 P.O. Box 818  
324 Provo, UT 84603  
325 Phone: (801) 373-7970  
326

327 To the City: City of Provo  
328 Attention: City Attorney  
329 351 W Center  
330 Provo, UT 84601  
331 Phone: (801) 852-6140  
332

333 9. General Term and Conditions.

334 a. Headings. The headings contained in this Agreement are intended for convenience only  
335 and are in no way to be used to construe or limit the text herein.

336 b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the  
337 parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors  
338 and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a  
339 "successor" includes a party that succeeds to the rights and interests of the Owner as evidenced by, among  
340 other things, such party's submission of land use applications to the City relating to the Property.

341 c. Non-Liability of City Officials and Employees. No officer, representative, consultant,  
342 attorney, agent or employee of the City shall be personally liable to the Owner, or any successor in interest  
343 or assignee of the Owner, for any default or breach by the City, or for any amount which may become due  
344 to the Owner, or its successors or assignees, or for any obligation arising under the terms of this  
345 Agreement. Nothing herein will release any person from personal liability for their own individual acts or  
346 omissions.



347 d. Third Party Rights. Except for the Owner, the City and other parties that may succeed  
348 the Owner on title to any portion of the Property, all of whom are express intended beneficiaries of this  
349 Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties.  
350 The Parties acknowledge that this Agreement refers to a private development and that the City has no  
351 interest in, responsibility for, or duty to any third parties concerning any improvements to the Property  
352 unless the City has accepted the dedication of such improvements

353 e. Further Documentation. This Agreement is entered into by the Parties with the  
354 recognition and anticipation that subsequent agreements, plans, profiles, engineering and other  
355 documentation implementing and carrying out the provisions of this Agreement may be necessary. The  
356 Parties agree to negotiate and act in good faith with respect to all such future items.

357 f. Relationship of Parties. This Agreement does not create any joint venture, partnership,  
358 undertaking, business arrangement or fiduciary relationship between the City and the Owner.

359 g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the  
360 Utah County Recorder against the Property and is intended to and shall be deemed to run with the land and  
361 shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

362 h. Performance. Each party, person and/or entity governed by this Agreement shall  
363 perform its respective obligations under this Agreement in a manner that will not unreasonably or  
364 materially delay, disrupt or inconvenience any other party, person and/or entity governed by this  
365 Agreement, the development of any portion of the Property or the issuance of final plats, certificates of  
366 occupancy or other approvals associated therewith.

367 i. Applicable Law. This Agreement is entered into under and pursuant to and is to be  
368 construed and enforceable in accordance with, the laws of the State of Utah.

369 j. Construction. This Agreement has been reviewed and revised by legal counsel for both  
370 the City and the Owner, and no presumption or rule that ambiguities shall be construed against the drafting  
371 party shall apply to the interpretation or enforcement of this Agreement.

372 k. Entirety of Agreement. This Agreement contains the entire agreement of the parties with  
373 respect to the subject matter hereof and there is no other promise, representation, warranty, usage, or course  
374 of dealing affecting it. This Agreement supersedes all prior agreements and understandings, whether oral  
375 or written, in connection with the site development of the Property or the use of the Property specifically  
376 including but not limited to that agreement between City and Owner dated 6 August 1991 and recorded 24  
377 April 1992 in Utah County Land Records as Entry 19571.

378 l. Consents and Approvals. Except as expressly stated in this Agreement, the consent,  
379 approval, permit, license or other authorization of any party under this Agreement shall be given in a  
380 prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent,  
381 approval, permit, license or other authorization required hereunder from the City shall be given or withheld  
382 by the City in compliance with this Agreement and the City Ordinances.

383 m. Approval and Authority to Execute. Each of the Parties represents and warrants as of the  
384 Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this  
385 Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding  
386 agreement.

387 10. Assignability. The rights and responsibilities of Owner under this Agreement may be assigned in  
388 whole or in part by Owner with the consent of the City as provided herein.

389 a. Notice. Owner shall give Notice to the City of any proposed assignment and provide such  
390 information regarding the proposed assignee that the City may reasonably request in making

391 the evaluation permitted under this Section. Such Notice shall include providing the City  
392 with all necessary contact information for the proposed assignee.

393 b. Partial Assignment. If any proposed assignment is for less than all of Owner's rights and  
394 responsibilities, then the assignee shall be responsible for the performance of each of the  
395 obligations contained in this Agreement to which the assignee succeeds. Upon any such  
396 approved partial assignment, Owner shall be released from any future obligations as to those  
397 obligations which are assigned but shall remain responsible for the performance of any  
398 obligations that were not assigned.

399 c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not  
400 reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of  
401 Owner proposed to be assigned.

402 d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the  
403 assigned terms and conditions of this Agreement as a condition precedent to the effectiveness  
404 of the assignment.

405 11. Sale or Conveyance. If Owner sells or conveys parcels of land, the lands so sold and conveyed  
406 shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be  
407 subject to the same limitations and rights of the City as when owned by Owner and as set forth in this Agreement  
408 without any required approval, review, or consent by the City except as otherwise provided herein.

409 12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a  
410 waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to  
411 be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be  
412 construed as a waiver of any succeeding breach of the same or other provisions.

413 13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the  
414 remaining provisions shall continue in full force and effect.

415 14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this  
416 Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable  
417 substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or  
418 hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable  
419 control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a  
420 period equal to the duration of that prevention, delay or stoppage.

421 15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.  
422



423  
424 IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their  
425 respective, duly authorized representatives as of the day and year first hereinabove written.

426 **CITY:**

427  
428 CITY OF PROVO  
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430  
431 ATTEST:

432  
433 By: \_\_\_\_\_  
434 City Recorder

433 By: \_\_\_\_\_  
434 Mayor Michelle Kaufusi

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436  
437 **OWNER:**

438 OWEN D. CHRISTENSEN INVESTMENT CO,  
439 LLC f/k/a Owen D. Christensen Investment  
440 Company, LP  
441

442  
443 By: \_\_\_\_\_  
444 Name: \_\_\_\_\_  
445 Title: \_\_\_\_\_  
446

447 And

448 CREST DISTRIBUTING, INC. d/b/a  
449 CHRISTENSEN OIL COMPANY

450  
451 By: \_\_\_\_\_  
452 Name: \_\_\_\_\_  
453 Title: \_\_\_\_\_  
454  
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457  
458 STATE OF UTAH )  
459 :ss  
460 COUNTY OF UTAH )

461  
462 On the \_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared before me \_\_\_\_\_, who being by  
463 me duly sworn, did say that he is the \_\_\_\_\_ of OWEN D. CHRISTENSEN INVESTMENT CO, LLC  
464 f/k/a Owen D. Christensen Investment Company, LP, and that the within and foregoing instrument was signed  
465 on behalf of said company with proper authority and duly acknowledged to me that he executed the same.  
466

467  
468 \_\_\_\_\_  
469 Notary Public  
470 Residing at:

471  
472 STATE OF UTAH )  
473 :ss  
474 COUNTY OF UTAH )

475  
476 On the \_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared before me \_\_\_\_\_, who being by  
477 me duly sworn, did say that he is the \_\_\_\_\_ of CREST DISTRIBUTING, INC. d/b/a CHRISTENSEN

477 OIL COMPANY, and that the within and foregoing instrument was signed on behalf of said company with  
478 proper authority and duly acknowledged to me that he executed the same.

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Notary Public  
Residing at:

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**Exhibit 1**

**Legal Description of the Property**

500  
501  
502  
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**Exhibit 2**  
**Zoning Ordinance**

504  
505  
506  
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508

**Exhibit 3**  
**Site Plan**

509

EXHIBIT D

510

Executed Agreement

511