

Ordinance 2023-32

SHORT TITLE:

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY TWO (2) ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 2075 WEST CENTER STREET, FROM ONE FAMILY RESIDENTIAL (R1.8) TO MIXED USE (MU) AND AUTHORIZING A RELATED DEVELOPMENT AGREEMENT. PROVO BAY NEIGHBORHOOD. (PLRZ20210271)

I

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	FOR	AGAINST	OTHER
CW 1	KATRICE MACKAY		✓	
CW 2	DAVID SHIPLEY	✓		
CD 1	BILL FILLMORE		✓	
CD 2	GEORGE HANDLEY	✓		
CD 3	SHANNON ELLSWORTH	✓		
CD 4	TRAVIS HOBAN		✓	
CD 5	RACHEL WHIPPLE	✓		
TOTALS		4	3	

This ordinance was passed by the Municipal Council of Provo City, on the 18th day of July 2023, on a roll call vote as described above. Signed this 21st day of August 2023.

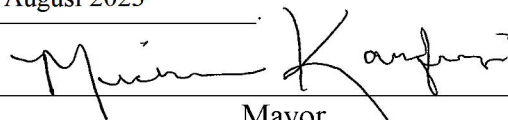


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 23rd day of August 2023.



Mayor

Ordinance 2023-32

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the 24th day of August 2023 and was published on the Utah Public Notice Website on the 19th day of July 2023. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2023-32.



A handwritten signature in cursive script, reading "Heidi Allman", is written over a horizontal line.

City Recorder

ORDINANCE 2022-32

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY TWO (2) ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 2075 WEST CENTER STREET, FROM ONE FAMILY RESIDENTIAL (R1.8) TO MIXED USE (MU) AND AUTHORIZING A RELATED DEVELOPMENT AGREEMENT. PROVO BAY NEIGHBORHOOD. (PLRZ20210271)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 2 acres of real property, generally located at 2075 West Center Street (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from One Family Residential (R1.8) to Mixed Use (MU); and

WHEREAS, on April 18, 2023, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended denial to the Municipal Council by a 3:3 vote; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on May 2, 2023 and July 18, 2023, 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) the Zone Map of Provo, Utah, should be amended as described herein; and (ii) the proposed zone map classification amendment for the real property described herein 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 a development agreement as proposed by the applicant for this zone change, consistent with those commitments described in the development agreement and the representations made by the applicant and the applicant's

representatives in the Council Meeting of May 2, 2023 and 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:

The classification on the Zone Map of Provo, Utah is hereby amended from the One-Family Residential (R1.8) Zone to the Mixed Use (MU) Zone for approximately 2 acres of real property generally located at 2075 West Center Street, as described herein. The effective date of this zone map change shall be the date of final execution of the development agreement described in Part I.

PART III:

- 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 Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.
- D. Except as otherwise stated in Part II, 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 Development 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. Because the zone classification change contemplated in Part II cannot come into effect if the Development Agreement is not executed, neither the applicant nor any successor(s) in interest shall have any vested rights under this ordinance if it expires.

END OF ORDINANCE

EXHIBIT A – ZONE MAP

Legal Description of the Property

COM N 167.65 FT & W 184.62 FT FR NE COR. OF SEC 10, T7S, R2E, SLB&M;
THENCE N 89°00'00" W 122.37 FT;
THENCE N 00°24'08" E 660.04 FT;
THENCE S 89°00'00" E 129.26 FT;
THENCE S 01°00'00" W 660.00 FT TO BEG

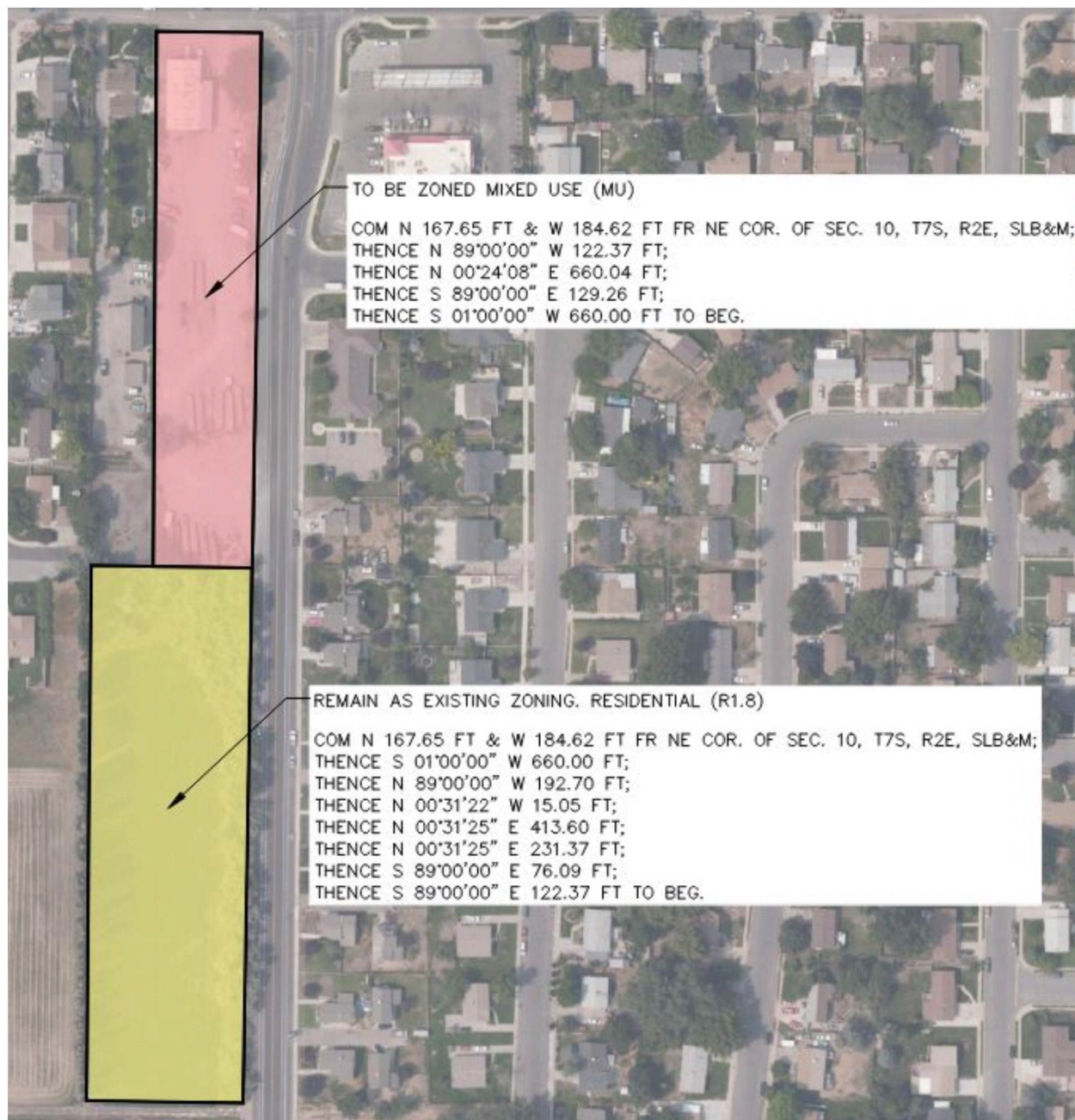


EXHIBIT B

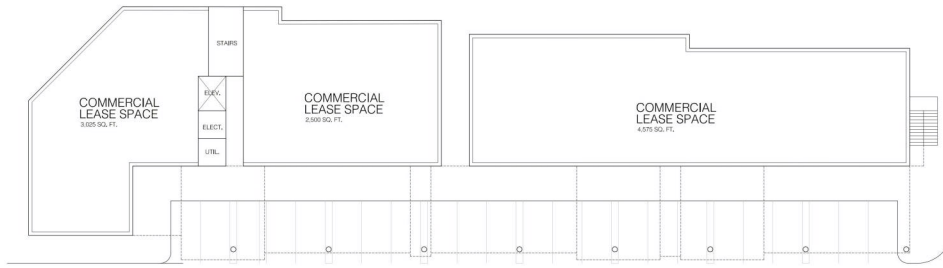
Exhibit B

Concept Plan

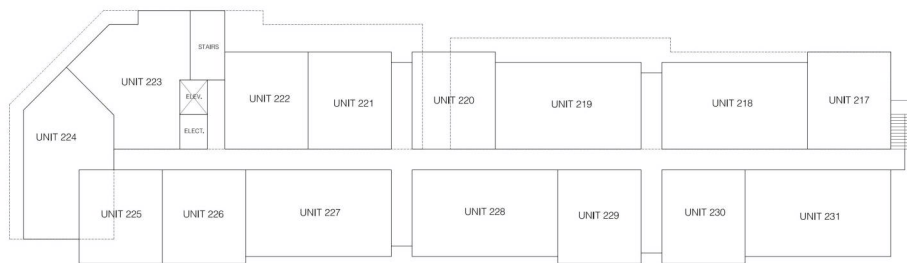


PRINTED DATE 02.09.2023	
LAYTON DAVIS ARCHITECTS 2050 WEST CENTER STREET PROVO, UT 84601 PHONE: 801.733.1234 WWW.LAYTONDAVISARCHITECTS.COM	
LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UT 84601	
CHRONOLOGY	
PROJECT NO 22.112	
DWN BY: CHK BY	
TITLE SCHEMATIC EXTERIOR ELEVATIONS	
24X36 SHEET # A200	

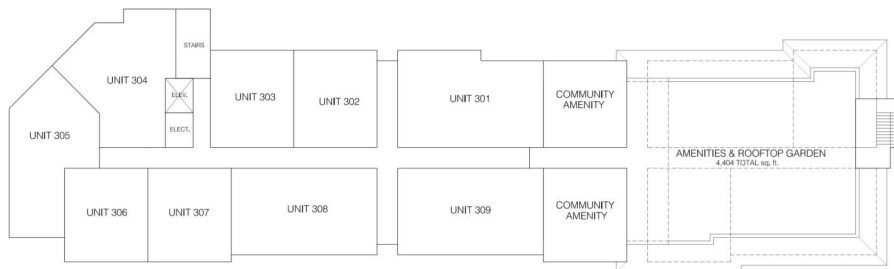




NORTH BUILDING - MAIN FLOOR PLAN
SCALE 1/4"=1'-0"



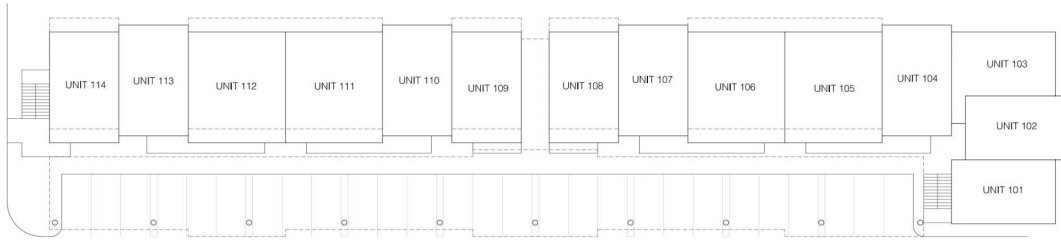
NORTH BUILDING - SECOND FLOOR PLAN
SCALE 1/4"=1'-0"



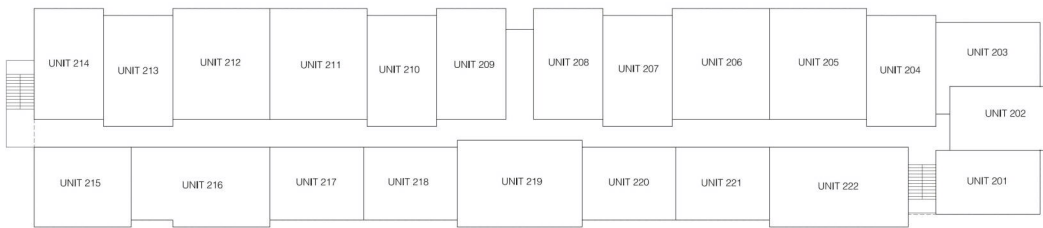
NORTH BUILDING - THIRD FLOOR PLAN
SCALE 1/4"=1'-0"

 <small>DAVID L. LAYTON, P.E. 00741141 DAVID S. DAVIS, P.E. 00741141 DAVID M. DAVIS, P.E. 00741141 DAVID J. DAVIS, P.E. 00741141</small>	PRINTED DATE 02.13.2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVIDENCE, UT 84201
	CHRONOLOGY
	PROJECT NO 22.112 DWN BY/ CHK BY _____ TITLE NORTH - MAIN AND SECOND FLOOR PLANS 24X36 SHEET # A101

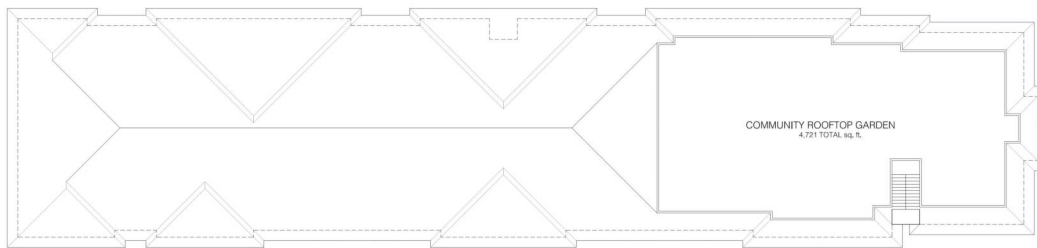
 <small>DAVID L. LAYTON, P.E. 00741141 DAVID S. DAVIS, P.E. 00741141 DAVID M. DAVIS, P.E. 00741141 DAVID J. DAVIS, P.E. 00741141</small>	PRINTED DATE 02.13.2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVIDENCE, UT 84201
	CHRONOLOGY
	PROJECT NO 22.112 DWN BY/ CHK BY _____ TITLE NORTH - THIRD FLOOR PLAN 24X36 SHEET # A102



◀ NORTH
1"=10'-0"
SOUTH BUILDING - MAIN FLOOR PLAN



◀ NORTH
1"=10'-0"
SOUTH BUILDING - SECOND FLOOR PLAN



◀ NORTH
1"=10'-0"
SOUTH BUILDING - THIRD FLOOR PLAN

 <small>LAURENCE A. LAYTON, AIA DANIEL J. DAVIS, AIA 2050 WEST CENTER STREET PROVO, UT 84601 PHONE: 801.733.1234 WWW.LAYTONDAVISARCHITECTS.COM</small>	PRINTED DATE 02.13.2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UT 84601
	CHRONOLOGY
	PROJECT NO 22.112 DWN BY/ CHK BY TITLE SOUTH - MAIN AND SECOND FLOOR PLANS 24X36 SHEET # A103

 <small>LAURENCE A. LAYTON, AIA DANIEL J. DAVIS, AIA 2050 WEST CENTER STREET PROVO, UT 84601 PHONE: 801.733.1234 WWW.LAYTONDAVISARCHITECTS.COM</small>	PRINTED DATE 02.13.2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UT 84601
	CHRONOLOGY
	PROJECT NO 22.112 DWN BY/ CHK BY TITLE SOUTH - THIRD FLOOR PLAN 24X36 SHEET # A104

EXHIBIT C – DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT FOR LAKEVIEW CROSSING

(Center Street to 130 South, 2050 West, Provo, Utah)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2023 (the “Effective Date”), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as “City,” and Premier Realty Investments, LLC, a Utah limited liability company, hereinafter referred to as “Developer.” The City and Developer are hereinafter collectively referred to as “Parties.”

RECITALS

A. Developer is the owner of approximately two (2) acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the “Property”).

B. On _____, the City Council approved Ordinance _____, vesting zoning (the “Vesting Ordinance”), based on the Concept Plan set forth on EXHIBIT B (“Concept Plan”), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the “Project”).

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the City’s general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

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

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

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

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

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

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

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

AGREEMENT

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 and the Developer hereby agree as follows:

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

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Mixed-Use Zones, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the City’s Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

- a. ROOFTOP AMENITY – The Project shall include rooftop amenities. The rooftop amenity space shall not be less than the minimum square footage required for recreational amenities in Section 14.14D.120(1). The rooftop amenities shall include at least all of the following elements: patio, canopy, deck, BBQ, firepit, pet exercise space, gardens, kitchenette, lounge furniture, and storage.
- b. CONDOMINIUM PLATTING & CONSTRUCTION – Developer intends Project to be a Condominium Project within the meaning of Provo City Code Chapter 15.06. Developer shall comply with all requirements of Chapter 15.06 for a Condominium Project.

- c. ELECTRIC VEHICLE (EV) CHARGING STATIONS – All covered parking stalls will be wired for and capable of EV charging.
- d. BICYCLE-FRIENDLY PROJECT – the site will include bike lockers and a bicycle repair facility.
- e. Certificates of Occupancy – Developer acknowledges and agrees that no certificate of occupancy will be issued by Provo unless all the requirements of this Section have been met.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.
 - i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:
 - 1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
 - 2. Compliance with State and Federal Laws. 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. Safety Code Updates. 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 of 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; or,

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

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

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

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

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

2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

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

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: Premier Realty Investments, LLC
Attn: Steve Turley
1480 South State Street
Provo, Utah 84606

To the City: City of Provo
Attention: City Attorney
445 West Center Street, Suite 300
Provo, UT 84601
Phone: (801) 852-6140

9. General Term and Conditions.

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

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

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

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement 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 unless the City has accepted the dedication of such improvements.

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

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

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

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

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

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

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

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

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting

party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

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

- a. Notice. 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.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

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

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

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

14. 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 therefore; 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.

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

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 hereinabove written.

CITY:

CITY OF PROVO

ATTEST:

By: _____
City Recorder

By: _____
Mayor Michelle Kaufusi

DEVELOPER:

Premier Realty Investments, LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On the ____ day of _____, 2023, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public
Residing at:

EXHIBIT D – EXECUTED DEVELOPMENT AGREEMENT

This will be available after it's completed.

**DEVELOPMENT AGREEMENT
FOR
LAKEVIEW CROSSING**

(Center Street to 130 South, 2050 West, Provo, Utah)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 17th day of August, 2023 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and Premier Realty Investments, LLC, a Utah limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately two (2) acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On June 6, 2023, the City Council approved Ordinance 2023-32, vesting zoning (the "Vesting Ordinance"), based on the Concept Plan set forth on EXHIBIT B ("Concept Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

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

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

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

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

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

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

AGREEMENT

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 and the Developer hereby agree as follows:

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

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Mixed-Use Zones, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the City’s Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

- a. **ROOFTOP AMENITY** – The Project shall include rooftop amenities. The rooftop amenity space shall not be less than the minimum square footage required for recreational amenities in Section 14.14D.120(1). The rooftop amenities shall include at least all of the following elements: patio, canopy, deck, BBQ, firepit, pet exercise space, gardens, kitchenette, lounge furniture, and storage.
- b. **CONDOMINIUM PLATTING & CONSTRUCTION** – Developer intends Project to be a Condominium Project within the meaning of Provo City Code

Chapter 15.06. Developer shall comply with all requirements of Chapter 15.06 for a Condominium Project.

- c. ELECTRIC VEHICLE (EV) CHARGING STATIONS – All covered parking stalls will be wired for and capable of EV charging.
- d. BICYCLE-FRIENDLY PROJECT – the site will include bike lockers and a bicycle repair facility.
- e. Certificates of Occupancy – Developer acknowledges and agrees that no certificate of occupancy will be issued by Provo unless all the requirements of this Section have been met.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.

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

- 1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
- 2. Compliance with State and Federal Laws. 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. Safety Code Updates. 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 of 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; or,
 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.
 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.
 6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.
- b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.
7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.
- a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

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

2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

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

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: Premier Realty Investments, LLC
Attn: Steve Turley
1480 South State Street
Provo, Utah 84606

To the City: City of Provo
Attention: City Attorney
445 West Center Street, Suite 300
Provo, UT 84601
Phone: (801) 852-6140

9. General Term and Conditions.

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

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

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement.

Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement 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 unless the City has accepted the dedication of such improvements.

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

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

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

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

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

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

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

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

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

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

- a. Notice. 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.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

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

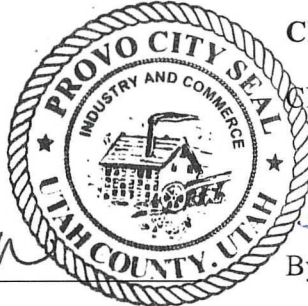
12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the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

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

14. 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 therefore; 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.

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

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 hereinabove written.



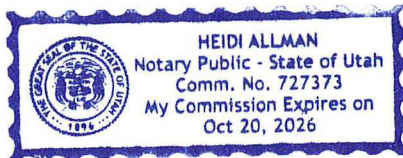
CITY:

CITY OF PROVO

ATTEST:

By: Heidi Allman
City Recorder

By: Michelle Kaufusi
Mayor Michelle Kaufusi



August 17, 2023

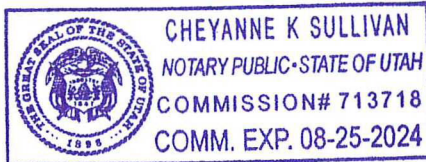
DEVELOPER:

Premier Realty Investments, LLC, a Utah limited liability company

By: [Signature]
Name: STEVE TURLEY
Title: MANAGER

STATE OF UTAH)
) :ss
COUNTY OF UTAH)

On the 16th day of August, 2023, personally appeared before me Steve Turley, who being by me duly sworn, did say that he is the Manager of Premier Realty Investments, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.



Cheyenne K Sullivan
Notary Public
Residing at: Provo, UT

Exhibit A

Legal Description of the Property

COM N 167.65 FT & W 184.62 FT FR NE COR. OF SEC 10, T7S, R2E, SLB&M;
THENCE N 89°00'00" W 122.37 FT;
THENCE N 00°24'08 E 660.04 FT;
THENCE S 89°00'00" E 129.26 FT;
THENCE s 01°00'00" W 660.00 FT TO BEG

Exhibit B
Concept Plan

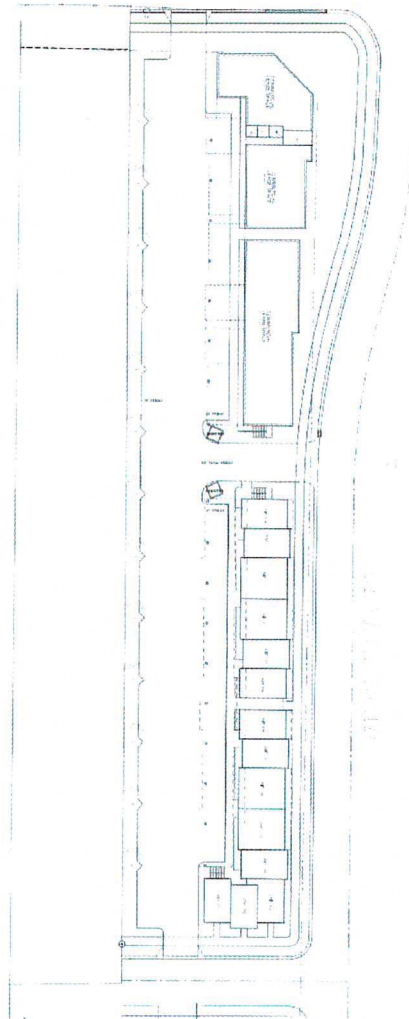


EAST FRONT ELEVATION (SOUTH)



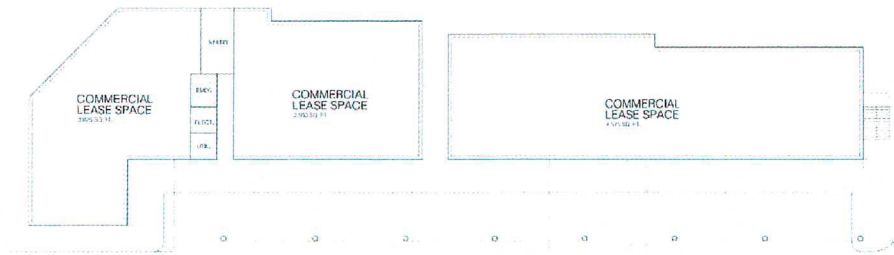
EAST FRONT ELEVATION (NORTH)

LAYTON & DAVIS ARCHITECTS 2000 N. 1000 E. SUITE 100 PROVO, UT 84601 (801) 733-1111 www.laytonanddavis.com	PRINTED DATE 02.28.2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2030 WEST CENTER STREET PROVO, UTAH
	CHRONOLOGY
	PROJECT NO. 22.112
DRAWN BY CWB	TITLE SCHEMATIC EXTERIOR ELEVATIONS
	SHEET #
	A200

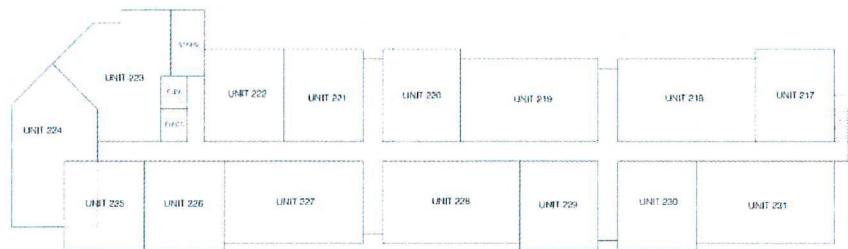


SCHEMATIC SITE PLAN

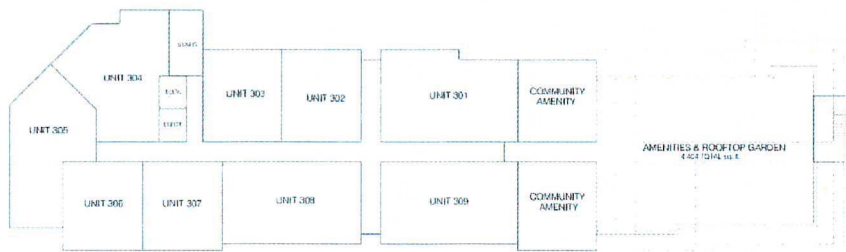
PRINTED DATE 02.13.2023	LAYTON DAVIS ARCHITECTS 2005 EAST 2700 SOUTH - SUITE 200 SALT LAKE CITY, UTAH 84119 PHONE: 801.462.7275 WWW.LAYTONDAVISARCHITECTS.COM	CHRONOLOG LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UTAH	PROJECT NO. 22112 DRAWN BY: CHK BY	TITLE SCHEMATIC SITE PLAN 2X6S SHEET # A100
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NORTH BUILDING - MAIN FLOOR PLAN



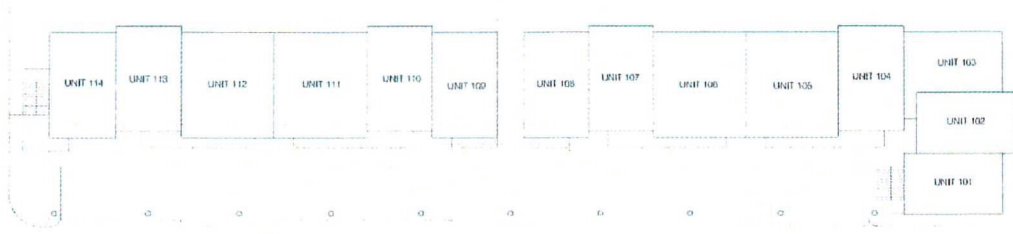
NORTH BUILDING - SECOND FLOOR PLAN



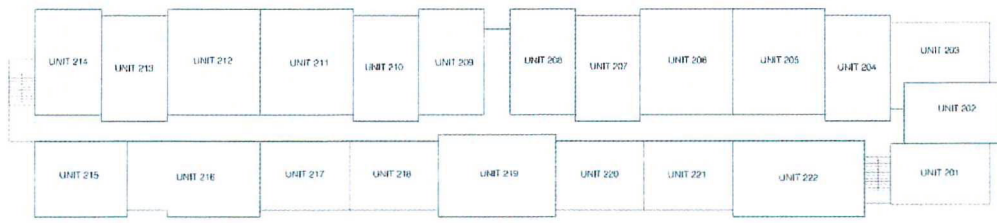
NORTH BUILDING - THIRD FLOOR PLAN

	PRINTED DATE 02/13/2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UTAH
	CHRONOLOGY
	PROJECT NO 22-112
	DRAWN BY: CMH
	TITLE NORTH - MAIN AND SECOND FLOOR PLANS
	SHEET SHEET # A101

	PRINTED DATE 02/13/2023
	LAKEVIEW CROSSING A MIXED USE PROJECT 2050 WEST CENTER STREET PROVO, UTAH
	CHRONOLOGY
	PROJECT NO 22-112
	DRAWN BY: CMH
	TITLE NORTH - THIRD FLOOR PLAN
	SHEET SHEET # A102



6. SOUTH BUILDING - MAIN FLOOR PLAN



7. SOUTH BUILDING - SECOND FLOOR PLAN



8. SOUTH BUILDING - THIRD FLOOR PLAN

PRINTED DATE
02/13/2023

LAYTONDAVIS
ARCHITECTS
2000 WEST CENTER STREET
PROVO, UTAH 84601
PHONE: 801.733.1111
WWW.LAYTONDAVISARCHITECTS.COM

LAKEVIEW CROSSING
A MIXED USE PROJECT
2000 WEST CENTER STREET
PROVO, UTAH

CHRONOLOGY

PROJECT NO
22-112

DRAWN BY
CJW

TITLE
SOUTH - MAIN
AND SECOND
FLOOR PLANS

SHEET #
A103

PRINTED DATE
02/13/2023

LAYTONDAVIS
ARCHITECTS
2000 WEST CENTER STREET
PROVO, UTAH 84601
PHONE: 801.733.1111
WWW.LAYTONDAVISARCHITECTS.COM

LAKEVIEW CROSSING
A MIXED USE PROJECT
2000 WEST CENTER STREET
PROVO, UTAH

CHRONOLOGY

PROJECT NO
22-112

DRAWN BY
CJW

TITLE
SOUTH - THIRD
FLOOR PLAN

SHEET #
A104