

ORDINANCE NO. 20-17

AN ORDINANCE OF THE SOUTH OGDEN CITY, UTAH APPROVING AND ADOPTING AN AMENDED DEVELOPMENT AGREEMENT WITH MT. OGDEN DEVELOPMENT FOR THE PROPERTY LOCATED AT APPROXIMATELY 935 COUNTRY HILLS DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1 - Recitals:

WHEREAS, the City Council finds that the planning commission has caused to be prepared and has recommended to the City Council a zoning ordinance and general plan; and,

WHEREAS, the City Council finds that the planning commission has caused to be prepared and has recommended to the City Council an Amended Development Agreement for Mt. Ogden Development representing the commission's recommendations for development of the proposed project area within the municipality; and,

WHEREAS, the City Council finds that the Development Agreement for Mt. Ogden Development has been subjected to the required public hearing prior to its adoption and this amendment; and,

WHEREAS, the City Council finds that under Utah Code §10-9a-305(8)(a) and §10-9a-509, the City Council may lawfully adopted development plans, and amendments thereto, and schedules, by ordinance as recommended by the Planning Commission; and,

WHEREAS, upon petition to and based on the recommendation of the South Ogden City Planning Commission, the City Council determines it to be in the best interest of the City to adopt the proposed Amended Development Agreement for Mt. Ogden Development; and,

WHEREAS, the City Council finds that such a change follows the City's General Plan; and,

WHEREAS, the City Council finds that the public convenience and necessity, public safety, health and welfare is at issue and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN, UTAH:

The **Amended Development Agreement** for Mt. Ogden Development, LLC, attached as **Attachment "A"**, and fully incorporated by this reference, is approved and adopted.

The foregoing recitals are fully incorporated herein.

Section 2 - Repealer of Conflicting Enactments:

All orders, ordinances and resolutions regarding the changes enacted and adopted which have been adopted by the City, or parts, which conflict with this Ordinance, are, for such conflict, repealed, except this repeal will not be construed to revive any act, order or resolution, or part, repealed.

Section 3 - Prior Ordinances and Resolutions:

The body and substance of all prior Ordinances and Resolutions, with their specific provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

Section 4 - Savings Clause:

If any provision of this Ordinance be held or deemed or will be invalid, inoperative or unenforceable, such invalidity will render no other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed the separate independent and severable act of the City Council of South Ogden City.

Section 5 - Date of Effect

This Ordinance will be effective on the 16th day of June, 2020, and after publication or posting as required by law.

DATED the 16th day of June, 2020

SOUTH OGDEN, a municipal corporation

by: _____
Mayor Russell Porter

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT "A"

ORDINANCE NO. 20-17

An Ordinance Of The South Ogden City, Utah Approving And Adopting An Amended Development Agreement With Mt. Ogden Development For The Property Located At Approximately 935 Country Hills Drive; And Providing For An Effective Date.

16 Jun 20

When recorded, return to:

South Ogden City
Attn: City Attorney
3950 S. Adams Ave, Suite 1
South Ogden, UT 84403

Parcel Number:
06-074-0001

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“DA”) is made and entered as of the ____ of _____, 2020, by and among South Ogden City, a political subdivision of the State of Utah (the “City”) and Mt. Ogden Development, LLC, a Utah limited liability company (the “Developer”).

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1b, below.
- B. The Project Property is currently assigned the 40th Street General Subdistrict as set forth in the Form Based Code within the South Ogden City Code, as amended by Ordinance 17-21, 11-21-2017, eff. 11-21-2017.
- C. The Parties desire that the Project Property be developed in a unified and consistent fashion under the 40th Street General Subdistrict within the South Ogden City Code and Developer provided Concept Plan and this DA. The Developer intends to develop the Project Property into a residential apartment complex with attractive architectural and landscaping components while striving to be environmentally friendly through efficient use of water and energy in the building.
- D. Development of the Project Property as a high-density residential apartment complex under this DA is acknowledged by the City to be consistent with LUDMA and generally the 40th Street General Subdistrict, and to operate to the benefit of the City, Developer, and general public.
- E. The Parties acknowledge that development of the Project Property under this DA will result in planning and economic benefits to the City and its residents by, among other things, requiring orderly development of the Project Property and increasing property tax, sales tax and other revenues to the City based on improvements to be constructed on the Project Property.
- F. Development of the Project Property under this DA will also result in benefits to Developer by providing assurances to Developer it can develop the Project

Property under this DA.

- G. The Parties have cooperated in the preparation of this DA.
- H. The Parties desire to enter into this DA to specify the rights and responsibilities of Developer to develop the Project Property and the rights and responsibilities of the City to allow and regulate such development under the requirements of this DA.
- I. The Parties understand and intend that this DA is a “development agreement” within the meaning of, and entered into under Utah Code Ann. § 10-9a-102 and SOCC11-3-1G.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree to the following:

TERMS

1. Incorporation of Recitals and Exhibits/Definitions.

a. Incorporation. The foregoing Recitals and Exhibits “A”, “B”, and “C” are incorporated into this DA.

b. Definitions. As used in this DA, the words and phrases specified below shall have the following meanings:

- (i) “DA” means this Development Agreement including all of its Exhibits.
- (ii) “Buildout” means the completion of all of the development on the entire Project Property under this DA.
- (iii) “City” means South Ogden City, a political subdivision of the State of Utah.
- (iv) “City Code” means the South Ogden City Code, as amended.
- (v) “Concept Plan” means the document provided by Developer for the Project, which is attached as Exhibit “A”.
- (vi) “Council” means the elected City Council of the City.
- (vii) “Developer” means Mt. Ogden Development, LLC, a Utah limited liability company, and its assignees or transferees as permitted by this DA (other than a Sub developer).
- (viii) “Development” means the development of a Parcel(s) or a portion thereof under an approved Development Application.

(ix) “Development Application” means an application to the City for development of a portion of the Project including Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

(x) “Form Based Code” means specific regulations applied to the 40th Street General Subdistrict within the City’s Zoning Regulations.

(xi) “LUDMA” means the Municipal Land Use, Development, and Management Act, Utah Code Ann. §§10-9a-101, et. seq.

(xii) “Notice” means any notice to or from any party to this DA.

(xiii) “Participation Agreement” means an agreement between the South Ogden City Community Development and Renewal Agency and Developer regarding contribution of Agency funds to Developer for the Project.

(xiv) “Parties” mean the City and Developer. Each may be referred to individually as a “Party.”

(xv) “Phase” means the development of a portion of the Project at a point in a logical sequence as determined by Developer.

(xvi) “Planning Commission” means the City’s Planning Commission.

(xvii) “Project” means the total development to be constructed on the Project Property under this DA with the associated public and private facilities, Phases, and all of the other aspects approved as part of this DA.

(xviii) “Project Property” means approximately 1.39 acres of land owned by Developer and located on 40th Street in South Ogden, Utah and more particularly described in Exhibit “B” attached hereto.

(xix) “Site Plan” all documents necessary under City Cod 10-5.1A-10-2E(3)(b).

(xx) “Substantial Completion” means the date at which Certificate of Occupancy has been issued for all buildings shown on the Site Plan.

(xxi) “Zoning” means the zoning for the Project.

(xxii) “Zoning Ordinance” means the Zoning Regulations contained within the City Code.

2. Conditions Precedent. As conditions precedent to the obligations of the Parties, this DA is contingent upon and shall only become effective

at such time, and in the event that:

- a. Developer obtains all necessary planning entitlements, e.g., site plan approval, from the City's Staff Review Committee.
- b. Developer obtains a traffic impact study for 40th Street and 900 East.

The Parties understand and agree that the Project Property is intended to meet the general requirements of the Zoning Ordinance but that this DA shall control the Parties rights and obligations, subject to Section 5, below. Unless the Parties mutually agree to amend this DA under paragraph 21, below, and the above listed Conditions Precedent are not met within 12 months from the date of signatures to this agreement, this DA shall be void.

3. Effect of DA. This DA shall be the sole agreement between the Parties related to developing the Project except as it may be modified by agreement of the Parties.

4. Development of the Project.

a. Project Development. Development of the Project shall be under the 40th Street General Subdistrict to include: development of multi-family residential uses and accessory sub-uses; specific development standards within the Zoning Ordinance and this DA, including the Conditions Precedent set forth herein, as outlined in Section 2, and the following:

- (i) A single apartment building consisting of a mixture of four stories of residential one bedroom and two bedroom units and podium parking with one level of said parking below grade and one level above grade.
- (ii) The Project shall generally follow the aesthetic guidelines outlined in South Ogden City Code, Title 10, Chapter 5.1, Article A, Sec. 10-5.1A-5-4 and 10-5.1A-11, et. seq., attached as Exhibit "C" and incorporated herein by this reference.

b. Adoption of Project Standards. The Parties understand and acknowledge that the 40th Street General Subdistrict provides standards including, but not limited to, location of buildings, setbacks, lot coverage, building orientation, landscaping and other design features and that the development of the Project is and shall remain subject to these applicable standards.

c. Project Standards Exceptions. The following exceptions to the 40th Street General Subdistrict and applicable Building Type standards

will apply to this DA:

- (i) Developer shall not be required to adhere to the building above-grade height restriction of three stories but will be limited, instead, to four stories of residential units and one story of above-grade podium parking.
- (ii) The building shall be a General Stoop Building with a Stoop Entrance Type and Visible Basement due to the slope of the Project Property.
- (iii) Developer shall be allowed a parking ratio that is in accordance with the verified tenant demand, market study, comparable approved projects in the area, and market comparisons for the proposed rental product type(s). The reduction in parking shall result in not less than 1.6 stalls per unit, which may include a shared parking agreement with neighboring businesses. To accomplish this some reductions in the number of landscaping areas in the parking lot may be permitted, if necessary, to maximize the parking available. Developer shall offset any approved reductions to parking lot landscaping with increased landscaping at other locations in the Project Property. Additionally, Developer has spoken with Nate Harbertson, the owner of the real property located immediately to the west of the Project Property, who is open to a shared parking agreement to provide additional parking for the Project.
- (iv) High Grade EIFS or Stucco may be used as a primary or secondary façade material on all levels of the Project. The application of High Grade EIFS or Stucco on the side of the building facing 40th Street shall be done in such a way as to maintain the appearance of the materials required by City Code.
- (v) The build-to line shall be increased to 0-15' for the Project.
- (vi) Developer shall not be required to adhere to a setback for levels above the 3rd story.
- (vii) Available bicycle parking within the Project shall be reduced to ½ stall per unit.

d. Timing of Development. The Parties acknowledge that the efficient and economic development of the Project may be contingent and dependent upon numerous factors, such as market conditions and demand, interest rates, competition and similar factors. The City agrees that Developer shall have a reasonable level of flexibility for timing (with

18. **No Waiver.** Failure of any party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

19. **Severability.** If any provision of this DA is held by a court of competent jurisdiction to be invalid, the Parties consider and intend that this DA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this DA shall remain in full force and affect.

20. **Limitations on Damages.** UNDER NO CIRCUMSTANCE SHALL ANY PARTY BE ENTITLED TO RECOVER (I) LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, (II) PENALTIES, OR (III) SPECIAL, PUNITIVE, TREBLE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

21. **Entire Agreement.** This DA and all Exhibits hereto, constitute the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties. Notwithstanding the foregoing, any non-substantive amendments to this DA may be reviewed and approved in writing by the City Manager and/or City Planning Department Staff and Developer.

22. **Counterparts.** This DA may be executed in original counterparts when taken together shall constitute a complete, valid and binding agreement.

23. **Recordation and Running with the Land.** This DA shall be recorded in the chain of title for the Project. This DA shall be deemed to run with the land.

24. **Authority.** The Parties to this DA each warrant that they have the necessary authority to execute this DA. Specifically, on behalf of the City, the signature of the Mayor, or designee, of the City is affixed to this DA lawfully binding the City on July 7, 2020.

~~(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ARE LOCATED ON THE NEXT PAGE.)~~

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

SOUTH OGDEN CITY

By: Matthew J. Dwyer

Development Agreement
South Ogden City/Mt. Ogden Development, LLC

Its: City Manager

State of Utah)

County of Weber)

On this 7 day of July, 2020, before me, Leesa Kapetanov a notary public, personally appeared Matthew Dixon, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has authority to sign on behalf of South Ogden City and that they executed the same on behalf of South Ogden City.

Witness my hand and official seal.

Leesa Kapetanov
(Notary Signature)



MT. OGDEN DEVELOPMENT, LLC,
A Utah limited liability company

By: _____

Its: _____

State of Utah)

County of _____)

On this _____ day of _____, 2020, before me, _____ a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has the authority to sign the foregoing on behalf of Mt. Ogden Development, LLC and that they executed the same on behalf of Mt. Ogden Development, LLC.

Witness my hand and official seal.

(Notary Signature)

the exception of Section 6), sequencing, and phasing of the project.

e. Approval Processes. Development approval of the Project shall follow the review processes in the 40th Street General Subdistrict within the Zoning Ordinance and this DA.

f. Project Fees. The Parties acknowledge that the City charges reasonable impact fees, building permit fees, and other fees and that Developer will be subject to all applicable fees. The Parties further acknowledge that the Project may be benefited by a Participation Agreement, but that the successful negotiation of a Participation Agreement is not a condition to performance of Developer's obligations under this DA.

5. Vested Rights and Reserved Legislative Powers.

a. Vested Rights Granted by Approval of this DA. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this DA grants Developer the right to develop and construct the Project consistent with the uses and building types as provided in the 40th Street General Subdistrict and this DA. The Parties intend that the rights granted to Developer under this DA are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that the 40th Street General Subdistrict and this DA, grant to Developer "vested rights" as that term is construed in Utah's common law and under Utah Code Ann. § 10-9a-509. If any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed.

b. Reserved Legislative Powers. The Parties acknowledge that any exception to the vested rights as set forth above must meet the compelling, countervailing public interest standard in Utah Code Aim. §10-9a-509.

c. Legislative Discretion. Nothing in this DA shall be interpreted to usurp the independent exercise of the legislative discretion of the Planning Commission and Council.

6. Developer's Non-Performance. Should Developer fail to meet or perform the obligations defined within this DA, or if Substantial Completion of the Project has not been accomplished within three and one-half (3.5) years of the date of this DA, absent any extensions by further agreement of the Parties, this DA shall be automatically terminated and the Parties shall have no further rights or obligations hereunder.

7. Term of Agreement. This DA shall expire on its terms four (4) years from the date of approval and execution by the Parties, unless terminated earlier under

another provision of this DA.

8. City Obligations for Improvements. In connection with the Project, the City confirms that it has the necessary utility infrastructure to provide water, sewer, and stormwater service to the Project and that such infrastructure exists within a reasonable distance of the Project Property. The City also agrees that it will permit Developer to connect to the City's water, sewer, and storm drain upon payment of all applicable fees. Developer acknowledges that all other necessary utilities, including but not limited to electrical and natural gas service, are the responsibility of Developer.

9. Upsizing. Upon request from the City, Developer shall “upsized” any public infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) provided that the City makes arrangements to compensate Developer for the reasonable costs of such upsizing on or before the date on which such infrastructure is installed by Developer. For example, if an upsized to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

10. Developer to Indemnify the City. Developer shall, protect, indemnify, hold harmless and defend the City and its agents, employees, officers and elected officials against any claims, demands, judgments, expenses, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the Parties hereto and their employers, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work/development contemplated by this DA. This indemnification provision shall not apply to any claims or liabilities that are unrelated to the Project or this DA.

11. Notices.

a. Notice Addresses. All notices required or permitted under this DA shall be given in writing by certified mail and regular mail to the following addresses:

To Developer:
Mt. Ogden Development, LLC
c/o Devin Hubbard and Ryan Hughes
6086 Woodland Drive
Ogden, Utah 84403
devinhubbard03@gmail.com
rhughes2012@gmail.com

To the City:

South Ogden City
Attn: City Manager
3950 Adams Ave., Ste. 1
South Ogden City, UT 84403

Effectiveness of Notice. Each Notice shall be effective and shall be deemed delivered on the day the Notice is postmarked for mailing, postage prepaid, by Certified United States Mail and actually deposited with or delivered to the United States Postal Service. Any party may change its address for Notice under this DA by giving written Notice to the other Parties.

12. Assignment and Transfer of Development.

a. Assignment. Developer shall not assign its obligations under this Agreement or any rights or interests herein, and, except as provided below, shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee (a) has, in the sole opinion of the City, the qualifications and financial resources necessary and adequate to fulfill the obligations of Developer under this Agreement and any then-applicable documents necessary to complete development; and (b) by instrument in writing, has expressly assumed the obligations of Developer under this Agreement and all then-applicable additional agreements and agreed to be subject to the conditions and restrictions arising under this Agreement or any other related development documents. If only a portion of the Project is assigned and/or conveyed under this Section 13, a reasonable allocation of Developer's duties appurtenant to that portion will be made.

b. Security Interests. This Section 13 shall not prohibit granting any security interests for financing the acquisition and development of the Project, subject to Developer complying with applicable law and the requirements of this DA.

c. Change in Control. A change in the majority ownership or control of Developer shall be deemed a transfer requiring the consent of the City under the requirements of this Section 13. Notwithstanding the foregoing sentence, transferring all or a portion of the Project or change in the majority ownership or control of Developer shall NOT be considered

a transfer under these circumstances: (i) a transfer occurs to an entity that is an affiliate of Developer, (ii) a transfer or change in ownership occurs because of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing to enable Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the development related documents. If because of these described actions one or more new principals become associated with the Project, such principals shall sign a counterpart of this agreement evidencing their personal guaranty of Developer's obligations. For purposes of this section, an "affiliate" is an entity in which the owner(s) of Developer both holds an ownership stake of more than 50 percent and over which the owner of Developer is able to exert control

13. Appointment of Representatives. To further the commitment of the Parties to cooperate in implementing this DA, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City and the CDRA shall be Matthew Dixon, City Manager, and the initial representatives for Developer shall be Devin Hubbard and Ryan Hughes. The Parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this DA and the development of the Project.

14. Mutual Drafting. Each party has participated in negotiating and drafting this DA and therefore no provision of this DA shall be construed for or against either party based on which party drafted any particular portion of this DA.

15. Waiver of Jury Trial; Attorneys' Fees. All disputes or claims arising under this DA shall be mediated by a mediator to be agreed upon by the Parties. If, after good faith efforts by the Parties, mediation is unsuccessful in resolving the dispute(s), any remaining controversy or claims arising out of or relating to this DA, or a breach thereof, shall be resolved by bench trial in the District Courts for the Second Judicial District, Weber County, Utah. The prevailing Party in any such action may recover all costs, including reasonable attorneys' fees, incurred in enforcing this Agreement. The Parties waive their right to a jury trial of any disputes or claims arising under this DA.

16. Applicable Law. This DA is entered into in Weber County in the State of Utah and shall be construed under the laws of the State of Utah despite Utah's choice of law rules.

17. Venue. Subject to Section 16, supra, any action to enforce this DA shall be brought only in the Second District Court for the State of Utah, Weber County.

18. **No Waiver.** Failure of any party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

19. **Severability.** If any provision of this DA is held by a court of competent jurisdiction to be invalid, the Parties consider and intend that this DA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this DA shall remain in full force and affect.

20. **Limitations on Damages.** UNDER NO CIRCUMSTANCE SHALL ANY PARTY BE ENTITLED TO RECOVER (I) LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, (II) PENALTIES, OR (III) SPECIAL, PUNITIVE, TREBLE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

21. **Entire Agreement.** This DA and all Exhibits hereto, constitute the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties. Notwithstanding the foregoing, any non-substantive amendments to this DA may be reviewed and approved in writing by the City Manager and/or City Planning Department Staff and Developer.

22. **Counterparts.** This DA may be executed in original counterparts when taken together shall constitute a complete, valid and binding agreement.

23. **Recordation and Running with the Land.** This DA shall be recorded in the chain of title for the Project. This DA shall be deemed to run with the land.

24. **Authority.** The Parties to this DA each warrant that they have the necessary authority to execute this DA. Specifically, on behalf of the City, the signature of the Mayor, or designee, of the City is affixed to this DA lawfully binding the City on _____, 2020.

**(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ARE LOCATED ON THE NEXT PAGE.)**

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

SOUTH OGDEN CITY

By: _____

Its: _____

State of Utah)

:
County of _____)

On this ____ day of _____, 2020, before me, _____ a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has authority to sign on behalf of South Ogden City and that they executed the same on behalf of South Ogden City.

Witness my hand and official seal.

(Notary Signature)

**MT. OGDEN DEVELOPMENT, LLC,
A Utah limited liability company**

By: _____

Its: _____

State of Utah)

:
County of _____)

On this ____ day of _____, 2020, before me, _____ a notary public, personally appeared _____, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged he/she has the authority to sign the foregoing on behalf of Mt. Ogden Development, LLC and that they executed the same on behalf of Mt. Ogden Development, LLC.

Witness my hand and official seal.

(Notary Signature)

Exhibit “A”

Concept Plan

(See Attached.)

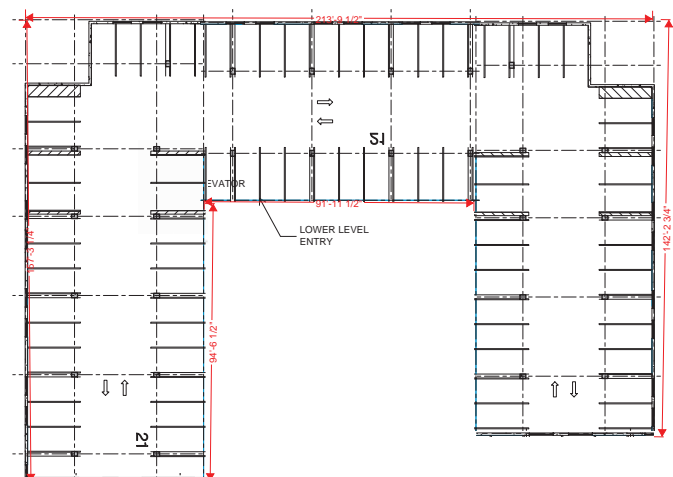
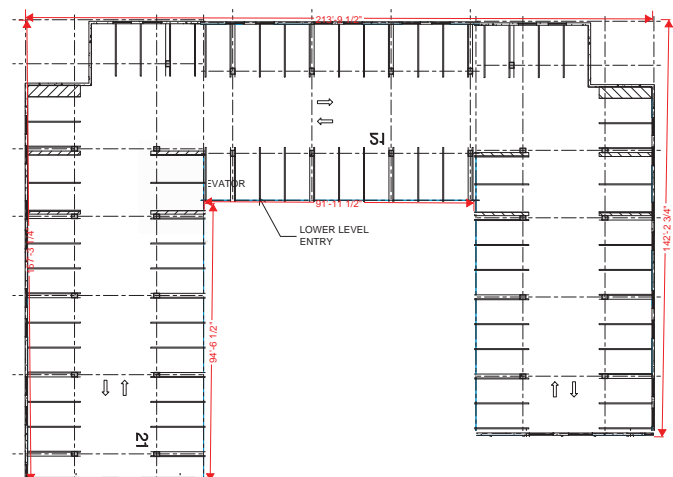
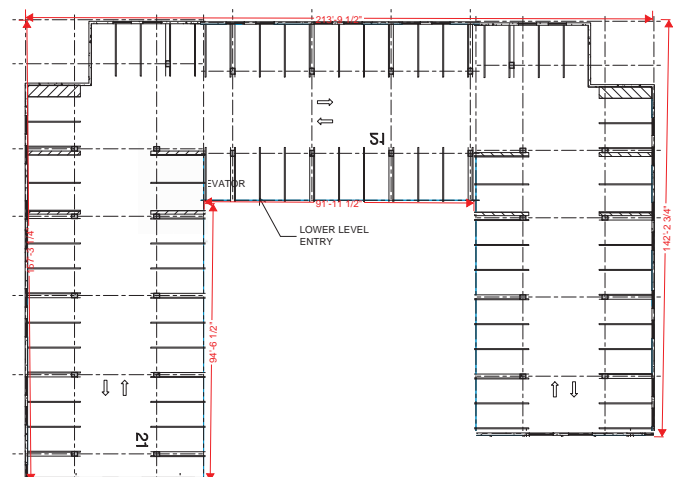
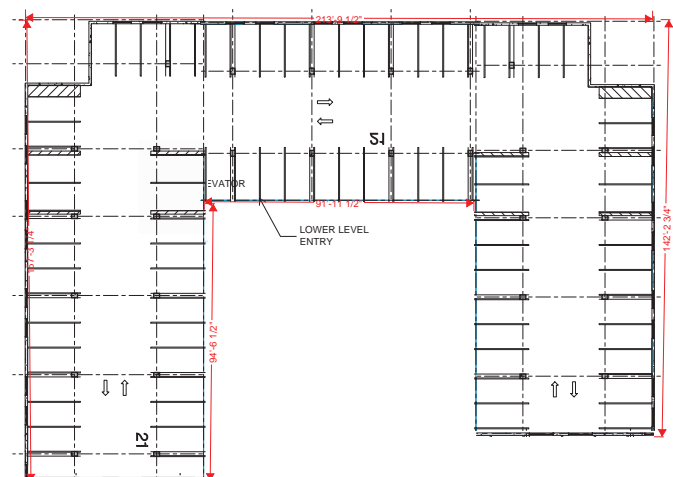
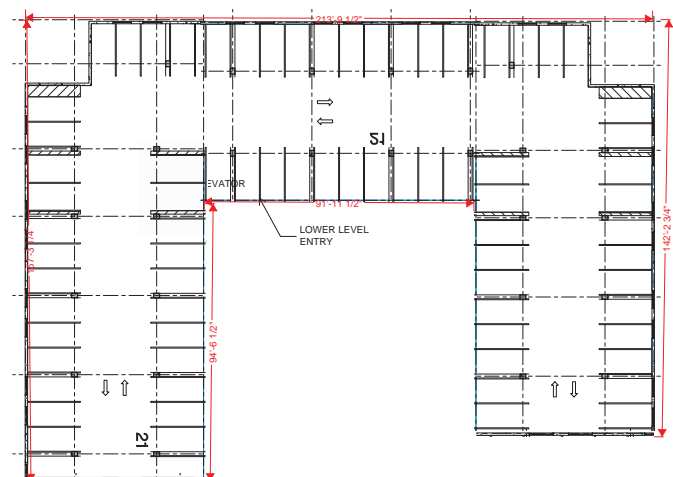








Exhibit "B"
Project Property Description
Legal Description

Tax ID: 06-074-0001

PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY AND A PART OF BLOCK 11, SOUTH OGDEN PLAT A, INCLUDING VACATED ROADWAYS AND ALLEYS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEASTERLY CORNER OF HERITAGE PLACE, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, PHASE NO. 1, IN SOUTH OGDEN CITY, WEBER COUNTY, UTAH; BEING 993.75 FEET SOUTH 0D38'16" WEST ALONG THE QUARTER SECTION LINE AND 787.38 FEET SOUTH 89D21'44" EAST FROM THE NORTH QUARTER CORNER OF SAID SECTION 9; AND RUNNING THENCE NORTH 0D38'16" EAST 253.11 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF COUNTRY HILLS DRIVE; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: NORTHWESTERLY ALONG THE ARC OF A 676.78 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 132.61 FEET (CENTRAL ANGLE EQUALS 11D13'36" AND LONG CHORD BEARS NORTH 82D41'12" WEST 132.40 FEET) TO A POINT OF TANGENCY; NORTH 88D18'00" WEST 143.30 FEET TO A POINT OF CURVATURE; AND NORTHWESTERLY ALONG THE ARC OF AN 859.00 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 157.93 FEET (CENTRAL ANGLE EQUALS 10D32'02" AND LONG CHORD BEARS NORTH 83D01'59" WEST 157.71 FEET) TO THE NORTHEASTERLY CORNER OF 900 EAST STREET AS IT IS DEDICATED WITH SAID HERITAGE PLACE, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, PHASE NO. 1; AND RUNNING THENCE ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID 900 EAST STREET THE FOLLOWING FOUR (4) COURSES: SOUTH 14D14'07" WEST 30.44 FEET TO A POINT OF CURVATURE; SOUTHEASTERLY ALONG THE ARC OF A 105.06 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 106.51 FEET (CENTRAL ANGLE EQUALS 58D05'22" AND LONG CHORD BEARS SOUTH 14D48'34" EAST 102.01 FEET) TO A POINT OF REVERSE CURVATURE; SOUTHEASTERLY ALONG THE ARC OF A 213.36 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 165.68 FEET (CENTRAL ANGLE EQUALS 44D29'29" AND LONG CHORD BEARS SOUTH 21D36'30" EAST 161.55 FEET) TO A POINT OF TANGENCY; AND SOUTH 0D38'16" WEST 11.11 FEET TO THE NORTHWEST CORNER OF LOT 1, SAID HERITAGE PLACE, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, PHASE NO. 1 AND RUNNING THENCE SOUTH 89D21'44" EAST 350.35 FEET ALONG THE NORTHERLY BOUNDARY OF SAID HERITAGE PLACE DEVELOPMENT TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THE FOLLOWING: PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY AND A PART OF BLOCK 11, SOUTH OGDEN PLAT A, INCLUDING VACATED ROADWAYS AND ALLEYS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 1, HERITAGE PLACE, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, PHASE NO. 1, IN SOUTH OGDEN CITY, WEBER COUNTY, UTAH, BEING 993.75 FEET SOUTH 0D38'16" WEST ALONG THE QUARTER SECTION LINE AND 437.03 FEET SOUTH 89D21'44" EAST FROM THE NORTH QUARTER CORNER OF SAID SECTION 9; AND RUNNING THENCE SOUTH 89D21'44" EAST 112.06 FEET ALONG THE NORTH BOUNDARY LINE OF SAID HERITAGE PLACE, PHASE NO. 1 TO THE NORTHEASTERLY CORNER THEREOF; THENCE NORTH 0D38'16" EAST 270.48 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF COUNTRY HILLS DRIVE; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING TWO, (2) COURSES: NORTH 88D18'00" WEST 36.50 FEET TO A POINT OF CURVATURE; AND NORTHWESTERLY ALONG THE ARC OF AN 859.00 FOOT RADIUS CURVE

TO THE RIGHT A DISTANCE OF 157.93 FEET (CENTRAL ANGLE EQUALS 10D32'02" AND LONG CHORD BEARS NORTH 83D01'59" WEST 157.71 FEET) TO THE NORTHEAST CORNER OF 900 EAST STREET AS IT IS DEDICATED WITH SAID HERITAGE PLACE, A PLANNED RESIDENTIAL UNIT DEVELOPMENT, PHASE NO. 1; AND RUNNING THENCE ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID 900 EAST STREET THE FOLLOWING FOUR, (4), COURSES: SOUTH 14D14'07" WEST 30.44 FEET TO A POINT OF CURVATURE; SOUTHEASTERLY ALONG THE ARC OF A 105.06 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 106.51 FEET (CENTRAL ANGLE EQUALS 58D05'22" AND LONG CHORD BEARS SOUTH 14D48'34" EAST 102.01 FEET) TO A POINT OF REVERSE CURVATURE; SOUTHEASTERLY ALONG THE ARC OF A 213.36 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 165.68 FEET (CENTRAL ANGLE EQUALS 44D29'29" AND ALONG CHORD BEARS SOUTH 21D36'30" EAST 161.55 FEET) TO A POINT OF TANGENCY; AND SOUTH 0D38'16" WEST 11.11 FEET TO THE NORTHWEST CORNER OF LOT 1, SAID HERITAGE PLACE, PHASE NO. 1 AND THE POINT OF BEGINNING.

Exhibit “C”

**South Ogden City Code, Title 10, Chapter 5.1, Article A, Sec. 10-5.1A-5-4 and 10-5.1A-11,
et. seq.**

(See Attached)

10-5.1A-5-4: GENERAL STOOP BUILDING:

- A. Description And Intent: The general stoop building type is limited in terms of uses by the subdistrict within which it is located, generally housing office and/or residential uses. Similar to the storefront building, the general stoop building is intended to be built close to the front and corner property lines allowing easy access to passing pedestrians and transit riders. Parking may be provided in the rear of the lot, internally in the building, or, in some cases, one double loaded aisle of parking is permitted in the interior or the side yard at the front property line. The minimum and maximum heights of this building type depend on the subdistrict within which it is located.
- B. Regulations: Regulations for the general stoop building type are defined in the table in this section. (Ord. 19-06, 4-16-2019, eff. 4-16-2019)



(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

			Permitted Subdistricts		
			City Center "General"	Riverdale Road "General"	40th Street "General"
1.	Building Siting: Refer to figure 5.4(1) of this section		Any multi-family residential building with frontage on a public or private dedicated street must use the storefront building type		
		Multiple principal buildings	Not permitted	Not permitted	Permitted
	(a)	Front sidewalk coverage	80% ¹	80% ¹	80%
		Occupation of corner	Required ⁵	Required ⁵	Required ⁵
	(b)	Front build-to zone	0' to 10'	0' to 10'	0' to 10'

			Permitted Subdistricts		
			City Center "General"	Riverdale Road "General"	40th Street "General"
	(c)	Corner build-to zone	0' to 10' ⁵	0' to 10' ⁵	0' to 10' ⁵
	(d)	Minimum side yard setback	10'	10'	10'
	(e)	Minimum rear yard setback	5'	5'	5'
	(f)	Minimum lot width	None	None	100'
		Maximum lot width	None	None	None
	(g)	Parking and loading location	Rear yard	Rear yard	Rear and side yard
	(i)	Vehicular access	Alley; if no alley exists, 1 driveway is permitted per nonprimary facade, or as approved by the City Manager or designee	Alley; if no alley exists, 1 driveway is permitted per nonprimary facade, or as approved by the City Manager or designee	Alley; if no alley exists, 1 driveway is permitted per street, or as approved by the City Manager or designee
2.	Height: Refer to figure 5.4(2) of this section				
	(j)	Minimum overall height	1 story	1 story	1 story
	(k)	Maximum overall height	3 stories	5 stories ³	3 stories
	(l)	All stories:			
		Minimum height	9'	9'	9'
		Maximum height	14'	14'	14'
3.	Uses: Refer to figure 5.4(2) of this section. Refer to section 10-5.1A-4, "Uses", of this article for permitted uses				
	(n)	All stories	Any permitted use ⁴		

			Permitted Subdistricts		
			City Center "General"	Riverdale Road "General"	40th Street "General"
	(p)	Parking within building	Permitted fully in basement and rear of upper floors		
	(q)	Required occupied space	30' deep on all full floors from the front facade		
4.	Street Facade Requirements: Refer to figure 5.4(3) of this section				
	(r)	Minimum transparency per each story	35%	35%	15%
		Blank wall limitations	Required, see subsection 10-5.1A-5-2D2 of this section 10-5.1A-5		
	(t)	Front facade entrance type	Stoop, porch, storefront ⁴	Stoop, porch, storefront	Stoop, porch, storefront ⁴
	(u)	Principal entrance location	Front facade ⁴	Front facade	Front or corner facade ⁴
		Required number of street entrances	1 per each 100' of front facade	1 per each 100' of front facade	1 per each 150' of front facade
		Vertical facade divisions	Every 25' of facade width	Every 50' of facade width	Every 50' of facade width
		Horizontal facade divisions	Required within 3' of the top of any visible basement and of the ground story, and at the fifth floor above the ground floor		
5.	Roof Type Requirements: Refer to figure 5.4(3) of this section				
	(v)	Permitted roof types	Parapet, pitched, flat	Parapet, pitched, flat	Parapet, pitched, flat
	(w)	Tower	Permitted	Permitted	Permitted

Notes:

1. A courtyard covering up to 35 percent of the front facade is permitted and may contribute

to the front lot line coverage requirement.

2. Lots wider than 140 feet are permitted 1 double loaded aisle of parking (maximum width of 72 feet), located perpendicular to the front property line, which is exempt from front property line coverage.

3. Upper stories above the third story on any building facade with street frontage shall have a step back from the lower stories that is a minimum of 6 feet.

4. Lots lacking frontage on 40th Street but that are still within the 40th Street General Subdistrict are limited to permitted residential uses only.

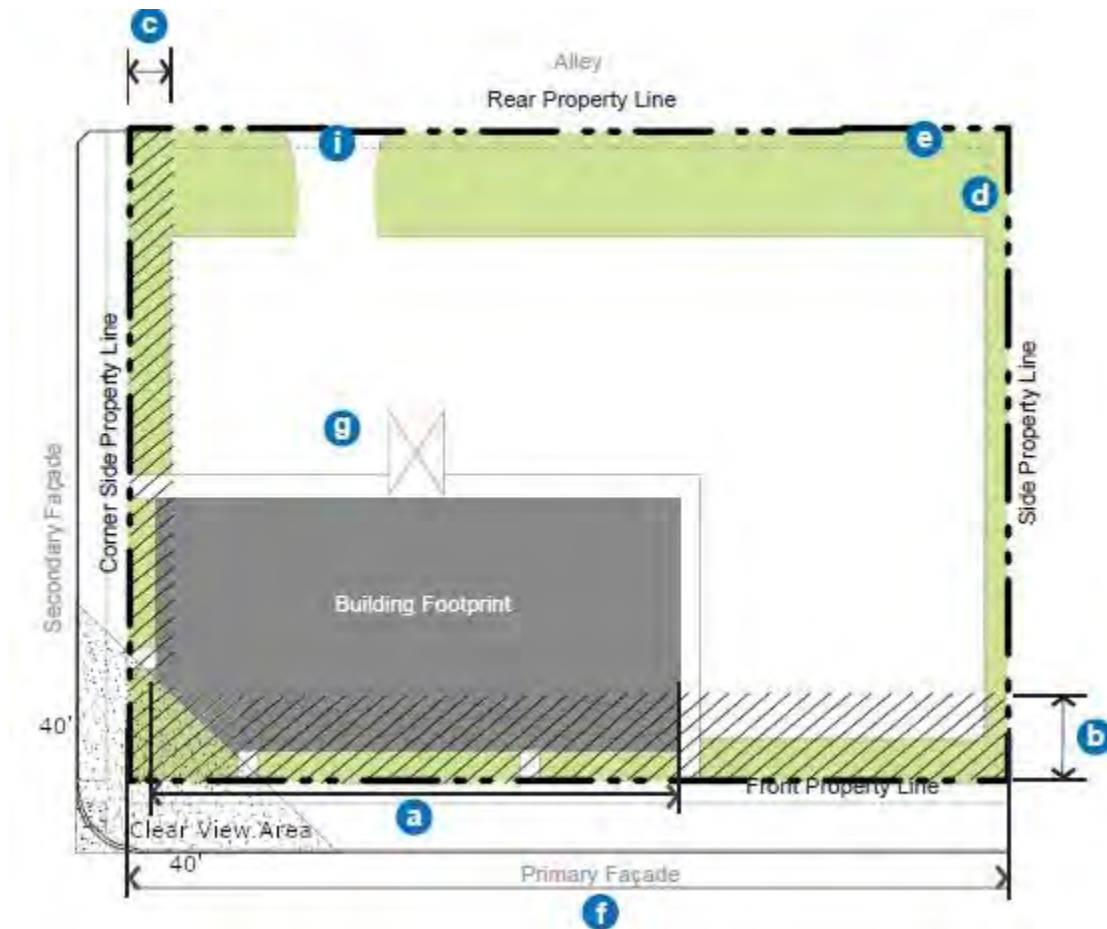
5. At any uncontrolled intersection, the buildings will be modified to afford automobile drivers a clear view of approaching vehicles or pedestrians. Buildings, trees, or any obstruction shall be prohibited within a triangular area formed by the street curb lines and a line connecting them at points 40 feet from the point of intersection of the back of curbs (clear view area).

(Ord. 18-11, 9-18-2018, eff. 9-18-2018; amd. Ord. 19-06, 4-16-2018, eff. 4-16-2018)

FIGURE 5.4(1)
GENERAL STOOP BUILDING: BUILDING SITING



Typical Site Plan



Site Plan With Side Yard Parking "General"

(Ord. 18-11, 9-18-2018, eff. 9-18-2018)

FIGURE 5.4(2)
GENERAL STOOP BUILDING: HEIGHT AND USE REQUIREMENTS

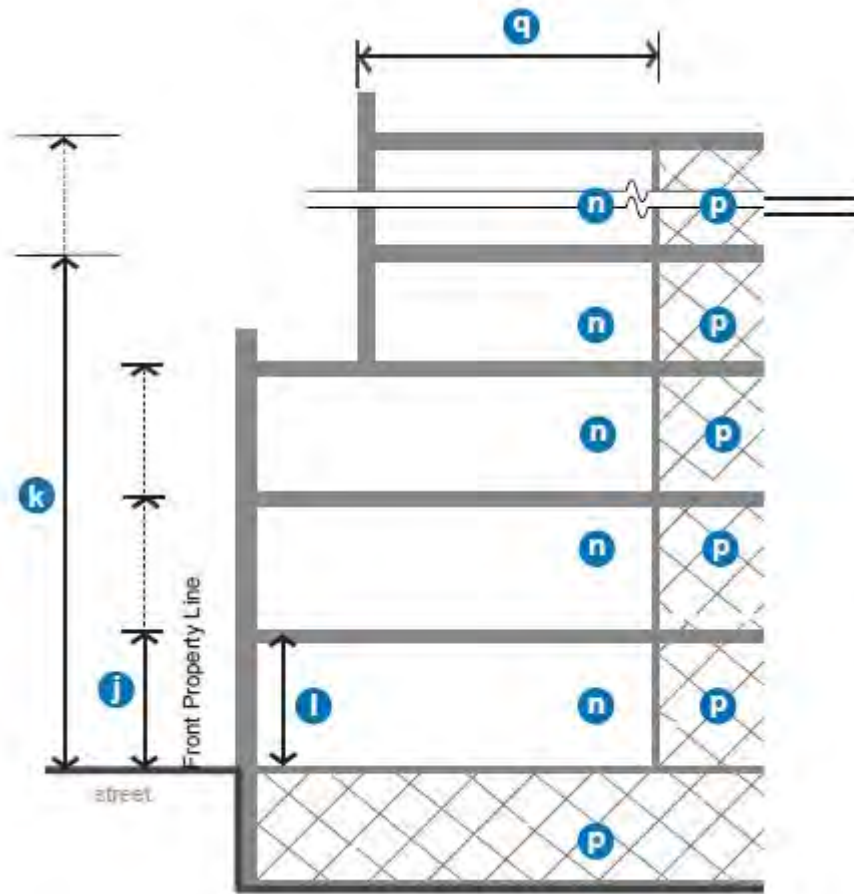
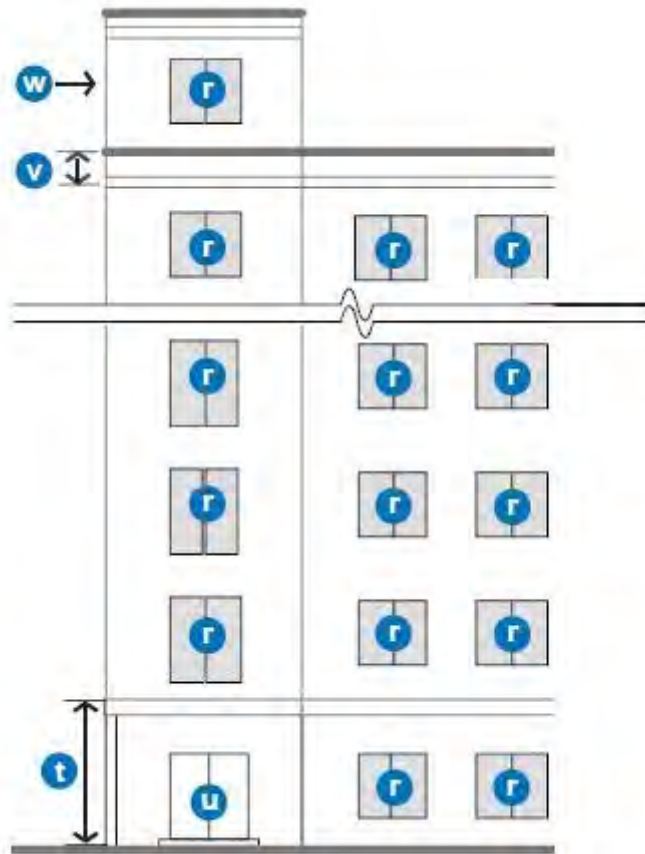


FIGURE 5.4(3)
GENERAL STOOP BUILDING: STREET FACADE REQUIREMENTS



(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

10-5.1A-11: APPENDIX A; SUBDISTRICT OVERVIEW:**10-5.1A-11-1: CITY CENTER "CORE" SUBDISTRICT:**

The City Center "Core" constitutes the center of the community and heart of the new City Center, and includes the majority of the shops and workplaces within the City Center. The storefront building type that comprises this subdistrict defines a street wall along the primary streets of the area with storefront glass windows. Upper stories of the storefront building may be utilized for living and working. Building heights range from two (2) to five (5) stories.

ALLOWED BUILDING TYPES

Storefront



Civic



(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

10-5.1A-11-2: CITY CENTER "GENERAL" SUBDISTRICT:

The city center "general" subdistrict serves as the interstitial fabric of the city, separate from the defined center or core and the

edges. This area is primarily comprised by both the storefront building, and the more generic stoop building which have lower minimum transparency levels, and is mainly occupied by office, retail and residential uses at a variety of scales. Building heights range from one to five (5) stories.

ALLOWED BUILDING TYPES



Storefront



Stoop



Civic



Row Building





(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

10-5.1A-11-3: RIVERDALE ROAD "GENERAL" SUBDISTRICT:

The Riverdale Road "general" subdistrict serves as the interstitial fabric of the city, separate from the defined center or core and the edges. This area is primarily comprised by both the storefront building and the more generic stoop building which have lower minimum transparency levels, and is mainly occupied by office, retail and residential uses at a variety of scales. This subdistrict also permits drive-through structures and the limited bay building type to allow more flexibility for auto oriented uses. Building heights range from one to four (4) stories.

ALLOWED BUILDING TYPES



Storefront



Stoop



Civic



Limited Bay



Row Building



(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

10-5.1A-11-4: 40TH STREET "GENERAL" SUBDISTRICT:

The 40th Street "general" subdistrict combines the storefront building and stoop building to create a corridor that supports a

future transit line along 40th Street. Development along this corridor will be at a smaller scale and finer grain, in relation to the city center. Building heights range from one to four (4) stories.

ALLOWED BUILDING TYPES



Storefront



Stoop



Civic



Row Building





(Ord. 16-07, 6-21-2016, eff. 6-21-2016)

10-5.1A-11-5: EDGE SUBDISTRICT:

The edge subdistricts are made up of smaller scale residential buildings, which provide a buffer between existing single-family residential neighborhoods and the "core" and "general" subdistricts. Building heights range from one to 3.5 stories.

ALLOWED BUILDING TYPES



Row Building



Yard Building



Civic





(Ord. 16-07, 6-21-2016, eff. 6-21-2016)