

**REGULAR MEETING
OF THE VINEYARD PLANNING COMMISSION,
Wednesday, December 1, 2021, at 6:00 p.m.**

PUBLIC NOTICE is hereby given that the Vineyard City Planning Commission will hold a regularly scheduled meeting at City Hall, 125 South Main Street, Vineyard, Utah. You can also view the meeting on our [live stream channel](#).

REGULAR SESSION

CALL TO ORDER

1. INVOCATION/INSPIRATIONAL THOUGHTS/PLEDGE OF ALLEGIANCE

2. OPEN SESSION - Time dedicated for public comment. Comments will be limited to three (3) minutes. No actions may be taken by the Planning Commission due to the need for proper public noticing.

3. MINUTES REVIEW AND APPROVAL:

3.1 October 6, 2021

3.2 October 20, 2021

4. BUSINESS ITEMS

4.1 Appointment of a New Chair and Vice-Chair.

4.2 The Planning Commission will hold a public hearing and will consider the proposed development agreement between Vineyard City and Fifty Mill, LLC for the property located in Vineyard, Utah in the Yard Plat "B" Subdivision, Lots 6, 7 and 8, with Serial # 56:037:0006, 56:037:0007, & 56:037:0002 to accommodate the development of a residential/retail building.

5. WORK SESSION

6. COMMISSION MEMBERS' REPORTS AND EX PARTE DISCUSSION DISCLOSURE

7. ADJOURNMENT

The Public is invited to participate in all Planning Commission meetings. In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this public meeting should notify Cache Hancey, Planning Technician, at least 24 hours prior to the meeting by calling (801) 226-1929 or email at cacheh@vineyardutah.org.

The foregoing notice and agenda were posted on the Utah Public Notice Website and Vineyard Website, posted at the Vineyard City Offices and City Hall, delivered electronically to city staff and each member of the planning commission.

AGENDA NOTICING COMPLETED ON: November 24, 2021

NOTICED BY: /s/ Cache Hancey

Cache Hancey, Planning Technician



**REGULAR MEETING
OF THE VINEYARD PLANNING COMMISSION,
Wednesday, October 6, 2021, at 6:00 p.m.**

Present:

Chair Bryce Brady
Vice-Chair Jeff Knighton
Commissioner Anthony Jenkins
Commissioner Tay Gudmundson
Commissioner Tim Blackburn
Commissioner Jessica Welch (Not Voting)
Commissioner Amber Rassmussen (Not Voting)

Staff Present: Community Development Director Morgan Brim, Planner II Briam Amaya Perez, Planning Technician Cache Hancey, City Engineer Naseem Ghandour

Others Present: Jordan Cullimore with the Office of the Property Rights Ombudsman, Georgia Vargas and Alison McGrath with Sunlight Bilingual Preschool, and Jason Boal with Snell & Wilmer

CALL TO ORDER

1. INVOCATION/INSPIRATIONAL THOUGHTS/PLEDGE OF ALLEGIANCE

2. OPEN SESSION -

3. MINUTES REVIEW AND APPROVAL:

3.1 September 1, 2021

 MOTION: COMMISSIONER JENKINS MOTIONED TO APPROVE THE SEPTEMBER 1ST, 2021 MINUTES AS RECORDED. COMMISSIONER BLACKBURN SECONDED THE MOTION. ROLL WENT AS FOLLOWS: CHAIR BRADY, VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON, AND COMMISSIONER BLACKBURN VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.

4. BUSINESS ITEMS

4.1 Public Hearing – POSTPONED – Site Plan and Conditional Use Permit Application for a place of assembly (Church). The place of assembly will be located at 212 N 220 W. Parcel Number 41:914:0058. This property is located in the Hampton Subdivision and zoned SFD-15000.

- This item and public hearing is being postponed due to a conflict with the applicant.

43 **4.2**  **Public Hearing – Conditional Use Permit Application for Sunlight Bilingual**
44 **Preschool. This home-based preschool will be located at 73 W 160 N. Parcel Number:**
45 **41:971:0076. This property is located within the Hampton subdivision.**
46

47  **MOTION: COMMISSIONER JENKINS MOTIONED TO OPEN THE PUBLIC HEARING.**
48 **COMMISSIONER GUDMUNDSON SECONDED THE MOTION. ROLL WENT AS FOLLOWS: CHAIR**
49 **BRADY, VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON,**
50 **AND COMMISSIONER BLACKBURN VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.**
51

52  **MOTION: COMMISSIONER GUDMUNDSON MOTIONED TO CLOSE THE PUBLIC HEARING.**
53 **COMMISSIONER BLACKBURN SECONDED THE MOTION. ROLL WENT AS FOLLOWS: CHAIR**
54 **BRADY, VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON,**
55 **AND COMMISSIONER BLACKBURN VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.**
56

57 Planning Technician Cache Hancey presented the conditional use permit for the Planning
58 Commission to review.
59

60  **MOTION: COMMISSIONER JENKINS MOTIONED TO APPROVE THE CONDITIONAL USE**
61 **PERMIT. COMMISSIONER GUDMUNDSON SECONDED THE MOTION. ROLL WENT AS**
62 **FOLLOWS: CHAIR BRADY, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON, AND**
63 **COMMISSIONER BLACKBURN VOTED AYE. VICE-CHAIR KNIGHTON RECUSED HIMSELF FROM**
64 **THE VOTE. THE MOTION CARRIED UNANIMOUSLY.**
65

66 **4.3**  **Public Hearing – Zoning Text Amendment regarding Section 15.14.2.08**
67 **Development Standards in the Vineyard Special Purpose Zoning District; modifying**
68 **the language to increase the permitted number of residential units and density**
69 **located within the regional mixed use zoning district. Ordinance Number 2021-14.**
70

71  **MOTION: COMMISSIONER JENKINS MOTIONED TO OPEN THE PUBLIC HEARING.**
72 **COMMISSIONER BLACKBURN SECONDED THE MOTION. ROLL WENT AS FOLLOWS: CHAIR**
73 **BRADY, VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON,**
74 **AND COMMISSIONER BLACKBURN VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.**
75

76 Residents David Lauret, Mardi Sifuentes, Claudia Lauret, Julie Gray, and Kelby Daytowl made
77 comments regarding the zoning text amendment.
78

79  **MOTION: COMMISSIONER BLACKBURN MOTIONED TO CLOSE THE PUBLIC HEARING.**
80 **COMMISSIONER GUDMUNDSON SECONDED THE MOTION. ROLL WENT AS FOLLOWS: CHAIR**
81 **BRADY, VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON,**
82 **AND COMMISSIONER BLACKBURN VOTED AYE. THE MOTION CARRIED UNANIMOUSLY.**
83

Chair Brady asked for clarification regarding the density and scope of the potential development. Jason Boal with Snell & Wilmer, representing the developer, clarified that this text amendment would not necessarily allow for increased density, it would allow the property owners to discuss a development agreement with the city. Commissioner Knighton and Brady asked for an update as to the connection of 400 north to Geneva Road.

 **MOTION: COMMISSIONER JENKINS MOTIONED TO RECOMMEND APPROVAL OF THE ZONING TEXT AMENDMENT WITH THE CONDITIONS THAT THE CITY ATTORNEY ANSWERS ALL LEGAL QUESTIONS REGARDING POTENTIAL LITIGATION, PRECEDENT SET BY THIS APPROVAL, AND WHAT OPTIONS THE CITY HAS TO ONCE A DEVELOPMENT AGREEMENT HAS BEEN SIGNED. COMMISSIONER BLACKBURN SECONDED THE MOTION. ROLL WENT AS FOLLOWS: VICE-CHAIR KNIGHTON, COMMISSIONER JENKINS, COMMISSIONER GUDMUNDSON, AND COMMISSIONER BLACKBURN VOTED AYE. CHAIR BRADY VOTED NAH. THE MOTION PASSED.**

5. WORK SESSION

5.1 Utah State Ombudsman Training

Jordan Cullimore with the Office of the Property Rights Ombudsman gave a training to the Planning Commission.

6. COMMISSION MEMBERS' REPORTS AND EX PARTE DISCUSSION DISCLOSURE

 Commissioner Welch reported that the childrens library will be closed for the winter. She also gave a report about the babysitting training that the city initiated with the Sheriff's Department.

Commissioner Rassmussen gave a report about the community garden wrapping up it's season. Community Development Director Morgan Brim reported that a waterfront design meeting would be held in the coming weeks.

7. ADJOURNMENT

MINUTES CERTIFIED CORRECT ON: November 24, 2021

CERTIFIED BY: /s/ Cache Hancey

Cache Hancey, Planning Technician



**REGULAR MEETING
OF THE VINEYARD PLANNING COMMISSION,
Wednesday, October 20, 2021, at 6:00 p.m.**

Present:

Chair Bryce Brady
Vice-Chair Jeff Knighton
Commissioner Blackburn
Commissioner Jenkins

Staff Present: Community Development Director Morgan Brim, Planner II Briam Amaya Perez,
and City Engineer Naseem Ghandour

Others Present: Residents David Lauret and Aubry Bills

REGULAR SESSION

CALL TO ORDER

1. INVOCATION/INSPIRATIONAL THOUGHTS/PLEDGE OF ALLEGIANCE

Commissioner Jenkins gave an invocation.

2. OPEN SESSION

- Chair Brady opened the public comments at 6:09 pm
- Mr. Brim provided a comment regarding Housing and Planning directives from the state.
- Resident Aubry Bills stated that she thought the Holdaway Farms plan was too dense.
- Resident David Lauret stated that the plan is truly a medium density plan, not a low/medium density plan. There are too many lots to be considered truly low/medium density.

3. MINUTES REVIEW AND APPROVAL:

3.1 No Minutes for Approval

4. BUSINESS ITEMS

4.1 Public Hearing – POSTPONED – Site Plan and Conditional Use Permit Application for a place of assembly (Church). The place of assembly will be located at 212 N 220 W. Parcel Number 41:914:0058. This property is located in the Hampton Subdivision and zoned SFD-15000.

- This item and public hearing is being postponed due to a conflict with the applicant.

5. WORK SESSION

5.1 Holdaway Farms Development

The Community Development Director, Morgan Brim, explained the four (4) applications the applicant, Ryan Bybee, submitted to the City.

Ryan Bybee presented proposed changes to the Land Use Map within the General Plan Map.

Mr. Bybee presented various iterations of their proposed project over the last six (6) months.

Mr. Bybee addressed several concerns regarding the project that were brought up by the Planning Commissioners.

Concerns were brought up regarding the overall acreage. A conversation ensued regarding the difference in profit for the developer and the property owners regarding the various iterations of the project. Mr. Bybee stated that he felt that information was not necessarily relevant to the land use decision at hand.

Chair Brady expressed that he does not believe that the proposed project reflects the intentions of the Land Use Map within the General Plan.

Mr. Bybee proceeded to run through the slideshow presentation he brought.

Mr. Ryan Hales, of Hales Engineering, explained the traffic impact imposed by the project.

Commissioner Blackburn stated concerns regarding the transformation of homes within the project into homes that possess accessory dwelling units (ADU) or short-term rentals.

Commissioner Jenkins asked Staff about the impact on utilities that this project would impose. City Engineer, Naseem Ghandour, assured the Commissioner that this project would not overburden the City's utilities systems. Water Manager, Sullivan Love, stated the importance of working with the property owners to secure water rights owned by the property owner to help support the project's common areas.

Concerns were brought up regarding road safety and road design. Mr. Bybee explained their reasoning for the way their road system was designed.

An opportunity was opened up for public comment at 7:40 pm

Resident, David Lauret, stated items that were not taken into account in the Traffic Impact Study.

Mr. Lauret also stated a lack of housing for single families with many children in Vineyard.

Residents expressed many of the same concerns as the Planning Commission in general.

86
87 A member of the Holdaway family expressed their appreciation and backing of the
88 developers working on the property and how they represent the desires of the
89 Holdaway Family.
90

91 Chair Brady summarized that, as a whole, residents are petitioning for larger lots. Chair
92 Brady recommended the developers to bring the average size of the SFD lots up to
93 12,000 SF.
94

95 **6. COMMISSION MEMBERS' REPORTS AND EX PARTE DISCUSSION DISCLOSURE**

96 Mr. Ghandour provided updates on the infrastructure projects moving forward in the City
97 including the construction of Vineyard Connector.
98

99 Mr. Brim pointed out that the developers of the Holdaway Farms shall provide waterwise
100 landscaping throughout the project.
101
102

103 **7. ADJOURNMENT**
104

105 The Public is invited to participate in all Planning Commission meetings. In compliance with the
106 Americans with Disabilities Act, individuals needing special accommodations during this public
107 meeting should notify Cache Hancey, Planning Technician, at least 24 hours prior to the meeting
108 by calling (801) 226-1929 or email at cacheh@vineyardutah.org.

109 The foregoing notice and agenda were posted on the Utah Public Notice Website and Vineyard
110 Website, posted at the Vineyard City Offices and City Hall, delivered electronically to city staff
111 and each member of the planning commission.
112

113 **Certified Correct On:** November 24, 2021

114 **CERTIFIED BY:** /s/ Cache Hancey

115 Cache Hancey, Planning Technician

Date: December 01, 2021
From: Briam Amaya Perez, Planner II
To: Planning Commission
Item: Public Hearing and Consideration of Development Agreement Application
Applicant: Jason Boal, Snell and Wilmer Law Firm, representing Fifty Mill LLC



OVERVIEW

Jason Boal, of Snell and Wilmer Law Firm, representing Fifty Mill LLC, seeks approval of a development agreement for a mixed-use, multi-family building located at The Yard Plat B, southwest corner of Geneva Road and 400 North. On October 06, 2021, the Vineyard Planning Commission approved a Zoning Text Amendment regarding Section 15.14.2.08 Development Standards in the Vineyard Special Purpose Zoning District. This amendment modified the language to increase the permitted number of residential units and density located within the regional mixed-use zoning district. The maximum residential density was increased up to 85 units per acre and the number of residential units was increased up to 2,350 through a Development Agreement as provided in Section 15.16 of the Vineyard City Zoning Code.

On November 11, 2021, the Vineyard City Community Development Department received an application for a Development Agreement from Jason Boal, of Snell and Wilmer Law Firm, acting in behalf of Fifty Mill LLC, pursuant to the adopted zoning provisions stated above. The attached development agreement would allow for up to 341 units on 4.87 acres, in conjunction with commercial space onsite and on the separate, adjoining parcel to the north. This development is designed to not only integrate commercial and residential uses, but also focuses on pedestrian access, walkability, and an appropriate utilization of

parking areas. On the eastern edge of the subject property, the regional trail will be extended in a large open space corridor.

Staff has reviewed the development agreement. Our comments are provided below:

ANALYSIS

The development agreement consists of two parties, Vineyard City and Fifty Mill, LLC. The Zoning Code and the Development Agreement would establish and vest the development rights of this project, including the general use, maximum density, and general configuration. The developer, Fifty Mill LLC, is developing the property as a mixed-use development. The property is intended to be used for multi-family residential and commercial uses including short-term rentals, retail, and associated facilities. A concept plan for the property has been attached to this staff report. The project shall include a maximum of three hundred forty-one (341) units.

Phasing and Timing

The city has requested a commitment from the developer to provide a phasing schedule. The developer has stated that the entire project will be built all at once, not in separate phases, and shall be leased out as completed. At the moment, there is nothing in this development agreement that shall obligate the developer to develop in any particular order or phase and that the developer reserves all discretion to determine where to develop a particular portion or phase of the property based upon the developer's business judgement. There is currently no agreed upon phasing plan.

Retail and Commercial Uses

The concept plan proposes a total of 3,570 SF dedicated to retail use. The city has expressed that this quantity of retail space is insufficient considering that the project is being proposed in a mixed-use zoning district. The city would like this project to function as a truly mixed-use building. From the city's standpoint, this would require an increased integration of retail uses throughout the building. The applicant will provide an update concept exhibit showing additional retail on the ground floor of the façade facing 400 North. A variety of retail and commercial uses could be situated here. Total retail square footage and parking calculations would have to be revised and submitted by the developer.

Short-Term Rentals

Part of what makes this project function as a truly mixed-use building is the short-term rental aspect. Short-term rentals, which are not currently allowed in any parts of the city could be integrated into this project by way of the development agreement (or through a zoning text amendment) to make it a permissible use. Vineyard City could greatly benefit financially from the Transient Room Tax (TRT) that could be imposed for lodgings or stays offered for less than thirty (30) consecutive days. The City would like to see a minimum unit requirement for those dedicated towards a STR use.

Parking

The developer's concept plan shows 90-degree parking along 400 N to service their project. With the future extension of 400 N to Geneva Road, Vineyard City Engineering has pointed out that this parking configuration presents numerous conflict points between future traffic on 400 N and those wishing to

enter and exit the proposed parking stalls in front of the proposed building. The developer understands the risks involved with this configuration and intends to propose a different plan for on-street parking along 400 N. It is likely that 45-degree parking will replace the 90-degree parking, nevertheless, other alternatives may be proposed by the developer, by way of a site plan application, including reverse angled-parking where users enter the stalls in reverse. The developer agreed to meet all existing parking requirements per code. The developer understands that it is the responsibility of Fifty Mill LLC to extend 400 N up to the rail tracks and that all parking shall be approved by way of a site plan application.

Open Space

As part of the Section 15.14.2.08 'Development Standards', all projects within the zoning district are required to provide a "minimum of 10 percent of the site area set aside for open space. The proposed concept plan meets this requirement, but it counts land that is currently within the City of Orem towards this open space requirement. The land that is on the eastern-most edge of the property is technically outside of Vineyard City. This includes the proposed open space trail. There is currently no provision within the Vineyard City Zoning Code that would allow for open space outside of the municipal boundary to be counted towards the open space requirement. The developer, Fifty Mill LLC, who owns the Orem parcels in question, stated that the property could be restricted by a deed which would only allow the property to operate and function as open space. A deed restriction would not allow that parcel of property to be used for residential, commercial, or any other land use category. Alternatively, the developer could pursue a Municipal Boundary Line Adjustment through the City of Orem to realign the municipal boundaries so that the entire property is captured within Vineyard City. A final option includes the annexation of this property in question into Vineyard City. The Vineyard City Attorney stated that he would look further into how this issue could be resolved.

Public Infrastructure

All infrastructure would need to be 100% completed and connected before the developer can obtain certificates of occupancy. The developer shall complete all required studies prior to any issuances of permits and notices to proceed. The city will determine if any upsizing needs to take place before the fact. If any upsizing is needed on the front end, the city will cover the costs of any required upsizing.

Building Height

The proposed building exceeds the outrightly allowable height in the zoning district. Section 15.14.2.04 'Procedures' outlines a process for major amendments to development plans. Section 6.b states that major amendments to the development plan submitted by the applicant "are those that increase the maximum allowable building height, residential density, non-residential intensity, and/or that exceed ten (10) percent of an individual DP plan element." This section grants the City Council the authority to approve any major amendment of the development plan upon a recommendation from the Planning Commission.

RECOMMENDATION:

There are several elements within the proposed development agreement that still need to be determined, such as phasing, open space, and parking. Until this takes place, it is difficult for city staff to make a formal recommendation to the Planning Commission. Considerable clarification is needed

regarding the elements stated above. It is expected that the applicant will provide an update to the development plan that sheds further light on these issues.

City Staff recommends the Planning Commission open the public hearing and obtain additional feedback from the public. Following the public hearing, the Planning Commission may proceed with issuing a recommendation to the City Council on the development agreement.

PROPOSED MOTIONS:

“I move to approve the proposed Development Agreement, as submitted by Jason Boal, of Snell and Wilmer Law Firm.”

ATTACHMENTS

1. Development Agreement

Snell & Wilmer

15 WEST SOUTH TEMPLE
SUITE 1200
GATEWAY TOWER WEST
SALT LAKE CITY, UT 84101
801.257.1900 P
801.257.1800 F

Craig T Jenson
(801) 257-1881
cjenson@swlaw.com

October 28, 2021

Mayor Julie Fullmer
Vineyard City
125 S Main Street
Vineyard, UT 84059

Re: Vineyard City Development Agreement for The Yard

Dear Honorable Mayor:

On behalf of the Fifty Mill, LLC, the owners of Parcel Nos. 56:037:0003 and 56:042:0009, we are making application for a development agreement with Vineyard City. This request is made pursuant to the recently adopted provisions of Vineyard City's Zoning Code §15-14-2-08, which allows for increased density and residential units for a mixed-use project in the Regional Mixed Use zone through a development agreement.

We are seeking approval of the attached development agreement, which would allow for up to 341 units on 4.87 acres, in conjunction with commercial space onsite and on the separate, adjoining property to the North. This development is designed to not only integrate commercial and residential uses, but also focuses on pedestrian access, walkability, and an appropriate utilization of parking areas. On the eastern edge of the subject property, the regional trail will be extended in a large open space corridor. We are excited to be bringing this project to Vineyard.

As required in Vineyard City Code §15-16-030, we have included all the required elements in the proposed development agreement. We understand that the agreement will need to be vetted by city staff, go to the Planning Commission for a public hearing and its recommendation, and then to City Council for an additional public hearing and final decision, as outlined in City Code §15-16-040.

We have no doubt that this project meets the purpose of the RMU District found in Vineyard City Code §15-14-2-02:

The purpose of the Regional Mixed Use District (RMU) is to promote the goals of the General Plan in areas of the Town that are designated by the General Plan for a combination of land uses in a mixed use development pattern either horizontal or

Mayor Julie Fullmer
October 28, 2021
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vertical design. This zoning designation recognizes that adherence to a traditional pattern of development standards would preclude the application of a more flexible approach. Commercial, employment, and residential uses are encouraged to be provided with intensities and densities that promote a mix of day and nighttime activities. Developments within this district shall be compatible with surrounding existing and planned land uses.

We look forward to the opportunity to present our proposed development agreement to the citizens of Vineyard, the Planning Commission and City Council. We are pleased to have the opportunity to work with the City through this development agreement application.

If you have any questions or concerns, please feel free to reach out to us.

Respectfully submitted,

Craig T. Jenson

CC Eric Towner
Steve Hutchings
Jayme Blakesley, Esq.
Jacob McHargue

Enclosures:
Proposed Development Agreement

WHEN RECORDED, RETURN TO:

Fifty Mill, LLC
Attn: Eric Towner
9537 S 700 E
Sandy, UT 84070

**DEVELOPMENT AGREEMENT
FOR
THE YARD**

THIS DEVELOPMENT AGREEMENT (“DA”) is made and entered into by and between VINEYARD CITY, a political subdivision of the State of Utah, and FIFTY MILL, LLC, a Utah limited liability company, and made effective as of the Effective Date.

RECITALS¹

A. The capitalized terms used in this DA and in these Recitals are defined in Section 1.2 below.

B. Developer owns the Property.

C. The Property is located within the boundaries of Vineyard City, Utah.

D. Developer is developing the Property as a mixed-use development. Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the applicable Zoning and this DA.

E. Developer has prepared that certain Concept Plan for the Property, which is attached hereto as Exhibit B.

F. The Parties desire to enter into this DA to more fully specify the rights and responsibilities of Developer to develop the Property as expressed in this DA, and the rights and responsibilities of City to allow and regulate such development pursuant to the requirements of this DA and all other applicable laws.

G. The Parties understand and intend that this DA is a “development agreement” within the meaning of the Act and entered into pursuant to the terms of the Act.

¹ Note to City: no known existing agreements to incorporate.

| H. The City finds that this DA conforms with the intent of the City's General Plan and the Zoning.

| 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 Parties hereby agree to the following:

|

TERMS

1. **Incorporation of Recitals and Exhibits; Definitions.**

1.1 **Incorporation.** The foregoing Recitals and all Exhibits are hereby incorporated into this DA.

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

1.2.1 **Act** means the Municipal Land Use, Development, and Management Act, *Utah Code Ann. § 10-9a-101 (2019), et seq.*

1.2.2 **Applicant** means a person or entity submitting a Development Application.

1.2.3 **Buildout** means the completion of all of the development, both residential and commercial, on the entire Project in accordance with this DA.

1.2.4 **City** means Vineyard City, Utah, a Utah political subdivision.

1.2.5 **City Council** means the elected Vineyard City Council.

1.2.6 **City's Future Laws** means the ordinances, policies, standards, and procedures that may be in effect as of a particular time in the future when a Development Application is submitted for a part of the Project and which may or may not be applicable to the Development Application depending on the provisions of this DA.

1.2.7 **City's Vested Laws** means the ordinances, policies, standards, and procedures of the City in effect as of the Effective Date.

1.2.8 **Concept Plan** means the graphic depiction of the Project to be developed on the Property as generally shown on Exhibit B attached hereto, and as may be amended or supplemented from time to time

1.2.9 **DA** means this Development Agreement, including all of its Exhibits.

1.2.10 Default means a material breach of this DA as specified herein.

1.2.11 Denial means a formal denial issued by the final decision-making body of the City for a particular type of Development Application, excluding review comments or “redlines” by City staff.

1.2.12 Developer means Fifty Mill, LLC, a Utah limited liability company, and its assignees or transferees as permitted by this DA.

1.2.13 Development means the development of all or a portion of the Property pursuant to one (1) or more approved Development Applications.

1.2.14 Development Application means a complete application to the City for development of all or a portion of the Project, including a Final Plat, or any other permit (including, but not limited to, building permits or conditional use permit), certificate or other authorization from the City required for Development of the Project.

1.2.15 Effective Date means the date this DA is recorded by the City Recorder.

1.2.16 Final Plat means the recordable map or other graphical representation of land prepared in accordance with *Utah Code Ann.* § 10-9a-603, or any successor provision, and approved by the City, effectuating a subdivision of any portion of the Project.

1.2.17 Final Unit Count means the total number of Units within the Project, which number shall be no more than the Maximum Units.

1.2.18 Intended Uses means the use of all or portions of the Property for multifamily residential; nonresidential, commercial (including, without limitation, short-term rentals also known as short-term residential lease, retail, and associated facilities); and all other uses approved by the City in accordance with the City’s Vested Laws.

1.2.19 Maximum Units means the development on the Property of a maximum of three hundred forty-one (341) Units.

1.2.20 Notice means any notice to or from any Party to this DA that is either required or permitted to be given to another Party.

1.2.21 Party/Parties means, in the singular, either Developer or the City; in the plural, Developer and the City.

1.2.22 Planning Commission means the Planning Commission of the City.

1.2.23 Project means the total development to be constructed on the Property pursuant to this DA with the associated public and private facilities, and all of the other aspects approved as part of this DA.

1.2.24 Property means the real property owned by and to be developed by Developer more fully described in Exhibit A.

1.2.1 Public Infrastructure means those elements of infrastructure that are planned to be dedicated to the City or other public entities as a condition of the approval of a Development Application.

1.2.2 Unit means a structure or any portion thereof designed and constructed for multifamily occupancy as a residence or short-term, commercial occupancy, and located in one (1) or more buildings within the Project in the locations set forth on the Concept Plan.

1.2.3 Zoning means the Regional Mixed Use District (RMU) zoning of the Property as further set forth in the City's Vested Laws.

2. Development of the Project.

2.1 **Compliance with this DA.** The Zoning and this DA establish and vest the development rights for the Project, including the general use, maximum density, and general configuration for the Project. Pursuant to Vineyard Municipal Code 2.04.3.c., this DA establishes and vests the maximum density for the Project. Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this DA), the Zoning, and this DA. City agrees that Developer shall have the full power and exclusive control of the Property. ~~Nothing~~ Subject to the provisions of Addendum No. 1 attached to this DA, nothing in this DA shall obligate Developer (or its successors) to develop in any particular order or phase and that Developer reserves all discretion to determine whether to develop a particular portion or phase of the Property based upon Developer's business judgment. The Property may be developed for all of the Intended Uses, as well as all uses approved by the City in accordance with the City's Vested Laws. Subject to the terms of this DA and the Zoning, City and Developer expressly agree that following acceptance and recordation of this DA, Developer shall have the ability to adjust the Concept Plan including variations to the exact locations and densities of the Units, exact locations of open space and parking, roads and rights-of-way and changes to building size, but in no event shall the Final Unit Count within the Project exceed the Maximum Units.

2.2 **Zoning.** City agrees that the Regional Mixed Use District (RMU) Zoning district accommodates and allows the Intended Uses, and development rights to locate the Intended Uses in the general areas configured in the Concept Plan, as more particularly set forth below.

2.3 **Maximum Units.** Subject to Section 2.1 above, at Buildout Developer shall be entitled to have developed the Project up to the Maximum Units.

2.4 Rescission Option; Condition of Issuance of Building Permits— or Certificates of Occupancy.

2.4.1 If the City has not issued a building permit, and there has not been commencement of horizontal or vertical construction under such building permit, for a golf driving range facility (e.g., “Top Golf”) on that certain real property adjacent to the Property (such adjacent real property is identified as all or a portion of Utah County Parcel No. 56:037:0002 (the “Golf Facility Parcel”); provided, however, such Golf Facility Parcel shall not be encumbered by this DA), on or before **January 1, 2023**, then either Party may deliver notice of rescission to the other Party to terminate this Agreement. Any such rescission must be hand delivered, if at all, no later than thirty-two (32) days after the date in the preceding sentence. Upon a Party’s delivery of notice of rescission pursuant to this subsection, this Agreement shall automatically terminate whereupon the Parties shall have no further rights or obligations under this Agreement. ~~Additionally,~~

~~2.3.1~~2.4.2 Developer acknowledges and agrees that City shall have no obligation to issue any building permit for the Project until a building permit is issued for vertical construction of a golf driving range facility (e.g., “Top Golf”) on the Golf Facility Parcel; provided, however, Developer or an Applicant may submit Development Applications, including, without limitation, for Project building permit(s), prior to the City’s issuance of a building permit for vertical construction of a golf driving range facility on the Golf Facility Parcel.

2.4.3 Developer acknowledges and agrees that City shall have no obligation to issue a certificate of occupancy for any portion of the Project until vertical construction (consisting of, at a minimum, above-ground structural supports for the golf driving range facility building or golf simulation facility) of a golf driving range facility (e.g., “Top Golf”) on the Golf Facility Parcel has commenced; provided, however, Developer or an Applicant may submit Development Applications, including, without limitation, for Project building permit(s) or certificate(s) of occupancy, prior to commencement of vertical construction of a golf driving range facility on the Golf Facility Parcel.

3. **Vested Rights.**

3.1 **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 and agree that this DA grants and confirms that Developer is vested with all rights to develop the Project in accordance with and in fulfillment of this DA, the City’s Vested Laws, and the Zoning of the Property, except as specifically provided herein. The Parties specifically intend that this DA grant to Developer the “vested rights” identified herein as that term is construed in Utah’s common law and pursuant to *Utah Code Ann.* § 10-9a-509 (2019). As of the Effective Date, City confirms that Developer is vested with the Intended Uses

and the uses in the RMU Zoning as in effect and made applicable to Property as of the Effective Date. Subject to Section 2.3 above, City further confirms that Developer is vested with the right to locate buildings of the type described and generally depicted, along with contemplated configurations, and densities reflected in the Concept Plan, consistent with City's Vested Laws. By way of further clarification, Developer is vested with the right to develop and locate on the Property the Intended Use(s) and densities, including, among other provisions, Developer's ability to increase density to the Maximum Units, and to develop in accordance with dimensional requirements as allowed by City's Vested Laws. The Parties intend that the rights granted to Developer hereunder are contractual vested rights and include the rights that exist as of the Effective Date under statute, common law and at equity. The Parties acknowledge and agree this DA provides significant and valuable rights, benefits, and interests in favor of Developer and the Property, including, but not limited to, certain vested rights, development rights, permitted and conditional uses, potential rights for new improvements, facilities, and infrastructure, as well as flexible timing, sequencing, and phasing rights to assist in the development of the Property.

3.2 **Exceptions.** City's Future Laws with respect to development or use of the Property shall not apply, except as follows:

3.2.1 Developer Agreement. City's Future Laws that Developer agrees in writing apply to the Project;

3.2.2 State and Federal Compliance. City's Future Laws that are generally applicable to all properties in the City's jurisdiction and that are required in order to comply with state and federal laws and regulations affecting the Project;

3.2.3 Codes. The City's development standards, engineering requirements, approval, and supplemental specifications for public infrastructure, and any City's Future Laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual 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 otherwise required to meet legitimate concerns related to public health, safety or welfare;

3.2.4 Taxes. Lawful taxes, or modifications thereto, provided that nothing in this DA shall be construed as waiving or limiting in any way Developer's right to challenge taxes imposed by the City, which right is hereby reserved;

3.2.5 Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City's jurisdiction (or a portion of the City's jurisdiction as specified in the lawfully adopted fee schedule) and that are adopted pursuant to state and local law.

3.2.6 Impact Fees. Impact Fees or modifications thereto that are lawfully adopted, imposed, and collected by the City or any other lawful agency, district, or public utility.

3.2.7 Compelling, Countervailing Interest. Laws, rules, or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to *Utah Code Ann. § 10-9a-509(1)(a)(ii)(A)* as proven by the City by clear and convincing evidence, of which jeopardy the City was not reasonably aware of at the time of the execution of this DA.

3.3 **Legal Challenge.** Should any third party not a Party hereto challenge this DA or the related approvals within thirty-one days (31) days of the Effective Date, Developer shall have the right to unilaterally rescind this DA by delivering notice to City no later than one-hundred-eighty (180) days of the Effective Date.

3.4 **Intent Regarding Administration and Amendment of this DA.** The Parties intend that the administration, but not the approval, of this DA and any amendments, shall be processed through administrative land use applications to be decided by the land use authority, as those terms are defined in the Act.

4. **Term of Agreement.** The initial term of this DA shall be thirty (30) years beginning on the Effective Date, which term may be extended by written agreement of the Parties.

5. **Addendum No. 1.** Addendum No. 1 contains the provisions of this DA that are specific to the development of the Project. If there is a conflict between this DA and Addendum No. 1, then Addendum No. 1 shall control.

6. **Processing of Development Applications.**

6.1 **Processing of Development Applications; City Denial of a Development Application.** City agrees to process the Development Applications needed for the Project as quickly as practicable under its existing processes and staffing levels, and on the condition that such ~~applications~~Development Applications are submitted in complete form at the time of submittal. If any additional conditional use applications are required for any portion of the Project, City agrees to process such application simultaneously with any other application such as site plan or other Development Application. If the City denies a Development Application, it shall provide a written determination advising the Applicant of the reasons for denial including specifying the reasons the City believes that the Development Application is not consistent with this DA, the City's Vested Laws (or, if applicable, the City's Future Laws), or any other applicable law. ~~The City agrees to table final decision on a Development Application, rather than issuing a Denial, at the request of Developer in order to address any issues in the Development Application and to allow for the "Meet and Confer" process outlined below. Notwithstanding Vineyard Municipal Code 15.24.110,~~ Developer may resubmit a denied Development ~~Applications~~Application after addressing the reasons for ~~denial~~Denial communicated by the City.

6.2 **Meet and Confer regarding Development Application Denials.** Upon written request by ~~the~~ Developer, the City and Developer or Applicant shall meet within fifteen (15) business days of any tabling of a Development Application or Denial to discuss how the ~~Development~~Developer may resolve the issues specified in the tabling or Denial of a Development Application.

6.3 **City Denials of Development Applications Based on Denials from Non-City Agencies.** If the City's Denial of a Development Application is based on the denial of the Development Application by a non-City agency, if Applicant chooses to appeal such Denial, the appeal shall be through the appropriate procedures for such a decision and not through the processes specified ~~below~~herein.

7. **Application Under City's Future Laws.** Without waiving any rights granted by this DA, Developer may at any time, choose to submit a Development Application for some or all of the Project under the City's Future Laws in effect at the time of the Development Application. Any Development Application filed for consideration under the City's Future Laws shall be governed by all portions of the City's Future Laws related to the Development Application. The election by Developer at any time to submit a Development Application under the City's Future Laws shall not be construed to prevent or limit Developer from submitting under and relying on City's Vested Laws for other Development Applications.

8. **Public Infrastructure and Utilities.**

8.1 **Construction by Developer.** Other than for those elements of Public Infrastructure otherwise specified in this DA that may be constructed by the City or agencies it controls, Developer shall have the right and the obligation to construct or cause to be constructed and installed all Public Infrastructure reasonably and lawfully required as a condition of approval of a Development Application.

8.2 **Financial Assurances.** If, and to the extent required by the City's Vested Laws, unless otherwise provided by the Act or this DA, if financial assurances for any Public Infrastructure is required by the City or an agency it controls, then Applicant shall provide it in a form acceptable to the City or the agency it controls as specified in the City's Vested Laws. Partial releases of any such required financial assurances shall be made as work progresses based on the City's Vested Laws.

8.3 **Upsizing/Reimbursements to Developer.** The Developer shall complete capacity studies for all City utilities required to serve this Project. The City shall not require Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Developer are made to compensate Developer for the incremental or additive costs of such upsizing, and the costs of service interruption and incidental property damage directly resulting from such upsizing. The Developer shall not refuse any request from the City to upsize Public Infrastructure if the costs to be paid by the City for such upsizing are within industry standards. Furthermore, if approved on a case-by-case basis by the City Council, Developer shall be eligible to receive credits against impact fees or any other fees that City may assess, as compensation for any such upsizing.

8.4 **Culinary Water and Sanitary Sewer Improvements.** Upon payment to the City by the Developer, the City agrees to provide all culinary water and sanitary sewer services to the Property without requiring the dedication of water rights from Developer upon payment of the fees associated with the approved development ~~designees~~ designs. City agrees to provide Developer “will serve” commitments with respect to the Property. Upon dedication of water and sewer improvements to the City by Developer, City shall reserve such developed capacity necessary for the use of the Project on the Property.

8.5 **Storm Water Improvements.** Developer shall construct, or cause to be constructed, storm water retention and detention facilities as may be necessary for the development of the Property as contemplated by the vested rights described herein. Developer shall not be required to design and construct such retention and detention facilities to address storm water flows originating from outside the Property. This City may require the Developer to engage with adjacent property owners to address known adverse stormwater conditions.

8.6 **Electrical, and Natural Gas, and Telecommunication Utilities.** The City agrees to cooperate with Developer and public utility service providers in their efforts to ensure that sufficient electrical capacity and transmission infrastructure and natural gas capacity and transmission is present to serve the Property.

8.7 **City Services.** City shall make available (subject to application for service, issuance of applicable permits and payment of connection fees and applicable commodity usage rates) culinary water, sanitary sewer, storm water and other municipal services to the Property. Such services shall be provided to the Property at the same levels of services, on the same terms and at rates as approved by the City Council, which rates may not differ materially from those charged to others in the City’s boundaries. City also agrees to cooperate in making available public rights of way and easements for use by utility and service providers to development within the Property.

8.8 **Transportation.** The Developer shall maintain transportation infrastructure to City standards and specifications. If the Developer proposes a design that is not within the City standards or specification, the Developer shall provide standards and specifications which are reasonable within industry standards. Deviations from City standards shall be reviewed by the City Engineer and may be approved to be incorporated into the approved Development Application. The City shall allow reasonable access to the City public right of way and public utility easements as applicable for the development of the approved development plans. The Developer shall provide the City applicable access and easements for public transportation within the Development. The City cannot dedicate access to non-city rights-of-way or easements; the Developer shall be responsible for coordination and approval for those requests.

8.9 **Infrastructure Studies.** The Developer shall conduct applicable studies to determine the development requirements for services and its impacts to the City and other public utility infrastructure. These studies shall include water, wastewater, stormwater, electrical, transportation impact studies, parking, and other studies as determined by the Community Development Director or City Engineer.

8.10 **Acceptance of Public Infrastructure and Rights-of-Way.** The City intends to accept public infrastructure and rights-of-ways that ~~serves~~serve the interests of the public. The Developer shall provide to the City public infrastructure and rights-of-way which meet or exceed the City standards and specifications, or which have been conferred as requirements during the Development Application. The Developer shall not transfer dedication of public infrastructure or right-of-way without the direct consent from the City Engineer. ~~The Development~~If the development improvements are within non-city jurisdiction~~—and, then~~ the City cannot guarantee or coordinate approvals and dedication of those improvements not within the City jurisdiction. The Developer shall maintain ownership of landscaping improvements along the property adjacent to its development that are within City jurisdiction.

8.11 **Non-City Coordination.** The Developer shall coordinate with adjacent City agencies, to include City, State, County, local District, and Utility agencies for design reviews, access needs and approvals as required for the Developer’s proposed development design. The City shall not coordinate these reviews for the Developer. The City may provide mediation between Developer and non-city agency to resolve issues which may arise.

9. **Default.**

9.1 **Notice.** If Developer, or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a Default has occurred shall provide Notice to the other Party.

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

9.2.1 **Specific Claim.** Specify the claimed event of Default;

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

9.2.3 **Materiality.** Identify why the Default is claimed to be material; and

9.2.4 **Optional Cure.** ~~If the City chooses, in its discretion, it may propose~~Cure.
Propose a method and time for curing the Default which shall be of no less than thirty (30) days duration.

9.3 **Remedies.** If the Parties are not able to resolve the Default within the cure period, then the Parties may have the following remedies, except as specifically limited in 11.8:

9.3.1 Law and Equity. All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, or specific performance.

9.3.2 Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular Default.

9.3.3 Future Approvals. The right to withhold all further reviews, approvals, licenses, building permits or other permits for development of the Project in the case of a default by Developer until the Default has been cured.

9.4 **Attorney Fees.** The Party prevailing in any action brought to enforce the terms of this Agreement shall be awarded its reasonable legal expenses, including its reasonable attorney fees.

9.5 **Public Meeting.** Before any remedy in Section 9.4 may be imposed by the City the party allegedly in Default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed Default.

9.6 **Extended Cure Period.** If any Default cannot be reasonably cured within thirty (30) days, then such cure period may be extended at the discretion of the Party asserting Default so long as the defaulting Party is pursuing a cure with reasonable diligence.

9.7 **Default of Assignee.** A default of any obligations assumed by an assignee shall not be deemed a default of Developer.

10. **Notices.** All notices required or permitted under this DA shall, in addition to any other means of transmission, be given in writing by either by certified mail, hand delivery, overnight courier service, or email to the following addresses:

To Developer:

Fifty Mill, LLC
9537 S. 700 E.
Sandy, Utah 84070
Attention: Eric Towner; Steve Hutchings
Email: eric@xdevco.com; ~~steve@xdevco.com~~;
steve@xdevco.com

To Vineyard City:
Vineyard City

With a Copy to:

Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Craig T. Jenson
~~Email: cjenson@swlaw.com~~ Email:
cjenson@swlaw.com

With a Copy to:
Hayes Godfrey Bell, P.C.

125 South Main Street
Vineyard, Utah 84059
Attention: City Manager
Email: ~~Refer~~[refer](#) to ~~city~~[City](#) website:

2118 East 3900 South, Suite 300
Holladay, Utah 84124
Attention: Jayme Blakesley
Email:
~~jblakesey@hgblaw.net~~jblakesey@hgblaw.net

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

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

10.1.2 Electronic Delivery. Its actual receipt if delivered electronically by email and the sending Party has an electronic receipt of the delivery of the Notice.

10.1.3 Mailing. On the day the Notice is postmarked for mailing, postage prepaid, by Certified United States Mail and actually deposited in or delivered to the United States Postal Service.

10.1.4 Change of Address. Any Party may change its address for Notice under this DA by giving written Notice to the other Party in accordance with the provisions of this Section.

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

12. **No Third-Party Rights/No Joint Venture.** This DA does not create a joint venture relationship, partnership or agency relationship between the City or Developer. Further, the Parties do not intend this DA to create any third-party beneficiary rights except as expressly provided herein. The Parties acknowledge that this DA 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 at which time all rights and responsibilities—except for warranty bond requirements under City’s Vested Laws and as allowed by state law—for the dedicated public improvement shall be the City’s.

13. **Assignability.** Except as provided in Section 13.1, the rights and responsibilities of Developer under this DA may be assigned in whole or in part, respectively, by Developer only with the express written consent of the City. The City shall not unreasonably withhold or delay its consent ~~without~~ **reason.**

13.1 **Related Entity.** Developer’s assignment of all or any part of Developer’s rights and responsibilities under this DA to any entity “related” to Developer (as defined by regulations of the Internal Revenue Service in Section 165), Developer’s entry into a joint venture for the development of the Project, or Developer’s pledging of part or all of the Project as security for financing shall be considered pre-approved by the City. Developer shall give the City Notice of any event specified in this

sub-section within ten (10) days after the event has occurred. Such Notice shall include providing the City with all necessary contact information for the newly responsible party.

13.2 **Non-Related Entity.** Developer's assignment of all or any part of the Developer's rights and responsibilities under this DA to any entity not "related" to Developer (as defined by regulations of the Internal Revenue Service in Section 165), shall be subject to the City's approval, which shall not be unreasonably withheld, conditioned or delayed. 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. Unless the City objects in writing within twenty (20) business days of Notice, the City shall be deemed to have approved of and consented to the assignment. The City may object if the City is not reasonably satisfied of the assignee's financial ability to perform the obligations of Developer proposed to be assigned or there is an existing breach of a development obligation owed to the City by the assignee or related entity that has not either been cured or is in the process of being cured in a manner acceptable to the City, or the proposed assignee or related entity has a documented history of failing to meet its obligations in prior agreements with the City or other governmental entities, or any similar reason.

13.3 **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 DA to which the assignee succeeds. Upon any such partial assignment, Developer shall be released from any future obligations as to those obligations that are assigned.

13.4 **Assignees Bound by DA.** Any assignee of all or any part of Developer's rights and responsibilities under this DA shall consent in writing to be bound by the assigned terms and conditions of this DA as a condition precedent to the effectiveness of the assignment.

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

15. **Severability; Invalidity.** If any immaterial provision of this DA is held by a court of competent jurisdiction to be invalid for any reason, 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. If any of the City's Current Laws are declared to be unlawful, unconstitutional or otherwise unenforceable then Developer will, nonetheless comply with the terms of this Agreement to the extent not precluded by law. In such an event, Developer and City shall cooperate to have City adopt a new enactment which is materially similar to any such stricken provisions and which implements the intent of the Parties under this Agreement.

16. **Force Majeure.** Any prevention, delay, or stoppage of the performance of any obligation under this DA that is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties, pandemic,

quarantine, 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.

17. **Time is of the Essence.** Time is of the essence to this DA and every right or responsibility shall be performed within the times specified.

18. **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of 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 the Developer. The initial representative for the City shall be the City Community Development Director. The initial representative for Developer shall be Eric Towner. 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.

19. **Applicable Law.** This DA is entered into in Utah County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah's choice of law rules.

20. **Venue.** Any action to enforce this DA shall be brought only in the Fourth District Court for the State of Utah in Utah County.

21. **Entire Agreement.** This DA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all Parties.

22. **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 any Party based on which Party drafted any particular portion of this DA.

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. The data disk of the City's Vested Laws shall not be recorded in the chain of title. A secure copy of such data disk shall be filed with the applicable City Recorder and each party shall also have an identical copy.

24. **Exclusion from Moratoria.** The Property shall be excluded from any moratorium adopted pursuant to *Utah Code Ann.* § 10-9a-504 unless such a moratorium is found on the record by the City Council to be necessary to avoid a physical harm to third parties and the harm, if allowed, would jeopardize a compelling, countervailing public interest as proven by the City with clear and convincing evidence.

25. **Authority.** The Parties to this DA each warrant that they have all of the necessary authority to execute this DA. City is entering into this DA after taking all necessary actions to enter into the agreements and understandings set forth herein. City's enactment of the resolution approving this DA, and entering into this DA, are legislative acts allowed and authorized by *Utah Code Ann. § 10-9a-101, et seq.*, including specifically *Utah Code Ann. § 10-9a-102(2)*.

[Signature Pages Follow]

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

DEVELOPER:

FIFTY MILL, LLC,
a Utah limited liability company

By: _____

Name: _____

Its: - _____

DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH _____)
_____:ss.
COUNTY OF _____)

On the _____ day of _____, 2021, personally appeared before me _____, _____, who being by me duly sworn, did say that he/she is the _____ of Fifty Mill, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

NOTARY PUBLIC

CITY:

~~Approved as to form and legality:~~

~~_____
Jayme Blakesley City Attorney~~

~~Attest:~~

~~a Utah political subdivision~~

~~By: _____~~

~~Name: Julie Fullmer~~

~~Its: Mayor~~

~~_____
Pamela Spencer~~

~~City Recorder~~

Approved as to form and legality:

Jayme Blakesley
City Attorney

Attest:

Pamela Spencer
City Recorder

VINEYARD CITY,
a Utah political subdivision

By: _____
Name: Julie Fullmer
Its: Mayor

CITY ACKNOWLEDGMENT

STATE OF UTAH)
_____:ss.
COUNTY OF UTAH)

On the _____ day of _____, 2021 personally appeared before me Julie Fullmer who being by me duly sworn, did say that she is the Mayor of Vineyard City, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the City by authority of its City Council and said Julie Fullmer acknowledged to me that the City executed the same.

NOTARY PUBLIC

|

EXHIBIT A
[Legal Description of the Property]

Exhibit A to Development Agreement

EXHIBIT

Exhibit A to Development Agreement

EXHIBIT B
[Concept Plan]

|

Addendum No. 1
(Project-specific terms)

1. **Development Plan.** The DA, including, without limitation, the Concept Plan, shall be considered the ‘development plan’ for the Project under the Zoning.

2. **Development Standards.** The City agrees that Developer shall be entitled to develop the Project in accordance with dimensional requirements and development standards as allowed by this DA, the Concept Plan, and the City’s Vested Laws. Pursuant to Vineyard Municipal Code 2.04.6.b., the building height standards within the Project may exceed the building height standards provided for in Section 15.12.060 – Dimensional Standards Table – of the Vineyard Municipal Code by up to ten (10%), or up to a total building height of sixty-six feet (66’).

3. **Phasing.** Developer shall have the right to determine the timing, sequencing, and phasing of the Project; provided, however, each phase of the Project shall be subject to and comply with applicable Zoning standards that are not in conflict with the terms and provisions contained in this DA. Developer anticipates commencing construction of the Project in Fall 2022 and completing the Project in a single phase.

4. **Listing of Project Features and Facilities to be Provided to the City.**

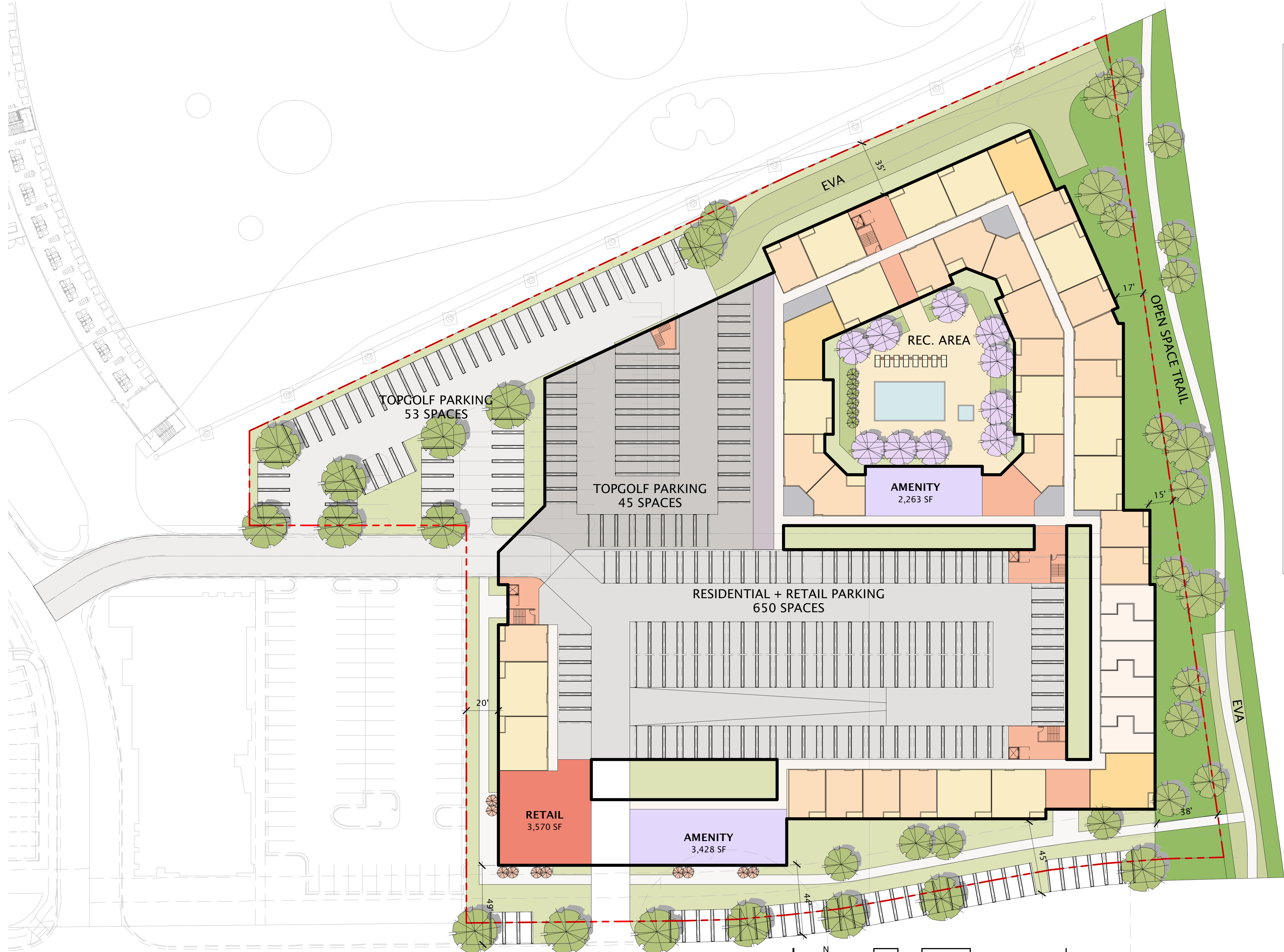
A.4.1. The Project’s ground floor area shall contain a minimum of [] square feet of commercial uses, as depicted in the Concept Plan.

A.4.2. If, prior to Developer’s ~~Option to Convert Units’ Use.~~ The application to the City for a building permit for vertical construction of the Project, the City enacts an amendment to the Zoning ~~allows~~ allowing for the use of the Units as short-term, ~~hotel use as a conditional~~ rentals, also known as short-term residential lease, as a permitted use-, then Developer shall ~~have the option, in its sole discretion, to convert up to sixty (60)~~ a minimum of ten (10) of the Units to short-term, ~~hotel~~ rentals, also known as short-term residential lease, use, ~~managed by means of a Development Application for~~ Developer or a single management company.

~~1. —The City and Developer acknowledge that a portion of the open space or public gathering space, as depicted in the Concept Plan (“Open Space”), is located outside of the City’s current municipal boundaries. Developer agrees to subject such ~~conditional use permit~~ portion of the Open Space to an open space restriction and covenant, in favor of the City, allowing no buildings, structures, parking areas, streets, or roads, and only allowing underground utilities and open space uses in compliance with Vineyard Municipal Code 15.30.~~

~~2. —the City’s Vested Laws, except as approved by the legislative body. The form and content of such restriction and covenant shall be subject to the City’s reasonable approval and such restriction and covenant shall be of record with the Utah County Recorder’s Office. Developer also agrees to cooperate with the City, at no more than minimal cost to Developer and without Developer incurring any liability, in any City action to include such portion of the Open Space into the City’s municipal boundaries, by municipal boundary line adjustment, annexation, or otherwise.~~ **Listing of Project Features and Facilities to be Provided to the City. [Insert, if any].**

A.4.3. , if the City elects to pursue such action.



SITE SUMMARY

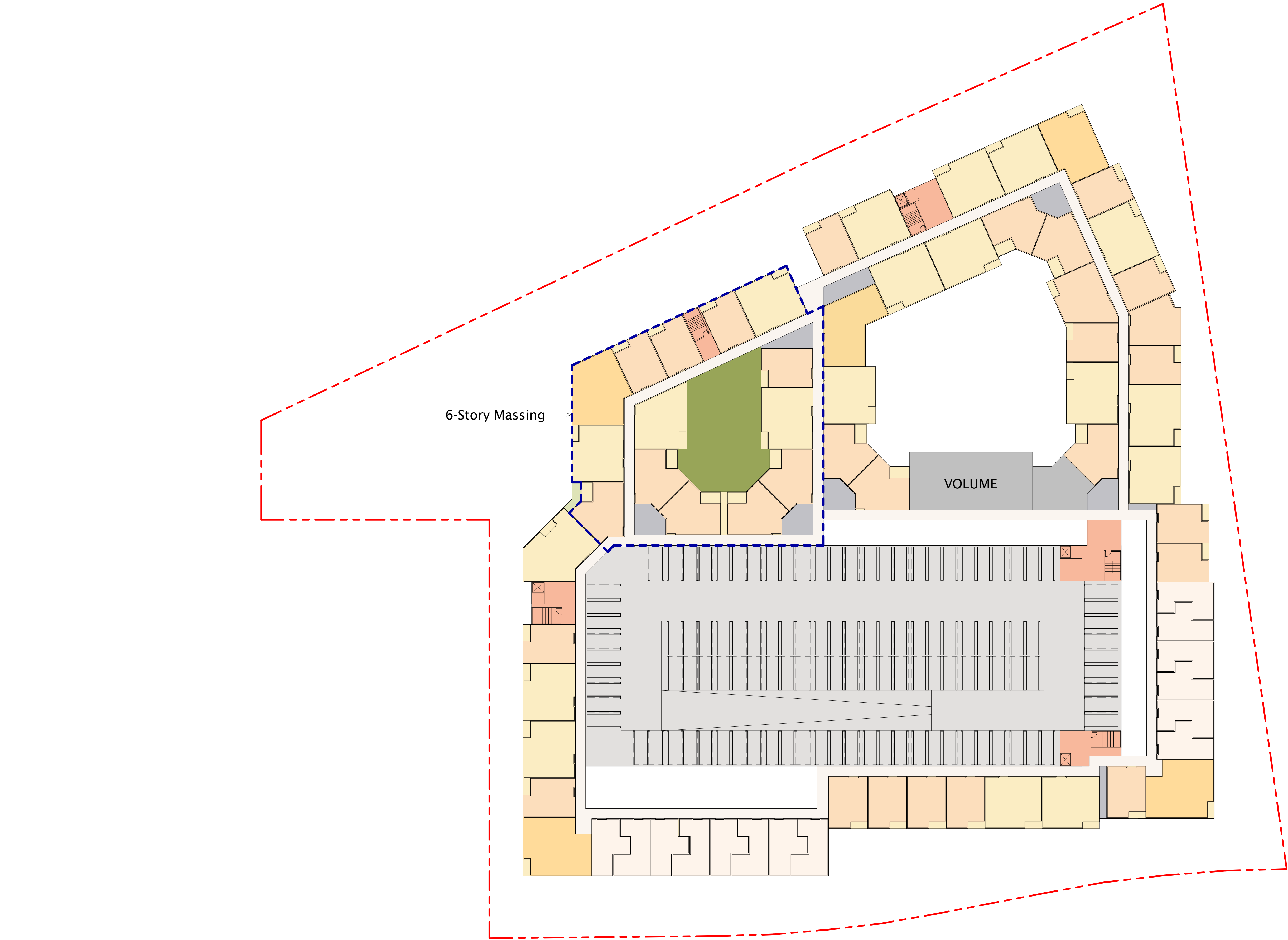
Residential: 341 du
 Studio: 22% (600 sf)
 1-BR: 44% (722 sf)
 2-BR: 29% (1,038 sf)
 3-BR: 5% (1,275 sf)
 Avg. Unit Size: 816 sf

Parking:
 Topgolf: 98 sp
 Residential: 722 sp
 Retail: 12 sp
 Total Req'd: 834 sp
748 sp*

**Utilizes 10% mixed-use reduction.*

Type III Wrap
 Site Area: 4.87 ac
 Density: 70 du/ac

Open Space Area: 45,300 sf
 Retail Area: 3,570 sf
 Residential Area: 378,000 sf
 Building Height: 5 & 6 stories
 Residential Parking: 1.87 sp/du



SITE SUMMARY

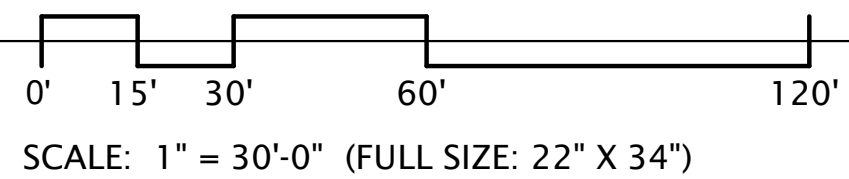
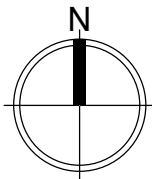
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Residential: 722 sp
Retail: 12 sp
Total Req'd: 834 sp
748 sp*

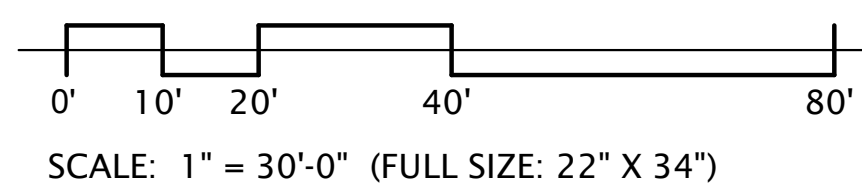
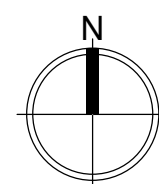
**Utilizes 10% mixed-use reduction.*

Type III Wrap
Site Area: 4.87 ac
Density: 70 du/ac

Open Space Area: 45,300 sf
Retail Area: 3,570 sf
Residential Area: 378,000 sf
Building Height: 5 & 6 stories
Residential Parking: 1.87 sp/du



LEVEL 3 PLAN



SITE SUMMARY

Residential: 341 du
Studio: 22% (600 sf)
1-BR: 44% (722 sf)
2-BR: 29% (1,038 sf)
3-BR: 5% (1,275 sf)
Avg. Unit Size: 816 sf

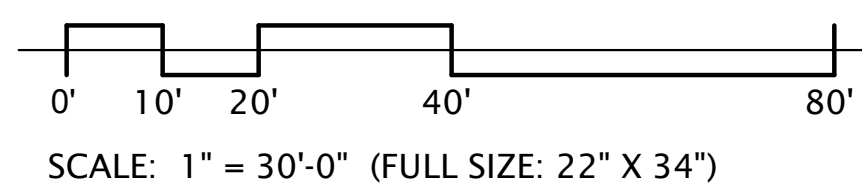
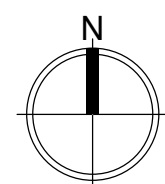
Parking:
Topgolf: 98 sp
Residential: 722 sp
Retail: 12 sp
Total Req'd: 834 sp
748 sp*

**Utilizes 10% mixed-use reduction.*

Type III Wrap
Site Area: 4.87 ac
Density: 70 du/ac

Open Space Area: 45,300 sf
Retail Area: 3,570 sf
Residential Area: 378,000 sf
Building Height: 5 & 6 stories
Residential Parking: 1.87 sp/du

LEVEL 4 PLAN



SITE SUMMARY

Residential: 341 du
Studio: 22% (600 sf)
1-BR: 44% (722 sf)
2-BR: 29% (1,038 sf)
3-BR: 5% (1,275 sf)
Avg. Unit Size: 816 sf

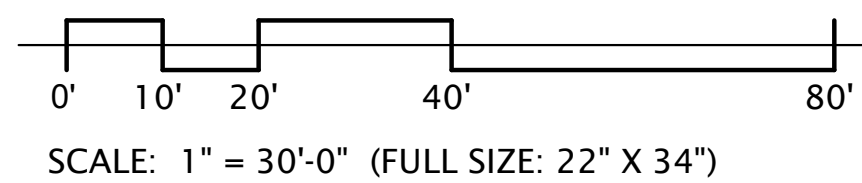
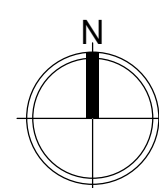
Parking:
Topgolf: 98 sp
Residential: 722 sp
Retail: 12 sp
Total Req'd: 834 sp
748 sp*

**Utilizes 10% mixed-use reduction.*

Type III Wrap
Site Area: 4.87 ac
Density: 70 du/ac

Open Space Area: 45,300 sf
Retail Area: 3,570 sf
Residential Area: 378,000 sf
Building Height: 5 & 6 stories
Residential Parking: 1.87 sp/du

LEVEL 5 PLAN



SITE SUMMARY

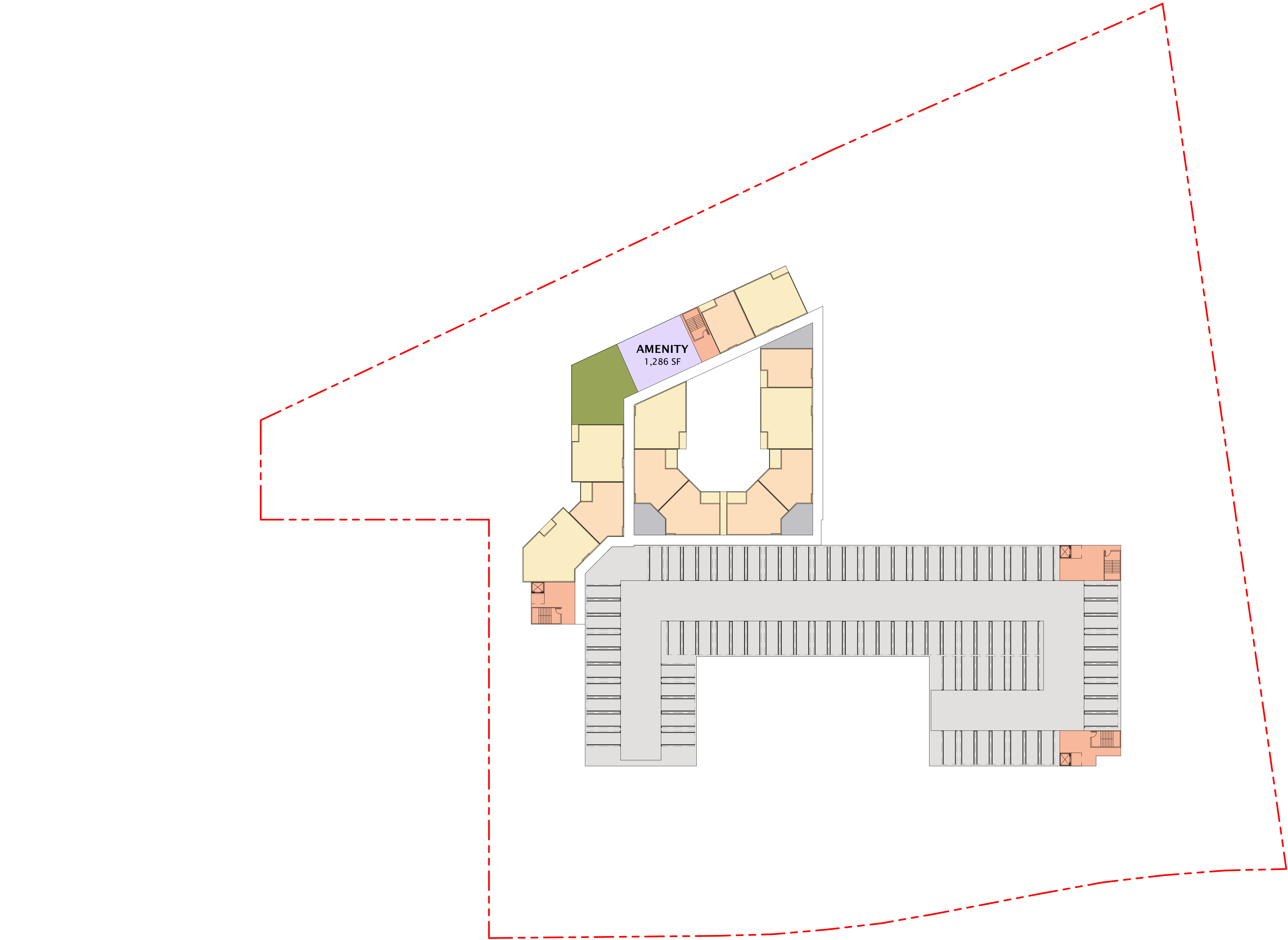
Residential: 341 du
Studio: 22% (600 sf)
1-BR: 44% (722 sf)
2-BR: 29% (1,038 sf)
3-BR: 5% (1,275 sf)
Avg. Unit Size: 816 sf

Parking:
Topgolf: 98 sp
Residential: 722 sp
Retail: 12 sp
Total Req'd: 834 sp
748 sp*

**Utilizes 10% mixed-use reduction.*

Type III Wrap
Site Area: 4.87 ac
Density: 70 du/ac

Open Space Area: 45,300 sf
Retail Area: 3,570 sf
Residential Area: 378,000 sf
Building Height: 5 & 6 stories
Residential Parking: 1.87 sp/du



SITE SUMMARY

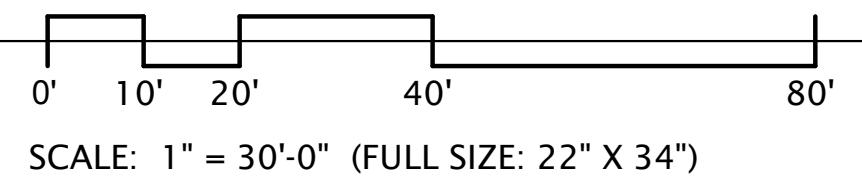
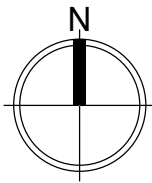
Residential: 341 du
 Studio: 22% (600 sf)
 1-BR: 44% (722 sf)
 2-BR: 29% (1,038 sf)
 3-BR: 5% (1,275 sf)
 Avg. Unit Size: 816 sf

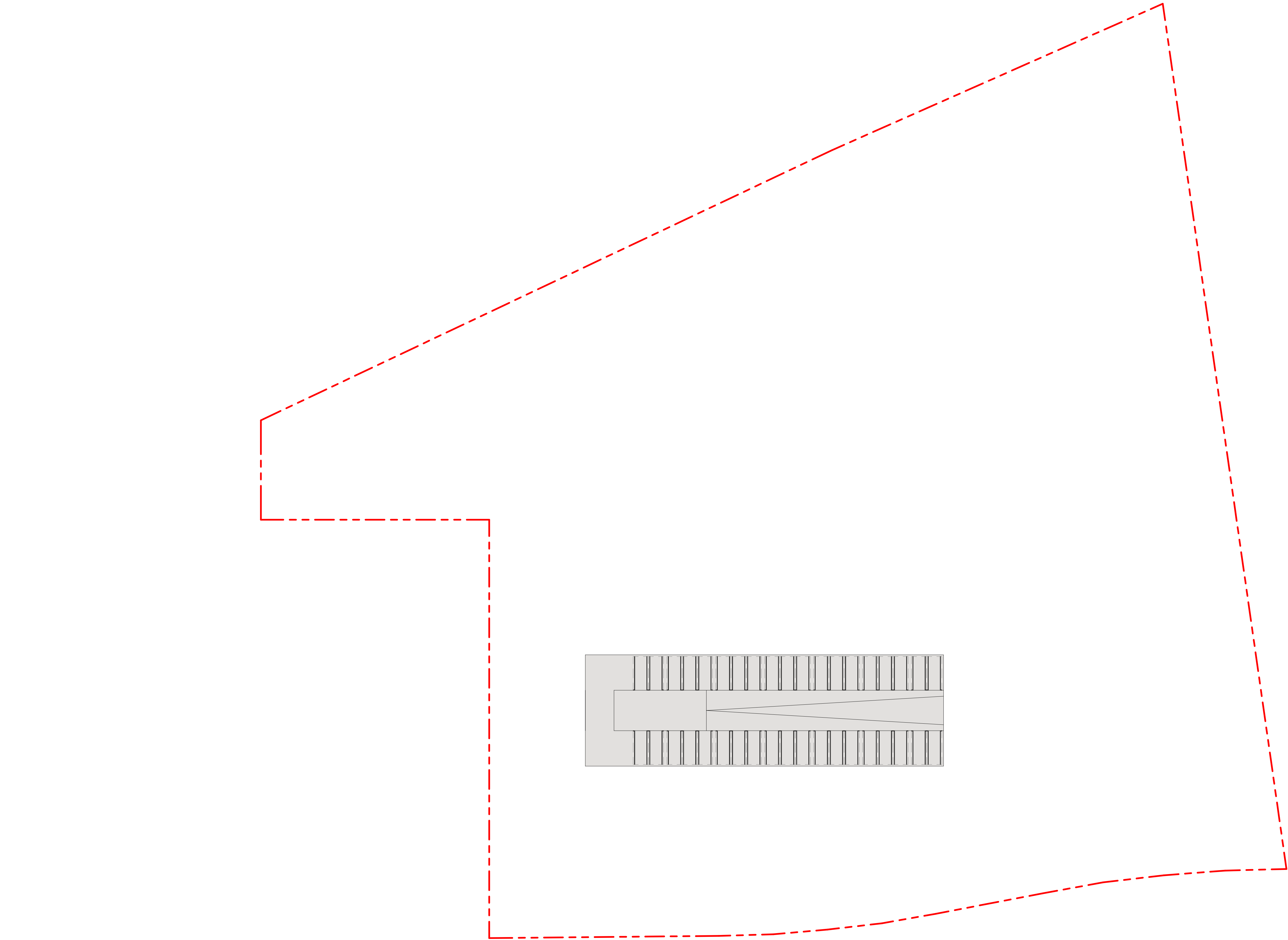
Parking:
 Topgolf: 98 sp
 Residential: 722 sp
 Retail: 12 sp
 Total Req'd: 834 sp
 748 sp*

*Utilizes 10% mixed-use reduction.

Type III Wrap
 Site Area: 4.87 ac
 Density: 70 du/ac

Open Space Area: 45,300 sf
 Retail Area: 3,570 sf
 Residential Area: 378,000 sf
 Building Height: 5 & 6 stories
 Residential Parking: 1.87 sp/du





SITE SUMMARY

Residential: 341 du
Studio: 22% (600 sf)
1-BR: 44% (722 sf)
2-BR: 29% (1,038 sf)
3-BR: 5% (1,275 sf)
Avg. Unit Size: 816 sf

Parking:
Topgolf: 98 sp
Residential: 722 sp
Retail: 12 sp
Total Req'd: 834 sp
748 sp*

**Utilizes 10% mixed-use reduction.*

Type III Wrap
Site Area: 4.87 ac
Density: 70 du/ac

Open Space Area: 45,300 sf
Retail Area: 3,570 sf
Residential Area: 378,000 sf
Building Height: 5 & 6 stories
Residential Parking: 1.87 sp/du

