



**NOTICE OF A REGULAR SESSION
OF THE VINEYARD CITY COUNCIL MEETING
October 10, 2018 at 6:00 PM**

Public Notice is hereby given that the Vineyard City Council will hold a regular session of the Vineyard City Council meeting on Wednesday, October 10, 2018, at 6:00 pm in the Vineyard City Hall, 125 South Main, Vineyard, Utah. The agenda will consist of the following:
([clicking on the blue wording will take you to the documents associated with the agenda item.](#))

AGENDA

6:00 PM REGULAR SESSION

**Presiding Mayor Julie Fullmer
(Mayor Pro tem – Councilmember Nate Riley – October to December)**

1. CALL TO ORDER

INVOCATION/INSPIRATIONAL THOUGHT/PLEDGE OF ALLEGIANCE

2. OPEN SESSION – Citizens’ Comments

(15 minutes)

“Open Session” is defined as time set aside for citizens to express their views for items not on the agenda. Each speaker is limited to three minutes. Because of the need for proper public notice, immediate action **cannot** be taken in the Council Meeting. If action is necessary, the item will be listed on a future agenda, however, the Council may elect to discuss the item if it is an immediate matter of concern.

3. MAYOR AND COUNCILMEMBERS’ REPORTS/DISCLOSURES/RECUSALS

4. STAFF AND COMMISSION REPORTS

(3 minutes each)

- City Manager/Finance Director – Jacob McHargue – Budget Report
- Public Works Director/Engineer – Don Overson
- City Attorney – David Church
- Utah County Sheriff’s Department – Sergeant Holden Rockwell – Quarterly Report
- Community Development Director – Morgan Brim &
Planning Commission Chair – Cristy Welsh
- City Recorder – Pamela Spencer
- Building Official – George Reid
- Water/Parks Manager Sullivan Love - Timpanogos Special Service District – Board Member

5. DISCUSSION ITEMS

No items were submitted.

6. CONSENT ITEMS

6.1 [Approval of the September 26, 2018 City Council Meeting Minutes](#)

6.2 [UVHBA Condo Conversion Final Plan](#)

6.3 [Homesteads POD 4 Phase 3 Final Plat](#)

7. MAYOR'S APPOINTMENTS

No names were submitted.

8. BUSINESS ITEMS

8.1 DISCUSSION AND ACTION – [Qwest dba Century Link Franchise Agreement \(Ordinance 2018-12\)](#)

(15 minutes)

Staff will present a Franchise Agreement between the city of Vineyard and Qwest Corporation dba CenturyLink QC. The Mayor and Town Council will act to approve (or deny) this agreement by Ordinance.

8.2 DISCUSSION AND ACTION – [MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services Franchise Agreement \(Ordinance 2018-13\)](#)

(15 minutes)

Staff will present a Franchise Agreement between the city of Vineyard and MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services. The Mayor and Town Council will act to approve (or deny) this agreement by Ordinance.

8.3 DISCUSSION AND ACTION – [Amend the Municipal Code adding towing and parking enforcement and towing business licensing regulations \(Ordinance 2018-14\)](#)

(15 minutes)

Staff will present an amendment to the Municipal Code adding towing and parking enforcement and towing business licensing regulations. The Mayor and Town Council will act to approve (or deny) this amendment by Ordinance.

9. CLOSED SESSION

The Mayor and City Council pursuant to Utah Code 52-4-205 may vote to go into a closed session for the purpose of:

- (a) discussion of the character, professional competence, or physical or mental health of an individual
- (b) strategy sessions to discuss collective bargaining
- (c) strategy sessions to discuss pending or reasonably imminent litigation
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property
- (e) strategy sessions to discuss the sale of real property

10. ADJOURNMENT

This meeting may be held electronically to allow a councilmember to participate by teleconference.

The next regularly scheduled meeting is October 24, 2018.

The Public is invited to participate in all City Council meetings. In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the City Recorder at least 24 hours prior to the meeting by calling (801) 226-1929.

I the undersigned duly appointed Recorder for Vineyard, hereby certify that the foregoing notice and agenda was emailed to the Salt Lake Tribune, posted at the Vineyard City Hall, the Vineyard City Offices, the Vineyard website, the Utah Public Notice website, and delivered electronically to city staff and to each member of the Governing Body.

AGENDA NOTICING COMPLETED ON: October 9, 2018

CERTIFIED (NOTICED) BY: /s/ Pamela Spencer

PAMELA SPENCER CITY RECORDER

MINUTES OF THE VINEYARD
CITY COUNCIL MEETING
125 South Main Street, Vineyard, Utah
September 26, 2018 at 6:01 PM

Present

Mayor Julie Fullmer
Councilmember John Earnest
Councilmember Tyce Flake
Councilmember Nate Riley

Absent

Councilmember Chris Judd

Staff Present: City Manager/Finance Director Jacob McHargue, Public Works Director/City Engineer Don Overson, Sergeant Holden Rockwell with the Utah County Sheriff's Office, Community Development Director Morgan Brim, City Planner Elizabeth Hart, Planning Commission Chair Cristy Welsh, Records Management Assistant Kelly Kloepper, Water/Parks Manager Sullivan Love

Others Speaking: Provo Police Captain Brian Wolken

6:01 PM REGULAR SESSION

Mayor Fullmer opened the meeting at 6:01 PM. Councilmember Earnest gave the Pledge of Allegiance and invocation.

WORK SESSION – Capital Projects – Postponed to later in the meeting
City Council and Staff will discuss the Capital Projects for the city. No action will be taken at this time.

OPEN SESSION – Citizens' Comments

Mayor Fullmer called for public comments. Hearing none, she closed the public session.

MAYOR AND COUNCILMEMBERS' REPORTS/DISCLOSURES/RECUSALS

Mayor Fullmer reported that she recently attended a conference in Washington, D.C. with five other Utah mayors to discuss the most pressing issues for the country and for the state of Utah. Some of the concerns for Utah were infrastructure and the housing crisis because of so many people moving into the state. She explained that because the economy was so strong in the country and especially in Utah, infrastructure was becoming a big issue and was one of the growing pains the city would have. She also said another topic of discussion at the conference was the opioid crisis. She commented that our Sheriff's Office was doing a great job informing the city and citizens of what people could do. She invited residents to email her with any questions, and added that more information was available in her biweekly Mayor Report, which she posted online.

51 **STAFF AND COMMISSION REPORTS**

52 City Manager/Finance Director – Jacob McHargue – Postponed to later in the meeting

53
54 Public Works Director/Engineer – Don Overson Mr. Overson reported that the city had finalized
55 its prequalification packet review for the Center Street Overpass. He said that they would give
56 the contractors a three-week period to bid the project, so he hoped to be able to present a
57 recommendation to City Council on October 24th.

58
59 City Attorney – David Church – Mr. Church was excused.

60
61 Utah County Sheriff's Office – Sergeant Holden Rockwell – Sergeant Rockwell explained that
62 he and the Sheriff's deputies were currently growing beards for the annual Shop with a Cop
63 program.

64
65 Community Development Director – Morgan Brim & Planning Commission Chair – Cristy
66 Welsh Mr. Brim reported on the three General Plan meetings that they recently held, including
67 the meeting for business owners held the previous week. He said that they had poll questions
68 that they would email to all Vineyard business owners, including home-based businesses, which
69 he emphasized were the future of the city's economic development. The city wanted to facilitate
70 the growth of small businesses. He gave a report of the recent General Plan Open House. He
71 added that the General Plan survey questions that were asked were posted online, and that they
72 really wanted the citizens' input.

73
74 Mayor Fullmer remarked that the General Plan Open House was very good and that those who
75 attended were able to vote by electronic voting and get answers to their questions. She said that
76 the city would continue having such meetings in the future, so there would be more opportunities
77 for those who missed the last one.

78
79 Mr. Brim agreed, adding that even after they were done with the General Plan, similar open-
80 format meetings, held periodically, would help to keep a dialogue going with the citizens.

81
82 Planning Commission Chair Cristy Welsh – Ms. Welsh reported on last week's Planning
83 Commission meeting and on working with the Community Development Department to resolve
84 code compliance problems. She also reported that they were working on the 3- and 6-acre parks.
85 Councilmember Riley asked when the parks would be completed. Ms. Welsh replied that they
86 were trying to complete both parks this fall, but if the grass could not be seeded before it got
87 cold, that might delay it until the spring.

88
89 City Recorder – Pamela Spencer – Ms. Spencer was excused.

90
91 Building Official – George Reid – Mr. Reid was excused.

92
93 Water/Parks Manager Sullivan Love – Mr. Love reported on the recent Utah Lake Commission
94 meeting. He said that the current level of the lake was five feet below full. There was an
95 acquisition of property by Lincoln Beach area, which the county would like to develop. He

asked that those interested in helping to obtain funding for the Utah Lake Shoreline Trail contact the Mountainland Association of Governments. He also reported that the Utah Lake Commission was looking into algae bloom treatments. He gave an update on phragmites removal, and there was a discussion about it. He also reported that the Commission was planning another lakefront cleanup day. He also discussed how the Commission had installed signage at eight public access points to educate the public about algae blooms. He directed those interested to the Division of Water Quality website for algae bloom updates.

<https://deq.utah.gov/division-water-quality>

Mayor Fullmer addressed concerns she had heard from residents about an apparent increase in mosquitoes. She explained that the County had a policy to only spray until the second week of September, partly because of funding and partly because the pesticide did not work at temperatures below 55 degrees. She added that Vineyard City sprayed three times per week, and emphasized that the city was still spraying.

CONSENT ITEMS

7.1 Approval of the September 12, 2018 City Council Meeting Minutes

Mayor Fullmer called for a motion.

Motion: COUNCILMEMBER FLAKE MOVED TO APPROVE THE CONSENT ITEM. COUNCILMEMBER EARNEST SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

MAYOR'S APPOINTMENTS

No appointments were submitted.

DISCUSSION ITEMS

6.1 Amend the Municipal Code to add towing regulations

The City Council and staff will discussion possible regulations for towing within city limits. No action will be taken at this time.

Mayor Fullmer explained that there had been parking concerns and people's cars being towed. She introduced Orem resident and Provo Police Captain Brian Wolken, and turned the time over to Sergeant Rockwell to begin the discussion.

Sergeant Rockwell explained that one of the solutions they were looking at was adopting an ordinance similar to what Provo had adopted to limit predatory towing and to set maximum fees to protect the citizens as much as possible.

Mr. Wolken introduced himself and stated that he had two adult children who lived in Vineyard. One of them lived at The Lochs, and had their car towed with what Mr. Wolken would call predatory towing. Provo had this problem for many years until they passed an ordinance in 2013. He described how predatory towing worked: The tow truck companies would prey on high-density housing, and would use a scout vehicle to find cars and then call the truck to tow several cars. He said that misleading signage was also a problem. He gave an example at The Lochs where they did have No Parking signs, but the signs were on corners and were diagonal, so it was confusing where people could and could not park. The Provo ordinance also required

clear signage for visitor parking. He explained that another problem, one that he experienced when his child's car was towed, was that no one was available to release the towed car until 11 hours later at noon the next day. The Provo ordinance required that the tow company be available within one hour to release the vehicle.

Mr. Wolken discussed another problem, which was when the tow truck company had no photos, no time stamps, and no proof. The Provo ordinance required that the tow truck companies take photos with time stamps, and to prove if there was any damage to the vehicle during the tow. Mr. Wolken explained that there currently was no due process if a vehicle were towed, since there was no appeal process. He added that the state maximum tow fee was \$221, which was a lot of money, especially for college students. He stated that the Provo ordinance had a lower maximum fee to \$175, which included the first day of storage. The maximum fee for a booted vehicle was \$60. The Provo ordinance also prohibited tow companies from giving kickbacks to property owners. He asked the council if they had questions about the ordinance.

Councilmember Riley asked about the impact once this ordinance was implemented. Mr. Wolken replied that he supervised the sergeant who oversaw the towing and booting. He reported that the number of tows and the number of complaints about wrongful tows went down immediately. Councilmember Riley asked about the backlash from the towing companies towards the city. Mr. Wolken replied that they were initially upset. He acknowledged that tow companies were doing business, and that the property owners had a right to have vehicles towed, and he felt that the ordinance they passed in Provo struck a balance. He added that the ordinance was backed by case law.

Mayor Fullmer asked if property owners felt that parking got worse because of the ordinance. Mr. Wolken replied that he had not received any negative feedback from property owners.

Councilmember Earnest asked how the adoption of the ordinance was communicated to the towing companies. Sergeant Rockwell responded, saying that there was public notice when any law went into effect and that citizens and businesses are held to the laws, whether or not they knew about them. He recommended that if the council adopted an ordinance similar to Provo's, that the Sheriff's Office communicate this with the HOAs and property owners. He explained that most of the towing companies were under contract with the property owners. This ordinance would specify what that contract would need to look like.

Councilmember Earnest asked about how much say the city would have with the fee amounts. He commented that the amount Mr. Wolken mentioned still sounded high for college students. Mr. Wolken replying that they put the maximum fee at what they thought was fair to both sides, but that he could not remember how they came up with that amount. Mayor Fullmer stated that it would be at the discretion of the council to calculate the maximum fees. Sergeant Rockwell clarified the state maximum fees, and added that council could discuss it and consult with the city attorney.

Councilmember Earnest asked what Vineyard could learn from Provo's experience and if there was anything that they wished they had done differently. Sergeant Rockwell replied that if the council wanted to adopt a similar ordinance, meeting with Provo to ask those kinds of questions would be part of the process. Mr. Wolken remarked that it took Provo over 2 years to write the ordinance and that it was adopted five years ago. He added that Lehi has also adopted a similar ordinance. He summarized by saying that he had watched Vineyard grow over the years and he could see there was a problem and wanted to share what Provo had done to address these same problems that would be developing in Vineyard. Mayor Fullmer agreed that Vineyard was

197 experiencing growing pains and thanked Mr. Wolken for reaching out to the city and presenting
198 this information.

199
200 Mayor Fullmer and the councilmembers agreed to add this as a business item on the next agenda.

201 202 203 **STAFF AND COMMISSION REPORTS, CONT'D**

204 City Manager/Finance Director – Jacob McHargue – Mr. McHargue reported that at the recent
205 Utah League of Cities and Towns (ULCT) conference, there was a lot of discussion about
206 affordable housing. He said that he anticipated more pressure from the state legislature on this
207 issue.

208
209 Mayor Fullmer commented that the state and federal governments were acting more aggressively
210 on affordable and high-density housing. Part of this discussion was the suggestion that cities
211 should not determine zoning. ULCT was working to maintain cities' and towns' ability to zone
212 their own areas and to keep that in the discussion. She added that this was one of the topics she
213 discussed at the conference in D.C. She felt that the government that was closest to the people
214 was the best equipped to represent the people. She commented that the city council, staff, and
215 the League were working to push back on the pressure. She emphasized that not only Vineyard,
216 but the whole state was feeling the pressure, especially with the strong economy and population
217 growth here in Utah. She explained that they are working to get the government to look at this
218 regionally instead of demanding that cities incorporate this. She added that Vineyard was
219 working to push back against state and federal governments to manage our own growth.

220
221 Councilmember Earnest acknowledged that high density housing was unpopular. He asked Mr.
222 McHargue if the city was on the right track with high density housing as far as the state is
223 concerned. Mr. McHargue replied that the discussions were more focused on affordability.
224 They were looking at the cities and all of the impacts on affordability such as zoning, impact
225 fees, and development fees, and that they were not looking at high density. He felt that they may
226 not understand fully why cities charge such fees and the services the cities provide.

227
228 Mayor Fullmer remarked that defining "affordable housing" was important. She said that
229 Vineyard had a lot of affordable housing but because the market was so good, prices were high
230 and therefore affordability was a problem and didn't meet the standards. Also, because the
231 economy here was so good in Utah, people didn't have to move away so they stayed and got jobs
232 here. She concluded that high demand was a big part of the problem. She cited statistics that
233 40% of the people were migratory, or talent that moved in from out of state, and 60% were those
234 raised in Utah who also attended university here and then stayed.

235
236 Mr. Brim indicated that density helped with affordability, and that well over 60% of housing in
237 Vineyard was townhomes, condominiums, and apartments. He felt that Vineyard's residential
238 neighborhoods were probably one of the densest in Utah County.

239
240 Mayor Fullmer remarked that one of the presenters she heard used Vineyard as a model for other
241 cities to follow. Morgan added that a lot of other cities did not allow for accessory dwelling
242 units, and Vineyard did. He felt that Vineyard would fare pretty well when the state
243 requirements came out, since Vineyard was accommodating affordable housing.

244
245 Councilmember Flake stated that the dilemma was that there was a group in the state legislature
246 within the last few years that wanted to take away cities' ability to zone, since they thought that
247 cities zoned maliciously. This group also thought that cities imposed impact fees and building
248 permit fees as a hindrance to building affordable housing. He conceded that this may be true

with some cities, but that Vineyard charged the minimum amount. He expressed concern that developers in the legislature would override cities to get what they wanted, even those who were models of providing affordable housing, such as Vineyard. He emphasized the importance of working closely with ULCT to put an end to the notion that cities such as Vineyard were causing this problem. He observed that part of the dilemma was the strong economy and high demand, which caused housing costs to rise, and the city was caught in the middle. He concluded that the city needed to speak up and not let itself be defined as not providing affordable housing.

Mayor Fullmer agreed, adding that city leaders were working hard to represent Vineyard by attending meetings, speaking to state and federal representatives, working with the National League of Cities, etc., to communicate that Vineyard had already begun to take these steps. She concluded that state and federal agencies imposing new regulations in a one-size-fits-all approach would not work since Vineyard was a city that was already working on affordable housing.

WORK SESSION – Capital Projects

City Council and Staff will discuss the Capital Projects for the city. No action will be taken at this time.

Mr. McHargue gave a brief overview of projects in the queue for the RDA. He identified the RDA Projects and Requests, RDA Funding, and Debt Obligations. He explained that since there were more requests than there was funding, he sought guidance from council in prioritizing the projects.

He mentioned that the agenda item in tonight's RDA meeting was that the RDA Board was applying for a Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant, which required matching funds. He described how the rail spur project along Geneva Road was a perfect candidate for the CRISI grant. He said that it was a \$16-18 million project, and that they applied for \$8 million and set aside \$10 million match since the U.S. Department of Transportation was looking for a 60% match.

Mr. McHargue then addressed the UDOT bond. He reviewed the different amounts:

	<u>UDOT bond</u>	<u>Roadway Impact Fee Fund</u>	<u>State Grant</u>
Center Street Overpass	\$4,800,000	\$3,200,000	
FrontRunner Station	\$5,000,000		\$4,000,000
Rail Spur	\$10,000,000		
Vineyard Connector Extension	<u>\$3,000,000</u>		
Total	\$22,800,000		

He explained that the Center Street Overpass was projected to cost \$8,000,000. He also detailed how the \$4,000,000 state grant for the FrontRunner Station would build a platform and a parking lot, but if the city wanted to upgrade with a parking structure or other elements, that is what the \$5,000,000 would do. He pointed out that with the \$16,603,000 currently in the UDOT bond, the city was about \$6,000,000 short. He sought direction from the council on how to proceed. They discussed funding and grants.

Councilmember Earnest asked what the order had been up until this point. Mr. McHargue replied that the top priorities had been the Center Street Overpass and the FrontRunner Station, with the others below those. He added that the city was waiting on air rights for Center Street

Overpass. He said that there was a panel with UDOT, UTA, and others working on a design for the FrontRunner Station.

Mayor Fullmer observed that putting in \$10,000,000 and asking for the \$8,000,000 grant was the best approach for the rail spur. She added that when the city made those priorities, Union Pacific (UP) was not even signing a contract for the rail spur. They had since signed an agreement, and so now the city was working on funding. They were also working on funding for the Connector Extension, but there were already two projects in motion.

Councilmember Earnest gave his order of priority as of now, even though funding may change things: Center Street Overpass, Rail Spur, Connector Extension, then the FrontRunner Station. A discussion about the FrontRunner funding and construction timeline ensued. Mayor Fullmer concluded that by March after the legislative session, the city would know if they had received funding, so the priorities might change again at that time.

Councilmember Flake asked about the Connector Extension. Mr. Overson explained the logistics of the Connector Extension and building access to the FrontRunner Station.

Councilmember Riley asked about the state's loan to the city, and Mr. McHargue indicated that the \$16,603,000 was the amount the city had. Councilmember Riley clarified that the state had given the city permission to use that money on other transportation projects.

Councilmember Riley said that his top priority was the Center Street Overpass. He acknowledged that the city was limited to one lane each way, but he emphasized that they needed to do whatever they could to maximize the capacity of the overpass in the event of an emergency. His second priority was the FrontRunner Station. He mentioned the rail spur and sought clarification on where that stood. Mayor Fullmer explained that UP had signed the agreement and now it was a matter of getting the funding, which the city was seeking from several sources. She added that commercial businesses along Geneva Road were coming in because the city had signed the rail spur agreement with UP and also because people were finding out that the FrontRunner Station was going to be built.

Councilmember Riley asked what the other options were for getting more funding. Mr. McHargue explained that it would be tight for the next three years, because everything would trigger in three years. At that point the funding available for RDA projects would increase significantly, estimated at \$1-4 million, depending on the development occurring in the next three years.

Mayor Fullmer explained how, even if the city got the CRISI grant money, the city would need to work on the phasing of the rail spur removal. For example, they could start by the Forge and then move up. She talked to Nathan Anderson with UP and he said that they could discuss that, since it's not in the agreement. About the Connector extension, she felt that since the Edge Homes project (Vineyard Shores) was coming in, the traffic needs would be increasing. She lamented that the city needed the money for all four projects at the same time. She added that at the legislative session next year the city would be applying for money for the Connector, so she could not say that one was better than the other. She stated that we could match the \$10 million.

Mr. McHargue asked if the council agreed that they could match the \$10 million for the rail spur removal, and if they could use \$4.8 million for the Center Street Overpass. The council agreed.

Mayor Fullmer stated that the FrontRunner Station was already underway and that the city would hope to get funding for the Connector extension. The discussion continued.

Mr. McHargue commented that there were ways to get all of the projects done, but that it would take time. Councilmember Flake summarized, saying that the timing of the funding would dictate the order in which the projects would be done. They continued the discussion about seeking funding and grants.

Councilmember Flake remarked that as Vineyard progressed, it would put pressure on other state entities to allocate funding. Mayor Fullmer pointed out that that included UDOT, and mentioned that in a discussion with the UDOT Region 3 director, she told them that the city had developed up to 800 North, and the FrontRunner Station was underway, and that these things would spur more development. State and federal entities were demanding a lot of development of high-density and affordable housing, but they were not meeting the infrastructure, and it was becoming critical. She said that that was the discussion the city was pushing, that the priorities of these other entities needed to change so that the city could get the funding needed for the infrastructure. The discussion continued.

Councilmember Riley asked about where UVU was with the funding. Mr. McHargue replied that they had been willing to write letters of support, but as far as funding, they were absent. They currently had their own funding concerns, and that up until now this had not been not a priority for them. Mayor Fullmer stated that she had a meeting planned with the new president of UVU soon.

BUSINESS ITEMS

9.1 DISCUSSION AND ACTION – Naming of Parks

The Parks and Trails committee will present names for the 3-acre and 6-acre parks, and the pocket park in the Le Cheminant subdivision. The mayor and City Council will take appropriate action.

Mayor Fullmer turned the time over to City Planner Elizabeth Hart.

Ms. Hart explained that the Parks and Trails Committee held a meeting on August 29 to discuss names for three parks.

1. Waters Edge 3-acre beach park – This park would be located north of the James Bay subdivision, off of 400 North and 300 West. The park name proposed by the committee was Sunset Beach Park, since it had access to the beach from lakeshore trail. An alternate name was Sunset View Park.

Councilmember Earnest commented that it was not a beach yet. Ms. Hart mentioned that Ms. Welsh said that there was a Sunset View Elementary school off of Geneva Road in Provo. Mayor Fullmer clarified that eventually that area would have beach access. Councilmember Earnest was comfortable with either name.

Motion: COUNCILMEMBER FLAKE MOVED TO ACCEPT THE NAME SUNSET BEACH PARK. COUNCILMEMBER RILEY SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

2. Waters Edge 6-acre park – This park would be located at Main street and Vineyard Loop Road. The park name proposed by the committee was Penny Springs Park.

Ms. Hart gave the history behind the name, telling the council that Penny was a Holdaway family horse. She was well-trained and loved by everyone in the community. As a girl Sherrie-Kaye Miller (née Holdaway) would ride her all over Utah County. Eventually Penny became the unofficial horse of Vineyard. Penny loved the water and Sherrie-Kaye and her friends would ride her down to a local pond and jump off of her into the water.

Councilmember Earnest liked the name Penny Springs Park because it had meaning, and emphasized that the city needed to commemorate Penny's story somewhere in the park, since it was such a great story.

Motion: COUNCILMEMBER EARNEST MOVED TO APPROVE THE NAME PENNY SPRINGS PARK FOR THE WATERS EDGE 6-ACRE PARK. COUNCILMEMBER FLAKE SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

3. LeCheminant pocket park – This park was located at the southeast corner of the LeCheminant subdivision. The park name proposed by the committee was Rendezvous Park to keep with French theme, and to recognize the park as a place for people to get together.

Motion: COUNCILMEMBER FLAKE MOVED TO ACCEPT THE NAME RENDEZVOUS PARK FOR THE LECHEMINANT POCKET PARK. COUNCILMEMBER RILEY SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

9.2 DISCUSSION AND ACTION – Resolution Approving an Interlocal Agreement

City Manager/Finance Director Jacob McHargue will present a resolution for approval of an interlocal agreement for joint and cooperative action creating Central Utah 911. The mayor and City Council will act to approve (or deny) this request by resolution.

Mayor Fullmer introduced the discussion and turned the time over to Mr. McHargue.

Mr. McHargue explained that he and Councilmember Earnest sat on the Utah Valley Dispatch Special Service District. He explained they were working to allow Nephi City and Juab County to join. He said the problem was that when you crossed county boundaries, they were not allowed to be a special service district any more. This interlocal agreement would amend the special service district, allowing Nephi City and Juab County to buy in, creating Central Utah 911. It would be a different entity with a smaller board. In addition to this, the dispatch board would still meet. Vineyard would still have a seat on the dispatch board. He explained further about the two boards, and stated that it would lower the costs for everyone. He also said that there was capacity in the system to accommodate the new entities and the growth.

Motion: COUNCILMEMBER EARNEST MOVED TO APPROVE AND ALLOW THE MAYOR TO SIGN RESOLUTION 2018-14. COUNCILMEMBER FLAKE SECONDED THE MOTION. ROLL CALL WENT AS FOLLOWS: MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

CLOSED SESSION

No closed session was held.

ADJOURNMENT

Mayor Fullmer called for a motion to adjourn the meeting.

Motion: COUNCILMEMBER FLAKE MOVED TO ADJOURN THE MEETING AT 7:27 PM. COUNCILMEMBER EARNEST SECONDED THE MOTION. MAYOR FULLMER, COUNCILMEMBERS EARNEST, FLAKE, AND RILEY VOTED AYE. COUNCILMEMBER JUDD WAS ABSENT. THE MOTION CARRIED WITH ONE ABSENT.

The next regularly scheduled meeting is October 10, 2018.

MINUTES APPROVED ON: _____

CERTIFIED CORRECT BY: /s/ Kelly Kloepfer
KELLY KLOEPFER, RECORDS MANAGEMENT ASSISTANT

Community Development

Date: October 10, 2018
From: Elizabeth Hart, Planner
To: City Council
Item: Consent
Address: 707 E Mill Road
Applicant: Washburn Associates



INTRODUCTION:

The applicant is requesting final plat approval for a condominium conversion of a commercial-office development, that is under construction, into seven (7) commercial condominium units. The subject property is located at 707 E Mill Road in the Regional Mixed Use (RMU) district. The projected previously received site plan approval from the Planning Commission in July 2017 and consists of a three (3) story office building. The applicant is requesting approval in order to sell individual units within the approved development, and as required by Utah State Code has prepared and submitted a condominium plat for City approval.

FINDINGS:

Staff has reviewed the proposed condominium plat and it does conform to the approved site plan. Staff is recommending approval with the listed conditions below.

CONDITIONS:

- 1) The applicant includes the existing address of the site on the plat prior to recording.
- 2) Unit 304 needs to be provided with an additional exit or the plat needs to be arranged such that it has access to two (2) exits.
- 3) The applicant submits and records the required condominium declarations and related document with the Utah County Recorder.
- 4) The applicant makes any redline corrections and pays any required fees.



Community Development

PROPOSED MOTION:

I move to grant final subdivision plat approval for the Utah Valley Home Builders Association plat with the conditions as listed above.

ATTACHMENTS:

Final Plat Application

Final Plat



240 East Gammon Road
Vineyard, Utah 84058
(801) 226-1929

FINAL SUBDIVISION APPLICATION

Please Note: Attachment of request specific documents is required prior to processing your application.

APPLICATION DATE: 9/10/18

APPLICANT(S): Washburn Associates

ADDRESS OF APPLICANT: 825 N 900 W Orderville, Utah

BUSINESS PHONE #: 801-368-4700

CELL PHONE #: _____

EMAIL ADDRESS: washburnsmith@gmail.com

FAX NUMBER: _____

CURRENT ZONING DISTRICT DESIGNATION: _____

NUMBER OF PROPOSED NEW LOTS: 7 units

LOCATION/ADDRESS OF PROPOSED FINAL SUBDIVISION: _____

TOTAL ACREAGE OF PROPOSED FINAL SUBDIVISION: 2.0 acres

NAME OF PROPERTY OWNER(S): Utah Valley Home Builders Association

CHECK APPLICABLE PERMIT ATTACHMENT:

☐	CONDITIONAL USE PERMIT	☒	FINAL PLAT
☐	GENERAL MAP/PLAT AMENDMENT	☐	LAND DISTURBANCE PERMIT
☐	MINOR PLAT AMENDMENT	☐	PERMITTED USE SITE PLAN
☐	PRELIMINARY SUBDIVISION	☐	ROAD CUT PERMIT
☐	TEMPORARY USE PERMIT	☐	VARIANCE APPLICATION

SIGNATURE OF APPLICANT(S):

Applicant Signature

Date

9/10/18

Co-Applicant Signature

Date

PROPERTY OWNER AFFIDAVIT

STATE OF UTAH }
 }ss
COUNTY OF UTAH}

I, the undersigned, Steve Caldwell, as owner(s) of the property identified in the attached application, depose that the statements herein contained in this application and the information provided in the attached plans and exhibits are in all respects true and correct to the best of my knowledge.

Steve Caldwell

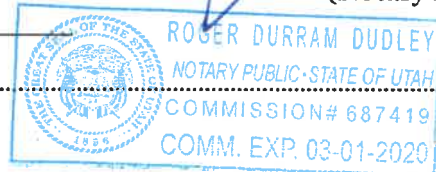
(Property Owner)

(Property Owner)

Subscribed and sworn before me, Roger D. Dudley, a Notary Public, on this 10th day of Sept, 20 18.

My commission expires: 3-1-20

(Notary Public)



AGENT AUTHORIZATION AFFIDAVIT

I, the undersigned, Steve Caldwell, as owner(s) of the real property described in the attached application, do authorize the following: Dan Washburn, Washburn Associates, as agent(s) and designated representative(s) regarding the attached application, to appear on my behalf before any administrative or legislative body in the Town of Vineyard considering this application, and to act in all respects as agent(s) in matters pertaining to the attached application.

Steve Caldwell

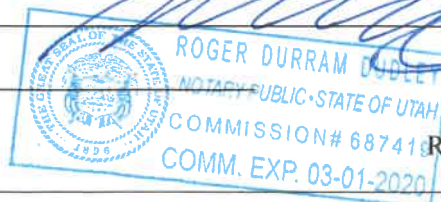
(Property Owner)

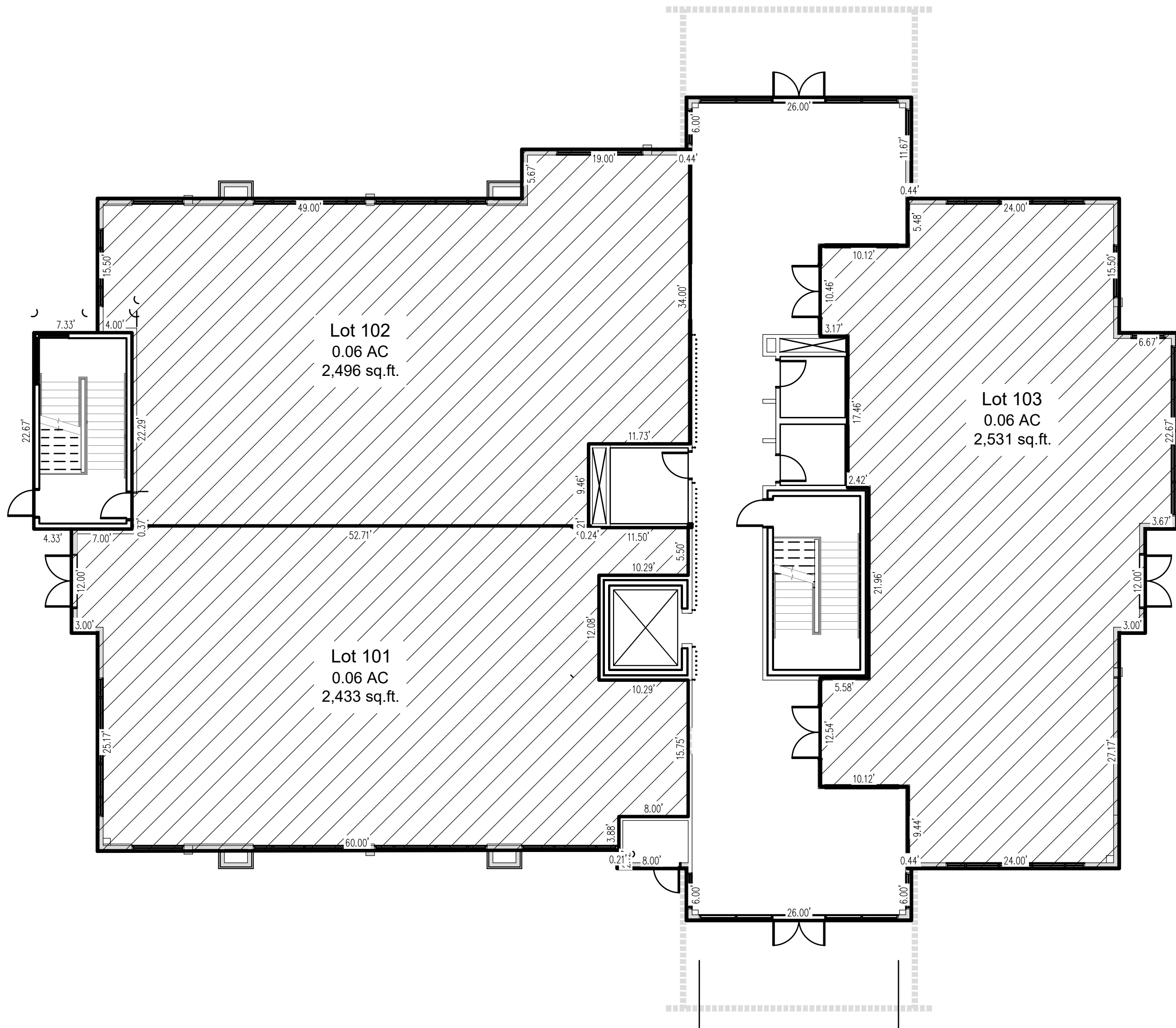
(Property Owner)

Dated this 10th day of Sept, 20 18, personally appeared before me, Steve Caldwell, the signer(s) of the agent authorization who duly acknowledged to me that they executed the same.

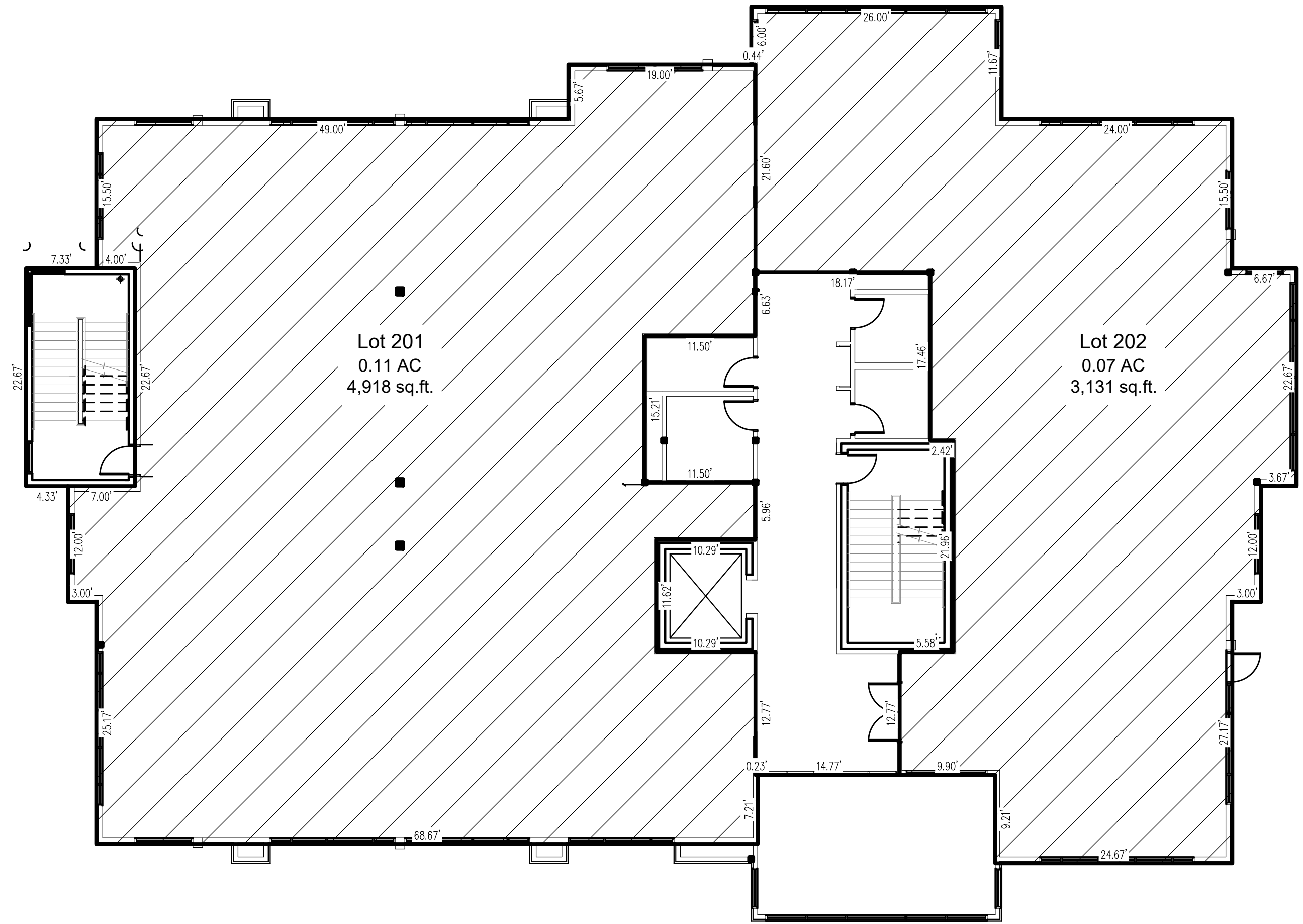
My commission expires: 3-1-20

(Notary Public)





MAIN FLOOR



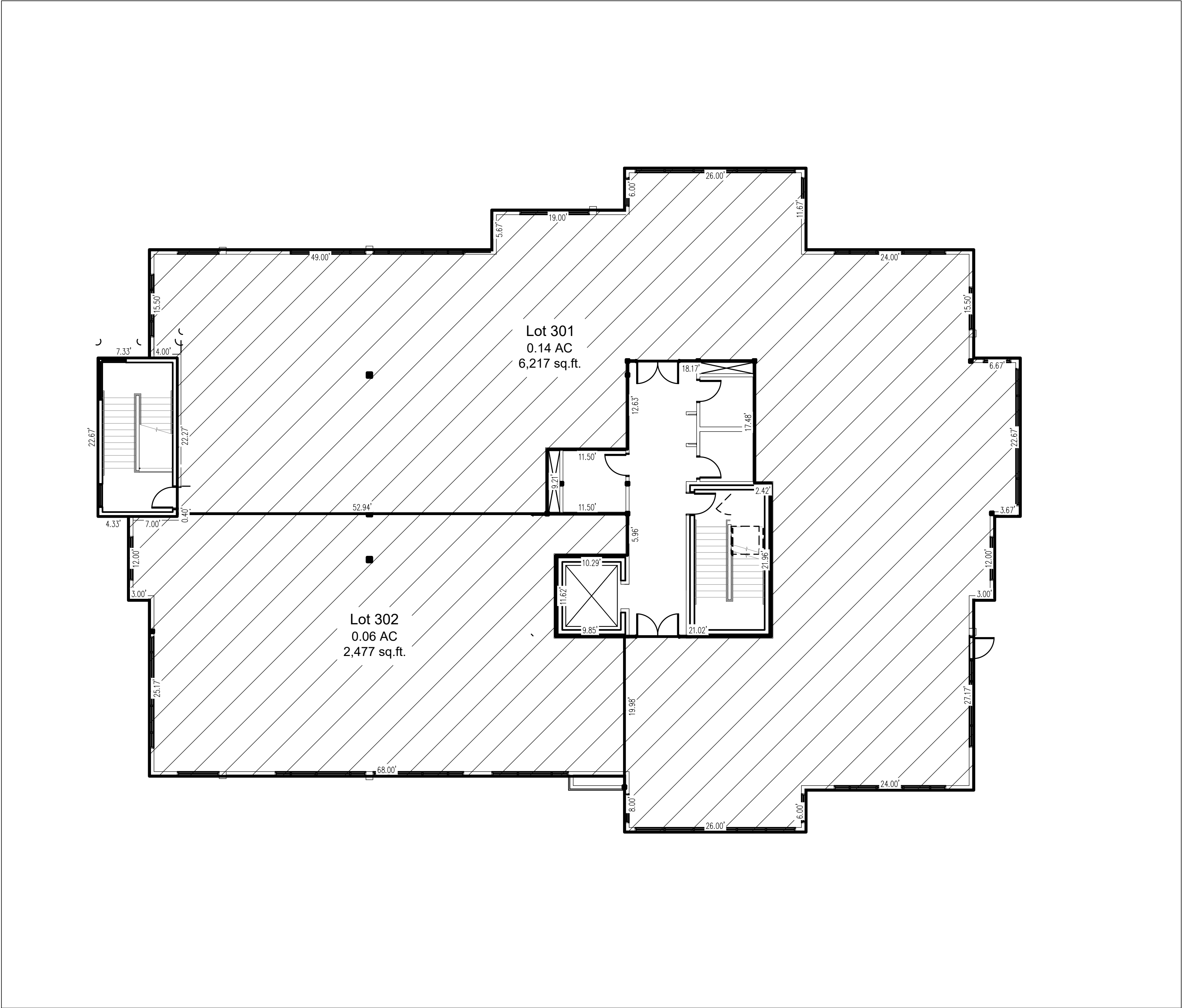
2ND FLOOR

Private Area

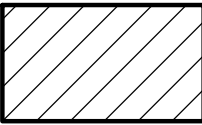
Common Area

UVHBA

PREPARED BY DUDLEY AND ASSOCIATES INC.	ENTRY No. _____
	STATE OF UTAH COUNTY OF _____
	RECORDED AND FILED AT THE REQUEST OF _____
	DATE _____ TIME _____ MAP _____
	Fee _____ COUNTY RECORDER _____

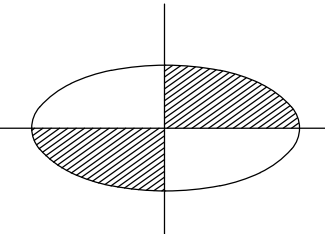


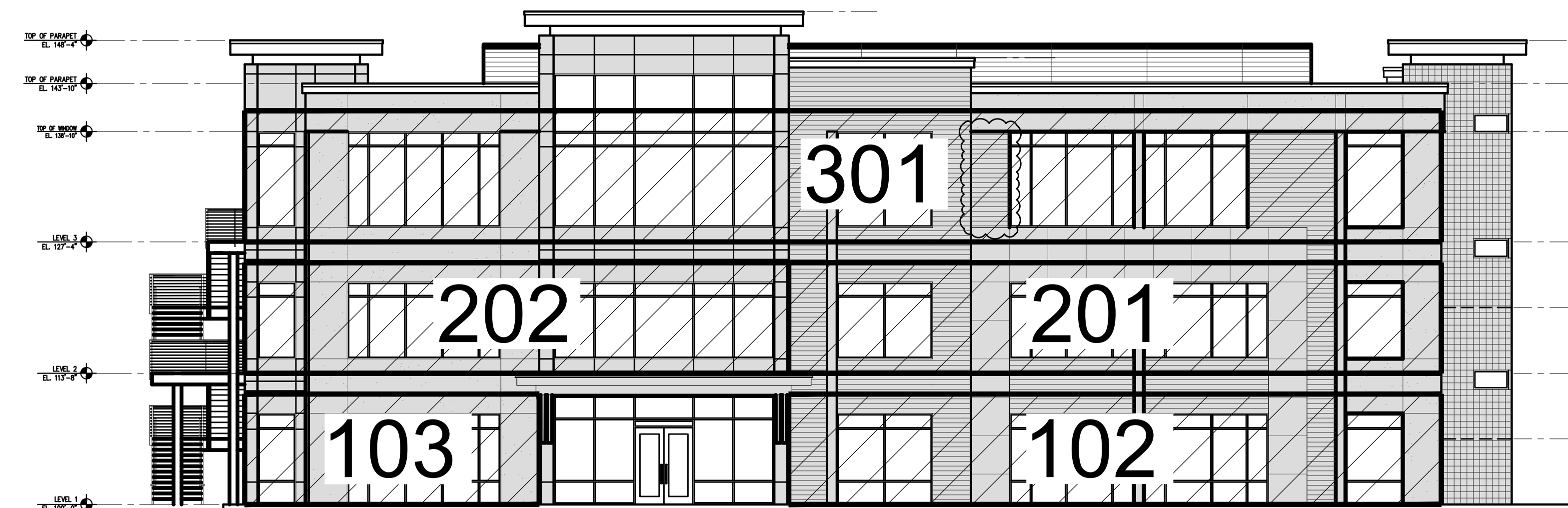
3RD FLOOR

-  Private Area
-  Common Area

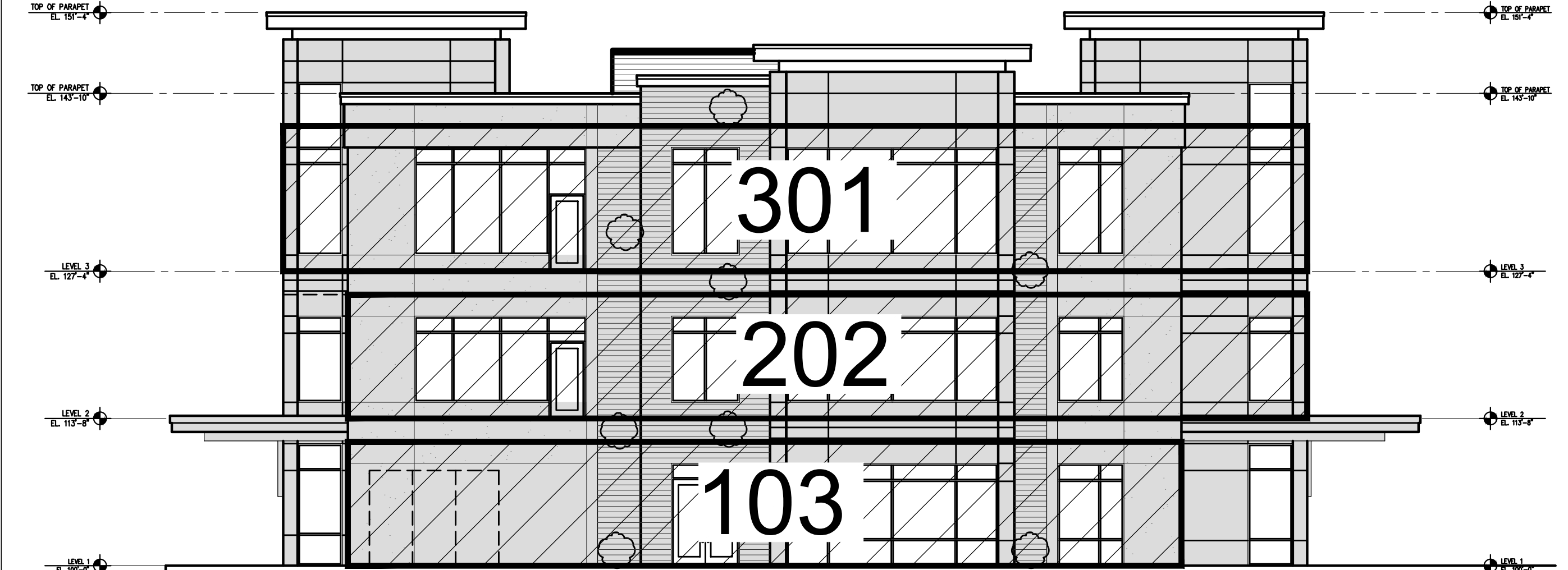
UVHBA

SHEET 3 OF 4 SHEET(S)

PREPARED BY	ENTRY No.
	STATE OF UTAH COUNTY OF
DUDLEY AND ASSOCIATES INC.	RECORDED AND FILED AT THE REQUEST OF
	DATE TIME MAP
	Fee COUNTY RECORDER



NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION



SOUTH ELEVATION



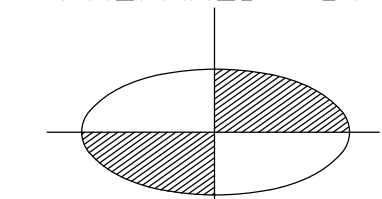
Private Area



Common Area

UVHBA

PREPARED BY



DUDLEY AND ASSOCIATES INC.

SHEET 3 OF 4 SHEET(S)

ENTRY No.

STATE OF UTAH

COUNTY OF

RECORDED AND FILED AT THE REQUEST OF

DATE TIME MAP

Fee

COUNTY RECORDER

Community Development

Date: October 10, 2018
From: Elizabeth Hart, Planner
To: City Council
Item: Consent
Address: 100 West and Center Street
Applicant: Mike Olsen, Vineyard Homesteads Development 2012



INTRODUCTION:

The applicant, Mike Olsen with Vineyard Homesteads Development, is requesting final plat approval for POD 4 Phase 3 of the Maples subdivision. The City Council approved a preliminary plat for POD 4 in August of 2013 and a final plat for Phase 3 in February 2017. The applicant has since updated the plat for phase 3, which required the applicant to go back through the final plat process. Changes to the phase 3 plat include a modified phasing boundary line. The previous phase 3 plat included 27 lots, the modified phase 3 plat now includes only 21 lots. No changes have been made to lots sizes or the streets. Staff is recommending approval of the modified POD 4 Phase 3 final plat of the Maples subdivision within the Homesteads development.

FINDINGS:

The proposed final plat is in conformance with the approved preliminary plat and the Homesteads Development Agreement with the following conditions:

- 1) The applicant makes any redline corrections prior to recording.
- 2) The applicant pays any outstanding fees.

ATTACHMENTS:

Final Plat Application
 POD 4 Phase 3 Final Plat

NOTE:
NO MORE THAN TWO HOUSES
IN A ROW SHALL BE LOCATED
ON THE SAME FRONT SETBACK.

EXISTING POD 4 PHASE 1

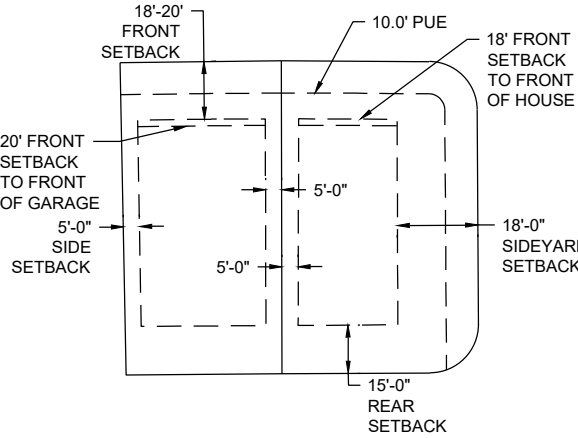
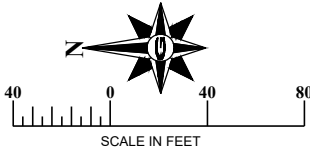
THE MAPLES, PHASE 3
LOCATED IN NORTHEAST QUARTER OF SECTION 18
TOWNSHIP 6 SOUTH, RANGE 2 EAST,
SALT LAKE BASE AND MERIDIAN

NOTES:

1. A ONE FOOT NON-VEHICULAR EASEMENT
IS REQUIRED ALONG THE REAR LOTS
ALONG CENTER STREET AND MAIN STREET
PER COUNCIL MEMBER RILEY.

2. CONTRACTOR SHALL VERIFY SEWER
DEPTHS BEFORE EXCAVATING FOR
BASEMENT. HOMES WITH BASEMENTS MAY
NOT HAVE SEWER SERVICES AVAILABLE
FOR BASEMENT.

3. TOWN OF VINEYARD WILL NOT BE
RESPONSIBLE FOR FLOODING IN THE
BASEMENTS DUE TO THE LAND DRAIN
SYSTEM.



TYPICAL SETBACK & PUE DETAIL

EAST QUARTER CORNER
SECTION 17,
TOWNSHIP 6 SOUTH,
RANGE 2 EAST,
SALT LAKE BASE & MERIDIAN
FOUND UTAH COUNTY
BRASS CAP IN CONCRETE

BASIS OF BEARING
S89°38'03"W 5362.75' (MEASURED)
S89°38'13"W RECORD
PER UTAH COUNTY STATE
PLANE COORDINATE AND
DEPENDENT RESURVEY NAD
83 UTAH CENTRAL ZONE

WEST QUARTER CORNER OF
SECTION 17, TOWNSHIP 6
SOUTH, RANGE 2 EAST, SALT
LAKE BASE & MERIDIAN,
FOUND UTAH COUNTY BRASS
CAP IN CONCRETE

POINT OF
BEGINNING

LEGEND

	FOUND UTAH COUNTY BRASS CAP MONUMENT AS DESCRIBED HEREON		STREET CENTERLINE
	SET REBAR & CAP OR NAIL & WASHER STAMPED "GILSON ENG" REBAR AND CAP NOT SET		SUBDIVISION BOUNDARY
	FOUND REBAR AND CAP		SUBDIVISION LOT LINE
	PROPOSED/EXISTING FIRE HYDRANT		ADJOINING PROPERTY LINES
	PROPOSED/EXISTING LIGHT POLE		SECTION LINE
			TIE LINES TO POINT OF BEGINNING
			RADIAL LINE
			NON-RADIAL LOTLINE

FUTURE POD 4 PHASE 4

NOTES:

1. CONTRACTOR SHALL VERIFY SEWER
DEPTHS BEFORE EXCAVATING FOR
BASEMENT. HOMES WITH BASEMENTS MAY
NOT HAVE SEWER SERVICES AVAILABLE
FOR BASEMENT.

2. TOWN OF VINEYARD WILL NOT BE
RESPONSIBLE FOR FLOODING IN THE
BASEMENTS DUE TO THE LAND DRAIN
SYSTEM.

VICINITY MAP



Lot Drainage - As approved and required by the Town of Vineyard

- At minimum, 50% of roof drains shall drain towards the street.
- All side downspouts are to be diverted toward the front or rear of the lot.
- Yards to be positively graded away from all window wells
- HOA's &/or homeowners are responsible for maintaining lot line drainage pathways through their properties per drainage plan.
- All runoff shall drain to an approved storm drain or be detained on individual lots.
- All lots shall meet the International Building Code standards and drain away from the structure.
- See drainage plan for grading and elevations.

Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	24.16	700.00	1°58'40"	S5° 32' 46"W	24.16
C2	200.79	1000.00	11°30'15"	N0° 46' 59"E	200.45
C3	199.97	2000.00	5°43'43"	N86° 51' 01"E	199.89
C4	40.51	1972.00	1°10'38"	N84° 34' 28"E	40.51
C5	24.95	15.00	95°18'46"	S47° 10' 50"E	22.17
C6	55.16	672.00	4°42'11"	S2° 49' 38"W	55.14
C7	15.91	672.00	1°21'22"	S5° 51' 25"W	15.91
C8	50.24	1028.00	2°48'00"	S5° 08' 07"W	50.23
C9	69.14	1028.00	3°51'12"	S1° 48' 31"W	69.13
C10	70.48	1028.00	3°55'41"	S2° 04' 56"E	70.46
C11	20.75	15.00	79°14'52"	S34° 39' 17"W	19.13
C12	6.47	15.00	24°42'04"	S77° 39' 13"E	6.42
C13	14.25	58.00	14°04'54"	S72° 20' 38"E	14.22
C14	43.15	58.00	42°37'28"	N79° 18' 11"E	42.16
C15	42.88	58.00	42°21'35"	N36° 48' 40"E	41.91
C16	48.03	58.00	47°26'45"	N8° 05' 30"W	46.67

Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C17	7.03	15.00	26°50'43"	N18° 23' 31"W	6.96
C18	30.98	972.00	1°49'34"	N4° 03' 22"W	30.98
C19	65.60	972.00	3°52'00"	N1° 12' 35"W	65.59
C20	65.75	972.00	3°52'33"	N2° 39' 41"E	65.74
C21	32.84	972.00	1°56'09"	N5° 34' 02"E	32.84
C22	32.40	728.00	2°33'00"	N5° 15' 36"E	32.40
C23	50.56	728.00	3°58'44"	N1° 59' 45"E	50.55
C24	22.95	15.00	87°40'50"	N43° 50' 47"E	20.78
C25	64.79	1972.00	1°52'56"	N88° 37' 40"E	64.78
C26	66.01	2028.00	1°51'54"	S88° 55' 25"W	66.01
C27	64.53	2028.00	1°49'23"	S87° 04' 47"W	64.53
C28	24.17	15.00	92°19'29"	S49° 05' 51"E	21.64
C29	14.44	322.00	2°34'10"	S1° 39' 02"E	14.44
C31	96.42	700.00	7°53'31"	S0° 38' 41"W	96.34
C32	23.56	15.00	90°00'00"	S44° 38' 03"W	21.21

ACCEPTANCE BY LEGISLATIVE BODY

VINEYARD PLANNING COMMISSION CHAIR	VINEYARD ATTORNEY
DATE ____/____/____	DATE ____/____/____
VINEYARD ENGINEER	VINEYARD CITY MANAGER
DATE ____/____/____	DATE ____/____/____
CLERK/RECORDER	
DATE ____/____/____	



I, JOSH F. MADSEN DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD LICENSE NO. 5152657 AS PRESCRIBED BY THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND THAT I HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS, BLOCKS, STREETS, AND EASEMENTS AND THAT THE SAME HAS OR WILL BE STAKED ON THE GROUND AS SHOWN ON THIS PLAT, AND SHALL BE HEREAFTER KNOWN AS THE MAPLES, PHASE 3 SUBDIVISION.

BOUNDARY DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 18 TOWNSHIP 6, SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, AND LOCATED IN THE TOWN OF VINEYARD, UTAH COUNTY, UTAH, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SITUATED SOUTH 89°38'03" WEST 1274.22 FEET ALONG THE EXTENDED CENTER SECTION LINE OF SECTION 17, AS DEFINED BY THE FOUND BRASS CAP MONUMENTS MARKING THE WEST QUARTER CORNER OF SECTION 17 AND THE EAST QUARTER CORNER OF SECTION 17 OF SAID TOWNSHIP AND RANGE, FROM THE EAST QUARTER CORNER OF SECTION 18 TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND NORTH 45.50 FEET TO THE POINT OF BEGINNING.
THENCE NORTH 0°08'38" WEST 85.80 FEET; THENCE NORTH 09°51'41" EAST 56.90 FEET; THENCE NORTH 0°03'46" EAST 258.37 FEET; THENCE NORTH 01°10'44" WEST 63.21 FEET; THENCE NORTH 01°19'17" WEST 183.23 FEET; THENCE NORTH 89°45'35" EAST 345.51 FEET; THENCE SOUTH 0°00'15" EAST 88.75 FEET; THENCE SOUTH 05°47'16" EAST 56.28 FEET; THENCE SOUTH 0°00'15" EAST 90.23 FEET; THENCE SOUTH 89°58'47" WEST 122.25 FEET; THENCE SOUTH 0°00'15" EAST 257.00 FEET; THENCE SOUTH 25°34'43" WEST 84.09 FEET TO A POINT ON A 322.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 14.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°34'10" (CHORD BEARING SOUTH 01°39'02" EAST 14.44 FEET); THENCE SOUTH 0°21'57" EAST 49.47 FEET TO A POINT ON A 15.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 23.56 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" (CHORD BEARING SOUTH 44°38'03" WEST 21.21 FEET); THENCE SOUTH 89°38'03" WEST 182.80 FEET TO THE POINT OF BEGINNING.

CONTAINS APPROX: 3.90 ACRES

CORPORATE ACKNOWLEDGMENT

STATE OF UTAH } S.S.
COUNTY OF UTAH
ON THE ____ DAY OF _____, A.D. 20____, PERSONALLY APPEARED BEFORE ME GLEN R. PETTIT, WHO BEING BY ME DULY SWORN DID SAY THAT HE IS THE MANAGER OF VINEYARD HOMESTEADS POD 6, LLC, BY PRO MANAGEMENT - UTAH, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND THAT THE WITHIN AND FOREGOING INSTRUMENT WAS SIGNED VOLUNTARILY FOR SAID CORPORATION AND FOR THE USES AND PURPOSES HEREIN MENTIONED.

VINEYARD HOMESTEADS POD 4, LLC
BY PRO MANAGEMENT- UTAH, LLC,
A DELAWARE LIMITED LIABILITY COMPANY
BY: _____
GLEN R. PETTIT, MANAGER

MY COMMISSION EXPIRES: _____ NOTARY PUBLIC RESIDING AT _____

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT _____, THE UNDERSIGNED OWNER(S) OF THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED SAME TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE HEREAFTER KNOWN AS

THE MAPLES POD 4, PHASE 3

DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE. THE OWNER(S) WARRANT AND DEFEND AND SAVE THE CITY HARMLESS AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCE ON A DEDICATED STREET WHICH WILL INTERFERE WITH THE CITY'S USE, MAINTENANCE AND OPERATION OF THE STREET.
IN WITNESS WHEREOF _____ HAVE HEREUNTO SET THIS ____ DAY OF _____ A.D. 20____

VINEYARD HOMESTEAD
DEVELOPMENT 2012, LLC

2264 WILLIAMSBURG CIR. WEST JORDAN, UT 84047

THE MAPLES, PHASE 3

LOCATED IN NORTHEAST QUARTER OF SECTION 18
TOWNSHIP 6 SOUTH, RANGE 2 EAST,
SALT LAKE BASE & MERIDIAN

Recorded # _____
State of Utah, County of UTAH, recorded and filed at the request of _____

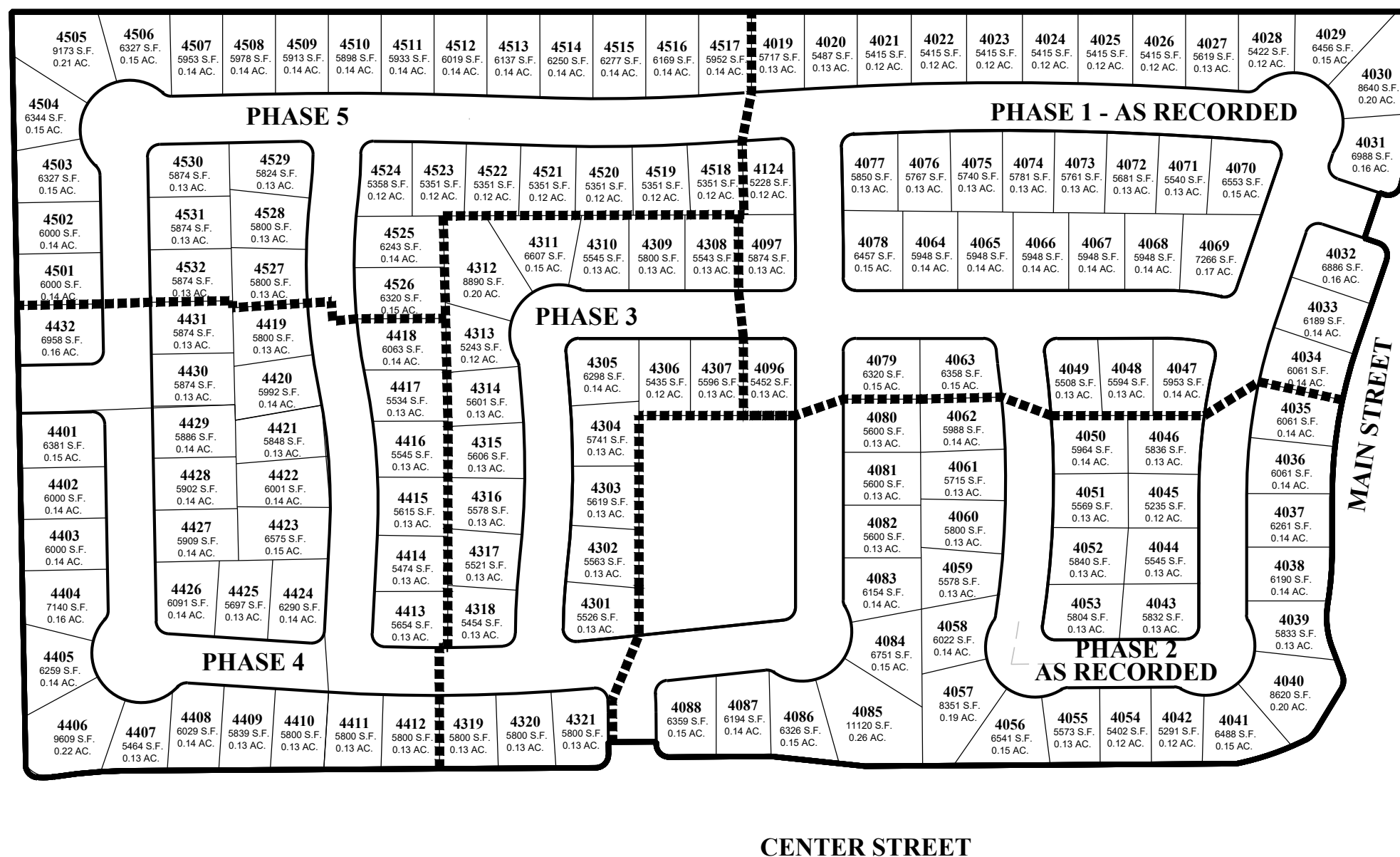
Date ____ Time ____ Book ____ Page ____

Fee \$ _____ Utah County Recorder

AIM.022

PG 1 OF 1

300 WEST



PHASE 2
DATE RECORDED:

PHASE 1 - 39 LOTS
PHASE 2 - 34 LOTS
PHASE 3 - 21 LOTS
PHASE 4 - 32 LOTS
PHASE 5 - 32 LOTS

08-14-2018

VINEYARD, UTAH
ORDINANCE NO. ____

An ordinance of the city of Vineyard granting to Qwest Corporation dba CenturyLink QC (“Franchisee”) and its affiliates a non-exclusive franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across the public rights of way ~~of~~ controlled by the City of Vineyard, prescribing certain rights, duties, terms, and conditions with respect thereto and establishing an effective date.

WHEREAS, Franchisee, has requested that the City grant it the right to install, operate, and maintain a telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority ~~under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah~~ to grant franchises for the use of ~~its the public ways (as hereinafter defined) it controls streets and other public properties~~; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

The City Council of the city of Vineyard, Utah does ordain as follows:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Affiliate” means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. “City” means the City of Vineyard, Utah.

C. “Communication(s) Service” shall mean any telecommunications services; ~~as defined in 47 U.S.C. § 153 telecommunications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable or copper cable. Communication Service shall also include non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.~~

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic and/or copper cable system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, conduits, ducts, poles, pedestals, cabinets, boxes and any associated ~~converter,~~ equipment, or other facilities within the ~~City’s~~ public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this ordinance or subsequently adopted ordinance, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

~~G. “Franchisee” means a corporation, or the lawful successor, transferee, assignee, or affiliate thereof.~~

H.G. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I.H. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service. ~~use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the City and the Franchisee the use thereof for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.~~

J.I. “Service Area” means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee's Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System, and to provide Communications Service.

Section 3. Construction Permits Required.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a construction permit pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit [or Section 10 of the Ordinance](#), the Franchisee shall give the City at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans ~~or maps~~ with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of [ten](#) _____ ([10](#)) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain [all lawful administrative and police](#) powers to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7. Omitted. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways ~~and other public properties~~ so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities ~~and joint trenching projects. By March 1st of each calendar year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.~~

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not ~~unreasonably~~ delay the work of the party causing the excavation to be made or ~~unreasonably~~ increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; ~~and~~ (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible; ~~and (4) as to City, such inclusion in Franchisee's project shall be for non-commercial, municipal purposes of the City only.~~

D. If the City should at any time after the installation of the facilities need the facilities moved for purposes of the City constructing, installing, maintaining, repairing or upgrading any public infrastructure of the City, the Franchisee shall bear all cost of the removal and replacement of the facilities. Except in cases of emergencies the City shall give the Franchisee ~~14~~ sixty (60) day's ~~advance written~~ notice of the City's need ~~to have specifying~~ the facilities ~~to be~~ moved.

| **Section 9. Restoration after Construction.** The Franchisee shall, after the installation,
construction, relocation, maintenance, removal or repair of its Communication Facilities within
the public ways restore the surface of said public ways and any other City-owned property that
| may be disturbed by the work to at least the same condition the public way or City-owned

property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. ~~The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City.~~

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second business day after the emergency. ~~second succeeding day during which the City Hall is open for business.~~

Section 11. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails ~~or refuses~~ to promptly take the actions directed by the City ~~or fails to fully comply with such directions~~, or if emergency conditions exist ~~which require immediate action~~, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof.

Section 12. Non-Liability of City for Acts of Franchisee. The City shall not ~~at any time~~ become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise; provided, however, that Franchisee shall have no obligation under this part for damage arising from the negligence or willful misconduct of City, its employees or contractors.

Section 13. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall ~~provide~~make available to the City for its inspection ~~an insurance certificate naming~~proof of insurance including the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such ~~insurance certificate~~proof of insurance (which is available at www.centurylink.com/moi) shall evidence:

A. Comprehensive general liability insurance written on an occurrence basis, including contractual liability coverage with limits inclusive of umbrella or excess liability coverage of not less than: (1) \$2,000,000 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance ~~certificate~~policy required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 14. Abandonment and Removal of the Franchisee's Communication Facilities. Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

Section 15. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Franchisee consistent with this section herein.

Section 16. Forfeiture and Revocation.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, extraordinary-unforeseeable acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ~~ten~~twenty (24) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike,

lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 17. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the reasonable exercise of its police powers in the interest of public safety and for the welfare of the public, ~~and including adopting a municipal telecommunication license tax under Utah Code 10-1401 et seq. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.~~

Section 18. Franchise Fee. ~~For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Franchisee of the City's Right-of-Way, the Franchisee will pay to the State of Utah for the benefit of the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended (the "Municipal Telecommunications Tax Act"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Act, and shall be paid by the Franchisee to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder. Compliance by the Franchisee with the terms and provisions of the Municipal Telecommunications Tax Act, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Franchise with respect to the calculation and payment of the Franchise Fee.~~

~~Franchisee acknowledges that the City currently has the authority to and has imposed an Utah Municipal Telecommunication License Tax in the maximum amount of 3.5% of the Delivered Value of taxable energy revenue, as set out in Title 10, Chapter 1, Part 4, of the Utah Code, Franchisee hereby agrees to pay a contractual franchise fee in the amount of 3.5% of the gross receipts for telecommunication services from a transaction for telecommunication services that is located in the City as determined for purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Act or its successor, beginning on or after the day on which Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act of Utah is (A) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-403 that Act is reduced; and (B) is not superseded by a law imposing a substantially equivalent tax.~~

Section 19. Omitted. Survival. ~~All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 11 Dangerous Conditions; 12 Non Liability of City for Acts of Franchisee; 13 Insurance; 14 Abandonment and~~

~~Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.~~

Section 20. Severability. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 21. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

~~Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.~~

Section 22. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:
Vineyard City
125 South Main
Vineyard Utah 84059
Atten: City Engineer

Franchisee:
Qwest Corporation d/b/a CenturyLink QC
250 E 200 S Ste 1000
Salt Lake City, UT 84111
Attention: Local Network Engineering & Construction

~~and with a copy to:~~

[Network Infrastructure Services](#)
[1025 Eldorado Blvd](#)

Broomfield, Co 80021
Attention: Director ROW

with a copy to:

(a) CenturyLink Law Department
931 14th St, 9th Floor
Denver, CO 80202
Attention: Network Attorney

and (b) such other offices as the Company may designate by written notice to the City.
Notice the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 23. Entire Franchise. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

Section 24. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party as determined by the court shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 25. Governing Law/Venue. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or ~~with respect to any federal question,~~ with the United States District Court for the District of Utah in Salt Lake City.

Section 26. Acceptance. Within sixty (60) days after the passage and approval of this

ordinance, this franchise shall be accepted by the Franchisee by ~~its~~ filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to ~~so~~ accept this franchise within said period ~~of time~~ shall be deemed a rejection thereof and the rights and privileges herein granted shall after the expiration of the sixty (60) day period, absolutely cease unless the time period is extended by ordinance duly passed for that purpose.

Section 27. Effective Date. This ordinance, shall take effect after the passage and posting of an approved summary thereof consisting of the title.

PASSED AND APPROVED this ____ day of _____, 20__.

CITY OF VINEYARD

By
Mayor

ATTEST:

City Clerk
(SEAL)

VINEYARD, UTAH
ORDINANCE NO. ____

An ordinance of the city of Vineyard granting to MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services. (“Franchisee”) and its affiliates a non-exclusive franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across the public rights of way of the City of Vineyard, prescribing certain rights, duties, terms, and conditions with respect thereto and establishing an effective date.

WHEREAS, Franchisee, has requested that the City grant it the right to install, operate, and maintain a telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

The City Council of the City of Vineyard, Utah do ordain as follows:

Section 1. Definitions. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. “Affiliate” means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.
- B. “City” means the City of Vineyard, Utah.
- C. “Communication(s) Service” shall mean any telecommunications services, telecommunications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable or copper cable. Communication Service shall also

include non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the City.

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic, ethernet and/or copper cable system constructed and operated within the City’s public ways and shall include all cables, wires, fibers, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the City, through this ordinance or subsequently adopted ordinance, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation, or the lawful successor, transferee, assignee, or affiliate thereof.

H. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the City in the Service Area which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the City and the Franchisee the use thereof for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.

J. “Service Area” means the present municipal boundaries of the City and shall include any additions thereto by annexation or other legal means.

Section 2. Authority Granted. The City hereby grants to the Franchisee its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the City for construction and operation of the Franchisee's Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System, and to provide Communications Service.

Section 3. Construction Permits Required.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a construction permit pursuant to the ordinances of the City presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the City at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this franchise shall be for a period of ~~Ten~~ (10) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the City and the Franchisee.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the City. However, the City shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the City Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the City from using any of its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7. Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content prescribed by the City Engineer. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital copies in a format specified by the City Engineer.

Section 8. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Utah.

B. The Franchisee shall cooperate with the City and all other persons with authority from the City to occupy and use the public ways of the City in coordinating construction activities and joint trenching projects. By March 1st of each calendar year, the Franchisee shall provide the City with a schedule of its proposed construction activities in, around, or that may affect the public ways of the City. The Franchisee shall also meet with the City and other grantees, franchisees, permittees, and other users of the public ways of the City annually or as determined by the City to schedule and coordinate construction activities. The City Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the City.

C. If either the City or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

D. If the City should at any time after the installation of the facilities need the facilities moved for purposes of the City constructing, installing, maintaining, repairing or upgrading any public infrastructure of the City the Franchisee shall bear all cost of the removal and replacement of the facilities. Except in cases of emergencies the City shall give the Franchisee ~~14~~not less than ninety (90) [A1] days' notice of the City's need to have the facilities moved.

Section 9. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways restore the surface of said public ways and any other City-owned property that may be disturbed by the work to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance

or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the City in accordance with the applicable ordinances of the City.

Section 10. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City Hall is open for business.

Section 11. Dangerous Conditions. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or City-owned property, the City Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, City-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the City for the reasonable costs thereof.

Section 12. Non-Liability of City for Acts of Franchisee. The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the City and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the City by reason of the exercise or arising out of the implementations of this franchise.

Section 13. Insurance. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the City for its inspection an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such insurance certificate shall evidence:

- A. Comprehensive general liability insurance written on an occurrence basis, including contractual liability coverage with limits inclusive of umbrella or excess liability coverage of not less than: (1) \$2,000,000 for bodily injury or death to each person; and (2) \$3,000,000 for property damages resulting from any one accident.
- B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of \$300,000 for each person and \$500,000 for each accident.
- C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 14. Abandonment and Removal of the Franchisee's Communication Facilities. Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the City within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the City.

Section 15. Modification. The City and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Franchisee consistent with this section herein.

Section 16. Forfeiture and Revocation.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the City ordinances.

B. If the City has reason to believe that the Franchisee is in violation of this franchise or other provisions of the City ordinances, the following procedures shall be followed by the City:

(1) The City shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the City, the City may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the City's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the City Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the City Council does not grant any additional period, the City Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default, failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike,

lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 17. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public and including adopting a municipal telecommunication license tax under Utah Code 10-1-401 et seq. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

Section 18. Franchise Fee. Franchisee acknowledges that the City currently has the authority to and has imposed an Utah Municipal Telecommunication License Tax in the maximum amount of 3.5% ~~of the Gross Receipts for Telecommunications Services from a transaction for Telecommunications Services that is located in the City as determined for purposes of sales and use taxes under Utah Code Title 59, Chapter 12 Sales and Use Act, and non-telecommunications services of the Delivered Value of taxable energy,~~ as set out in Title 10, Chapter 1, Part 4, of the Utah Code. Consistent with applicable law, Franchisee hereby agrees to pay a contractual franchise fee in the amount of 3.5% of the gross receipts for telecommunication services from a transaction for telecommunication services that is located in the City as determined for purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Act or its successor, beginning on or after the day on which Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act of Utah is (A) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-403 that Act is reduced; and (B) is not superseded by a law imposing a substantially equivalent tax.

Section 19. Survival. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 11 Dangerous Conditions; 12 Non-Liability of City for Acts of Franchisee; 13 Insurance; 14 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 20. Severability. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 21. Assignment. This Agreement may not be assigned or transferred without prior written notice to the City except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the City: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control ownership over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

Section 22. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

City:
Vineyard City
125 South Main
Vineyard Utah 84059
Atten: City Engineer

Franchisee:

Verizon Access Transmission Services
Attn: Franchise Manager
600 Hidden Ridge
Mailcode: HQE02E102
Irving, TX 75038

With Copy to (except for invoices):

Verizon Business Services, Inc.
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network & Technology

Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the U.S. mail, certified, postage prepaid in the case of regular mail, or next business day in the case of overnight delivery.

Section 23. Entire Franchise. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the City and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the City nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

Section 24. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 25. Governing Law/Venue. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the City is located, or ~~with respect to any federal question, with~~ the United States District Court for the District of Utah in Salt Lake City.

Section 26. Acceptance. Within sixty (60) days after the passage and approval of this ordinance, this franchise shall be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof and the rights and privileges herein granted shall after the expiration of the sixty (60) day period, absolutely cease unless the time period is extended by ordinance duly passed for that purpose.

Section 27. Effective Date. This ordinance, shall take effect after the passage and posting of an approved summary thereof consisting of the title.

PASSED AND APPROVED this ____ day of _____, 20__.

CITY OF VINEYARD

By _____
Mayor

ATTEST:

City Clerk
(SEAL)

**VINEYARD
ORDINANCE 2018-14**

**AN ORDINANCE OF THE VINEYARD CITY COUNCIL AMENDING THE VINEYARD
MUNICIPAL CODE BY ADDING CHAPTER 5.18 TOWING LICENSING REQUIREMENTS AND
SECTION 10.04.060 TOWING REGULATIONS.**

WHEREAS, the Vineyard City Council has the authority under Utah Code 10-3 to amend the municipal code; and

WHEREAS, the City Council has determined that it is in the best interest of the citizens of the city to regulate the towing practices within the city limits; and

NOW THEREFORE, be it ordained by the mayor and City Council of Vineyard, in the State of Utah, as follows:

SECTION 1: **ADOPTION** “5.18 Towing License” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18 Towing License(*Added*)

SECTION 2: **ADOPTION** “5.18.020 Definitions” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.010 Definitions(*Added*)

The following terms, as used in this chapter, shall have the meanings indicated. However, in the event of a conflict between a definition in this chapter and a definition set forth in Utah code section 72-9-102, the latter definition shall apply.

AUTHORIZED VEHICLE: A vehicle parked on private property for which permission has been granted to park such vehicle.

BOOT: The use of a device by a parking enforcement or tow truck service business to temporarily immobilize, disable, or electronically monitor a vehicle for purposes of enforcing parking restrictions.

MOTOR CARRIER: A person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property by a commercial vehicle on a highway within the state of Utah and includes a tow truck service business.

PARKING ENFORCEMENT OPERATION: The providing of parking enforcement services for compensation within the corporate limits of Vineyard City.

PARKING ENFORCEMENT SERVICE: The practice of booting vehicles without the owner's consent for the purpose of enforcing parking restrictions on public streets, private property, or public parking lots restricted to use.

PERSON: An individual, firm, partnership, corporation, company, association, or joint stock association.

TOW TRUCK: A motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, or impounded vehicles from a highway or other place by means of a crane, hoist, tow bar, tow line, dolly, tilt bed, or other means.

TOW TRUCK SERVICE: The functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

TOWING OPERATION: The providing of tow truck services for compensation within the corporate limits of Vineyard City, whether or not the towing extends beyond the city limits. Towing operations also include the storage of a towed vehicle, pending its return to the owner thereof by the person or the agent who towed such vehicle.

SECTION 3: **ADOPTION** “5.18.030 License Required; Scope” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.020 License Required; Scope(*Added*)

1. License Required: Except as otherwise provided in this section, it is unlawful for any person, tow truck motor carrier, or person with a place of business located within Vineyard City, to conduct a towing or parking enforcement operation within the corporate limits of Vineyard City without a Vineyard City business license authorizing such operations.
2. License Exemption: No Vineyard City business license is required to conduct a towing or parking enforcement operation if:
 - a. A tow truck motor carrier has a county or municipal business license for a place of business located within a county or municipality other than Vineyard City but within the state of Utah.
 - i. Information Required: Notwithstanding the foregoing, a business which conducts towing operations within Vineyard City shall first provide the following information to the Vineyard City business license office:
 - (1) Business name, address, and telephone number;
 - (2) Evidence of a current business license issued by another municipality or a county within Utah;
 - (3) Current fee schedule;
 - (4) Identification of vehicle operators employed by the business;
 - (5) Description, vehicle identification number, and license number of each tow truck used in the business; and
 - (6) Evidence of the surety bond and property damage insurance required by subsections 5.18.030 A7 and A8 of this chapter.
 - ii. Current Information: If any of the information in subsections B1a(1) through B1a(6) of this section changes, the business shall deliver current information to the

Vineyard City business license office within ten (10) business days following the change.

- iii. Certificate Issued: Upon receipt of a complete application, a certificate may be issued to a business which conducts towing or parking enforcement.
- iv. Certificate Renewal: A certificate issued under this chapter shall be renewed annually by showing conformity with subsections B1a(1) through B1a(6) of this section.
- v. Denial, Suspension, And Revocation Of Certification: Failure to provide changes as required by subsection B1b of this section to the Vineyard City business license office, failure to comply with the requirements in subsections B1a(1) through B1a(6) of this section, and any violation of section 10.40.060 of this code, as applicable, shall be grounds for denial, suspension, or revocation of any certification issued under this chapter.

SECTION 4: **ADOPTION** “5.18.040 License Application” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.030 License Application(*Added*)

1. Application: An application for a business license to conduct a towing or parking enforcement operation shall be filed in writing with the Vineyard City business license office, as set forth in section 5.02 of this title. In addition to the information required by such section, the license application shall include:
 - a. The business name, which cannot be substantially similar to the name of any Vineyard City department responsible for parking enforcement or tow truck services;
 - b. Identification of vehicle operators employed by the business;
 - c. A description, vehicle identification number, and license plate number of each tow truck and parking enforcement vehicle used in the business;
 - d. A valid driver license and certification card issued by the Utah department of transportation for each tow truck driver;
 - e. Current department of transportation certificates for each tow truck motor carrier, tow truck, and driver;
 - f. A statement disclosing whether any person listed in the application or any driver employed by the business has ever been convicted of a felony or misdemeanor, other than minor traffic tickets, and if so, the nature of the offense, and where and when it was committed;
 - g. Competent evidence of a surety bond of one thousand dollars (\$1,000.00) from good and sufficient sureties to ensure continued compliance with this chapter;
 - h. Competent evidence of valid property damage liability insurance in the amount of twenty five thousand dollars (\$25,000.00) issued by an insurance company authorized to do business in the state of Utah with the applicant named as an insured, including the policy number and insurance company name;
 - i. Competent evidence that the tow truck service business stores vehicles in a secure towing and impound yard that complies with state law; and
 - j. A list of current fees for all services performed by the business.
- 2.

Change Of Information: If any of the information in subsections A1 through A10 of this section changes, the business shall deliver current information to the Vineyard City business license office within ten (10) business days following the change.

3. Denial, Suspension, And Revocation Of License: Failure to provide changes as required by subsection B of this section to the Vineyard City business license office, failure to comply with the requirements in subsections A1 through A10 of this section, and any violation of section 10.40.060 of this code, as applicable, shall be grounds for denial, suspension, or revocation of any business license issued under this chapter.

SECTION 5: **ADOPTION** “5.18.050 License Issuance And Renewal” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.040 License Issuance And Renewal(*Added*)

1. License Issuance: Upon receipt of a complete application, a business license may be issued to a business which conducts towing or parking enforcement operations and which has a principal place of business within the corporate limits of Vineyard City.
2. License Renewal: A business license issued under this chapter may be renewed by showing conformity with subsections 5.18.030 A1 through A10 of this chapter and section 10.40.060 of this code.

SECTION 6: **ADOPTION** “5.18.060 License Fees” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.050 License Fees(*Added*)

The fee for a business entity desiring to provide tow truck or parking enforcement services within Vineyard City shall be as shown on the consolidated fee schedule adopted by the municipal council. Such fee shall be in addition to any other fee and shall be assessed in consideration of the expense incurred by the city to conduct required background checks prior to issuing a license.

SECTION 7: **ADOPTION** “5.18.070 Duty To Display License” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.060 Duty To Display License(*Added*)

1. Every employee of a towing or parking enforcement business shall personally carry:
 - a. A valid Utah driver license which allows for operation of a tow truck or parking enforcement vehicle;
 - b. In the case of tow truck operators only, evidence of a personal certification card issued by the Utah department of transportation;
 - c. Evidence of a valid business license or certificate issued by Vineyard City, if a license or certificate is required pursuant to chapter 5.18.020 of this chapter; and
 - d. A business identification card giving the name, address and phone number of the business and identifying the operator as an employee thereof.

SECTION 8: **ADOPTION** “5.18.070 Investigation By Police Department” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.080 Investigation By Police Department(*Added*)

1. Each application for a license shall be referred to the Utah County Sheriff's Office, which may investigate to determine compliance with the requirements in this section.
2. Background checks may be conducted on all employees of a business desiring to obtain a license under this chapter.
3. A business license may be denied if a background check discloses any of the following:
 - a. Conviction of a crime or any pending criminal citation or information not yet adjudicated involving moral turpitude, theft, narcotics, illegal drugs, or property damage unless a period of not less than five (5) years has elapsed from the date of the conviction or the date of release from confinement for such offense, whichever is later; or
 - b. Conviction of a felony for any reason unless a period of not less than ten (10) years has elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later.
 - c. Any person aggrieved by a decision to deny a business license may appeal such decision in accordance with section 5.02.100 of this title.

SECTION 9: **ADOPTION** “5.18.080 Storage Of Tow Trucks” of the Vineyard Municipal Code is hereby *added* as follows:

A D O P T I O N

5.18.080 Storage And Parking Of Tow Trucks(*Added*)

1. Tow trucks shall not be parked within a residential neighborhood or residential district.
2. Tow trucks must be stored in approved locations.

SECTION 10: AMENDMENT “10.04.060 Towing Regulations” of the Vineyard Municipal Code is hereby *amended* as follows:

A M E N D M E N T

10.04.060 Towing Regulations

1. Definitions: The definitions set forth in section 5.18.010 of this code shall apply to this section.
2. Towing Generally: An owner or a person in lawful possession or control of real property may, to the extent authorized by this section, tow away or boot any unauthorized vehicle located on the property. An unauthorized vehicle is any vehicle parked or stopped in violation of private property parking regulations which govern parking for authorized tenants and visitors or which restrict parking in a loading zone, handicapped zone, fire lane, or a no parking zone.
3. Towing Request: No person may conduct a towing or parking enforcement operation unless:
 - a. Authorized by the owner of the private property on which the vehicle is located, or the owner's agent; or
 - b. Requested by a peace officer or by an order of a person acting on behalf of a law enforcement agency.
4. Report Towing To Law Enforcement: Except as otherwise ordered by a peace officer or a person acting on behalf of a law enforcement agency, after performing a towing operation without the vehicle owner's knowledge, the tow operator shall report the towing of the vehicle to the Utah Valley Dispatch Special Service District within the soonest of one (1) hour or immediately upon arriving at the place of storage or impound of the vehicle using the current published nonemergency telephone number of the Utah County Sheriff's Office. The report shall include:
 - a. The vehicle's description, including its vehicle identification number and license number or other identification number issued by a state agency;
 - b. The name of the person, firm, or corporation impounding or towing the vehicle;
 - c. The name of the person who requested removal of the vehicle;
 - d. The date, time, and location of the vehicle's removal;
 - e. Reason(s) for removal of the vehicle;
 - f. The location where the subject vehicle will be kept; and
 - g. A telephone number, staffed twenty-four (24) hours a day, which an owner can call to arrange for release of the vehicle.
5. Towing Criteria: No person may conduct a towing or parking enforcement operation other than on a vehicle which has been continuously parked for more than seventy two (72) hours, unless:
 - a. "No parking" areas, restricted parking spaces, and visitor parking spaces, if any, are clearly marked with signage installed in such a manner as to provide adequate notice to those utilizing the parking area, including marking of the boundaries between the subject parking lot and any adjoining parking lot owned by another person; and
 - b. A conspicuous sign posted at, or immediately adjacent to, each entrance to the property provides notice that unauthorized vehicles may be towed from the parking lot or booted. Each such sign shall:
 - i. Be at least eighteen inches by twenty four inches (18" x 24") in size;
 - ii. Give warning, in large reflective lettering, that unauthorized vehicles may be towed or booted;

- iii. Give the name and telephone number of business(es) authorized to conduct a towing or parking enforcement operation on private property;
 - iv. State the parking enforcement towing operation on private property;
 - v. Be posted within approximately five feet (5') of each entrance to a parking lot..
 - (1) For purposes of this subsection, a "parking lot entrance" shall mean any access allowing the entrance or exit of a vehicle between a private parking lot and a city street unless such access is not the property of the parking lot owner. In such case, the parking lot entrance shall mean:
 - (A) The intersection of the parking lot property line and the property line of the access point; or
 - (B) Any privately owned road connected to a public right of way leading to the entrance of a parking lot located on private property.
 - (2) A sign posted directly over a driveway leading to an underground lot shall be deemed to meet the location requirements of this subsection.
 - (3) If signs cannot be posted within five feet (5') from the entrance to a parking lot for reasons of practical difficulty (such as the necessity of drilling a hole through concrete, removing a tree or shrubs, or because of an immediately adjacent private driveway not owned by the owner of the parking lot), a sign may be placed as close as reasonably practicable to the parking lot entrance. However, no sign shall be further than thirty feet (30') from the edge of the curb that borders the private property.
 - (4) In addition to the requirements under subsection E2, any additional signs posted within or on the private real property further designating parking restrictions, must meet the requirements listed under subsections E2a through E2d.
6. Towing On Private Property: No person may conduct a towing or parking enforcement operation regarding a vehicle located on private property unless:
- a. The owner of the subject real property or the owner's agent:
 - i. Conforms to the requirements of subsections F2a and G of this section;
 - ii. Discloses in writing to each tenant of the property when the tenant first occupies the property:
 - (1) The rules which govern the use of parking areas;
 - (2) That parking a vehicle in violation of such rules may subject the vehicle to a towing or parking enforcement operation; and
 - (3) That the tenant may contest a towing or parking enforcement operation as provided in this chapter;
 - b. The towing or parking enforcement business conducting the operation:
 - i. Except as otherwise provided in subsection G of this section, receives from the property owner or the owner's agent, who shall not be affiliated in any way with the towing or parking enforcement business, a written or telephonic request for each towing or parking enforcement of a particular vehicle;
 - ii. Posts a copy of the towing or parking enforcement business's fee schedule in a prominent place at the location where vehicles are released from storage; and
 - iii. Maintains personnel authorized to release any vehicle to its owner twenty four (24) hours each day and who can respond within one hour of a request for release of a vehicle;
 - c. The towing or parking enforcement business employee who conducts, or attempts to conduct, a towing or parking enforcement operation:
 - i. Wears either:
 - (1) A readily identifiable shirt, blouse, or other top article of clothing with the

- name of the business and the first name of the employee contained thereon and readable from a distance of six feet (6'); or
- (2) A prominently visible identification badge on the front of employee's clothing with the name of the business and the first name of the employee contained thereon and readable from a distance of six feet (6');
- ii. Possesses evidence of:
- (1) Either a written or telephonic towing or parking enforcement request from the property owner or the owner's agent, or the contract required by subsection G of this section and a license or certification as a Vineyard City qualified towing or parking enforcement business, and
- (2) The fee schedule required by subsection F2b of this section;
- iii. Upon request, provides the name and telephone number of the property owner or owner's agent, and shows the evidence required by subsection F3b of this section to:
- (1) A person whose vehicle is subject to the towing or parking enforcement operation; and
- (2) Any law enforcement officer;
- iv. Prior to mechanically connecting a vehicle to a tow truck or booting a vehicle, documents, through the use of date and time stamped digital photography or digital video, the precise nature of the violation of the private property parking regulations; and
- v. Upon booting a vehicle, places a notice on the driver's door window which indicates:
- (1) In large letters (24 - 36 font size), "This vehicle has been booted";
- (2) The name and telephone number of the towing or parking enforcement business and the name of the person that immobilized the vehicle;
- (3) A telephone number, staffed twenty four (24) hours a day, which the vehicle owner may call to arrange for release of the vehicle;
- (4) Applicable fees; and
- (5) The following statement: A person who tows or boots a vehicle unlawfully may be subject to criminal and civil penalties as provided in Vineyard City Code 10.40.060. A person whose vehicle is towed or booted shall be entitled, upon request, to the name and telephone number of the owner of the property or owner's agent where the tow or boot occurred.
- vi. Upon towing a vehicle, takes the vehicle directly to a storage lot that complies with the requirements of state law and this Section; and is no further than five (5) miles from the city of Vineyard.
- vii. Once the vehicle is mechanically connected to the tow truck, the tow operator . may only disconnect the vehicle:
- (1) Upon arrival at the storage lot;
- (2) To release the vehicle to the driver, owner, or owner's agent; or
- (3) To abandon the tow and leave the vehicle where the tow operator originally found it.
- d. Any person conducting a towing or parking enforcement operation of a vehicle located on private property shall:
- i. Maintain the documentation required under subsection F3d of this section for no less than one year;
- ii. Make available, prior to taking payment for the towing or parking enforcement operation, a copy of the documentation required under subsection F3d of this

section, upon request by any of the following:

- (1) The driver or owner of the vehicle that was subject to the towing or parking enforcement operation, or the owner's agent; and
 - (2) Any law enforcement officer; and
 - iii. Prior to taking any payment related to a towing or parking enforcement operation, provide the driver or owner of the towed or booted vehicle, or the owner's authorized agent, with a statement of the owner's rights regarding towing and parking enforcement operations that has been approved by the Vineyard City Mayor's Office.
- 7. Towing Request Exemption: The written or telephonic request required under subsection F2a of this section prior to initiating a towing or parking enforcement operation is not required if all of the following requirements are met:
 - a. The towing or parking enforcement business conducting the towing or parking enforcement operation has been designated as a Vineyard City qualified towing or parking enforcement business by the Mayor, or the Mayor's designee:
 - i. A licensed towing or parking enforcement business may seek this qualification by completing and signing a written application on a form provided by the city.
 - ii. The licensed applicant business shall be granted this qualification upon satisfying the Mayor, or the Mayor's designee, that the applicant's business operations comply with all the contractual obligations required under subsection G3 of this section.
 - b. The owner of the property where the towing or parking enforcement operation takes place complies with all the contractual obligations required under subsection G3 of this section; and
 - c. The towing and parking enforcement business and the private property owner must have, and comply with, a contract that contains provisions documenting and requiring all of the following:
 - i. A right of appeal to the property owner by the owner or operator of the vehicle booted or towed;
 - ii. The right of the property owner to grant the appeal and waive part or all of the fees and charges incurred by the appellant;
 - (1) A documented plan for providing adequate visitor parking;
 - (2) Reasonable, as determined by the Mayor or the Mayor's designee, temporary permit parking on a 24/7 availability basis for any property where the owner requires permit parking;
 - (3) Signage that, in the Mayor or Mayor's designee's reasonable opinion, provides fair notice to all persons of all limitations on parking on the property; and
 - (4) A limitation of the towing or parking enforcement operator's total maximum fees and charges for booting or otherwise immobilizing a vehicle to sixty dollars (\$60.00) and the total maximum fees and charges for towing a vehicle to one hundred seventy five dollars (\$175.00), including the first day of storage (subsequent days of storage may be charged in accordance with the rules and rates set forth in rule R909-19-13, Utah administrative code).
 - d. It is a violation of this section to conduct a towing or parking enforcement operation without a written or telephonic request pursuant to this subsection G if either party to a contract described in subsection G3 of this section fails to comply with a contract provision required under subsection G3 of this section.
 - e. Appeals by towing or parking enforcement operators or property owners of decisions by the Mayor, or the Mayor's designee, made under this subsection G may be appealed to the

8. Towing and Booting Administrative Code: A towing or parking enforcement business shall remove a vehicle from a site sooner than two (2) hours after the time of booting.
9. Payment for Towed Vehicle: Except as otherwise provided in this section, a towing or parking enforcement business conducting a towing or parking enforcement operation pursuant to this section shall release the subject vehicle to its owner or agent immediately upon payment of applicable fees authorized by this section or by rule R909-19, Utah administrative code, as amended.
- a. The towing or parking enforcement business shall accept payment offered in cash or by major credit card, but shall not be obligated to accept checks or payment in coins and shall maintain sufficient cash on hand to make change of up to forty dollars (\$40.00).
 - b. Every towing or parking enforcement business providing services pursuant to this subsection shall post in a conspicuous place upon its business premises a true copy of this section.
 - c. A parking enforcement business shall be limited to a maximum booting fee, per vehicle, of fifty percent (50%) of the maximum towing rate for non-consent tows as provided in rule R909-19-12, Utah administrative code, and may not charge any other fee for a parking enforcement operation. If an immobilized vehicle is towed, no fee of any kind relating to booting may be charged in addition to towing, storage, or other applicable fees. If a vehicle is towed or booted unlawfully, no fee shall be payable.
 - d. If the vehicle owner or agent arrives at the vehicle before the towing or parking enforcement operator has mechanically connected the vehicle to a tow truck or booting device, the towing or parking enforcement operator shall:
 - i. Not continue to tow or boot the vehicle; and
 - ii. Not be entitled to tow or boot the vehicle or to charge any fee whatsoever if the vehicle is promptly removed from the premises.
 - e. If a tow truck is mechanically connected to a vehicle, the tow truck shall be in possession of the vehicle. If the vehicle owner or agent attempts to retrieve the vehicle before the vehicle is removed from the property, the maximum towing or parking enforcement fee shall not exceed fifty percent (50%) of the posted rate schedule.
 - f. No parking enforcement fee, other than fees authorized by this subsection, shall be charged as a condition of releasing a booted vehicle.
 - g. A vehicle shall be released immediately upon payment of any required fees authorized by this section.
10. No Consideration For Towing Agreements: Property owners, managers, or their agents shall not receive any consideration whatsoever from any towing or parking enforcement business in exchange for utilizing such business's services to tow or boot unauthorized vehicles from the owner's property or for entering into a services agreement with a towing or parking enforcement business.
11. Towing Damages: Any person acting to remove or otherwise disturb any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling such private property, or either of them, shall be liable to the owner, owner's agent, or driver of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of such vehicle which does not comply with the requirements of this section.
12. Criminal Penalties: It shall be unlawful to:
- a. Tamper with or remove from a vehicle a lawfully installed boot without the authorization of the towing or parking enforcement operator who applied the boot, which authorization shall not be withheld in violation of state or local law; and

- b. To disconnect a vehicle mechanically connected to a tow truck without the authorization of the towing or parking enforcement operator lawfully in possession of the vehicle, which authorization shall not be withheld in violation of state or local law.
- c. Violation of this subsection or any subsection or provision of this section is a class B misdemeanor.

13. Civil Penalties: In addition to any other penalty, a civil action for damages or to abate a violation of this chapter may be brought by any aggrieved person.

- a. A person who authorizes, tows, or immobilizes a vehicle from private property in violation of the provisions of this section is liable in a civil action for a penalty of up to five hundred dollars (\$500.00) as the court may determine. A civil action under this subsection may not be commenced later than one hundred eighty (180) days after occurrence of the violation.
- b. Lack of compliance with the requirements of subsections E, F, and G of this section shall be prima facie evidence of a violation of this section.
- c. The remedies provided for in this subsection shall be cumulative and not exclusive.
- d. Nothing in this section shall preclude prosecution of any crime, including, but not limited to, criminal mischief, fraud, and theft.

SECTION 11: REPEALER CLAUSE All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 12: SEVERABILITY CLAUSE Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 13: EFFECTIVE DATE This Ordinance shall be in full force and effect from 10.10.2018 and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE VINEYARD COUNCIL _____.

	AYE	NAY	ABSENT	ABSTAIN
Mayor Julie Fullmer	_____	_____	_____	_____
John Earnest	_____	_____	_____	_____
Tyce Flake	_____	_____	_____	_____
Chris Judd	_____	_____	_____	_____
Nathan Riley	_____	_____	_____	_____

Presiding Officer

Attest

Julie Fullmer, Mayor, Vineyard

Pamela Spencer, City Recorder Vineyard