

**TOWN OF LEEDS  
ORDINANCE 2016-04  
ZONING AGREEMENT FOR THE GRAPEVINE WASH PROPERTIES**

**AN ORDINANCE OF THE TOWN COUNCIL OF LEEDS, UTAH, AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED ZONING AGREEMENT WITH THE PROPERTY OWNERS OF "GRAPEVINE WASH"**

**WHEREAS, the Town previously approved agreements with various property owners for a development known as Grapevine Wash; and**

**WHEREAS, such agreements included zoning of the affected property; and**

**WHEREAS, certain disputes have arisen between the owners of the Grapevine Wash properties and the Town regarding the initial agreements between the Town and the Grapevine Wash properties which resulted in a suit being filed by the property owners against the Town; and**

**WHEREAS, the owners of the property comprising the Grapevine Wash development have requested that the property be rezoned; and**

**WHEREAS, the Town, in accordance with applicable state laws and Town ordinances, have considered the request to rezone the property and have found that it is in the Town's best interest to rezone the property as requested by the affected property owners; and**

**WHEREAS, as part of the rezoning of the property, it is necessary to do away with the agreements attendant to the initial approvals of the Grapevine Wash development; and**

**WHEREAS, the Town wishes to satisfactorily resolve all disputes with the owners of the property comprising Grapevine Wash which led to the filing of legal action against the Town; and**

**WHEREAS, to resolve such disputes and rezone the property, it is expedient to enter into a Zoning Agreement between the Town and the owners of the Grapevine Wash properties; and**

**WHEREAS, the Town Council finds it in the best interests of the Town to enter into said Zoning Agreement;**

**THEREFORE, BE IT RESOLVED** by the Town Council of Leeds, Utah, that the Mayor is hereby authorized to execute the attached Zoning Agreement once properly signed by each of the "Grapevine Wash" property owners.

**ORDINANCE 2016-04** was adopted on May 25, 2016 and became effective on 25 day of May, 2016.

**ROLL CALL VOTE:**

**MAYOR: WAYNE PETERSON**  
**COUNCILMEMBER: ANGELA ROHR**  
**COUNCILMEMBER: RON CUNDICK**  
**COUNCILMEMBER: ELLIOTT SHELTMAN**  
**COUNCILMEMBER: NATE BLAKE**

Yea	Nay	Abstain	Absent
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Signed: \_\_\_\_\_



Wayne Peterson  
Mayor

Attest: \_\_\_\_\_



Kristi Barker  
Clerk/Recorder

WHEN RECORDED RETURN TO:

Town of Leeds  
Attn: Town Clerk/Recorder  
218 North Main Street  
Leeds, UT 84746

**ZONING AGREEMENT  
FOR THE GRAPEVINE WASH PROPERTIES**

THIS ZONING AGREEMENT ("Zoning Agreement") is entered into this \_\_\_\_ day of May, 2016 (the "Effective Date"), by and among Capital Funding Limited Company, LLC (as successor in interest to the Vijaya L. Sharma Family Trust), MISI Investments LLC, MSH Investments, LLC, Tuscan Lenders Group, L.L.C. and The Simkins 1975 Trust (individually each shall be "Land Owner" and collectively "Property Owners") and the TOWN OF LEEDS, a municipality and political subdivision of the State of Utah (the "Town"). Land Owner, Property Owners and the Town are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

A. Property Owners are the owners of approximately 369.26 acres of real property located in the Town as more fully described in Exhibit A which is attached hereto and incorporated by this reference (the "Grapevine Wash Properties"). The Property Owners and the Town entered into that certain Annexation and Development agreement dated October 28, 2009 (the "Annexation and Development Agreement").

B. Certain disputes have arisen between the Parties with respect to the interpretation of the Annexation and Development Agreement which led to the filing of that certain Amended Petition for Review and Complaint in the Fifth Judicial District Court in and for Washington County, State of Utah, Civil No. 140500462 (the "Litigation").

C. Property Owners have made application to the Town to rezone their respective properties as depicted on the property ownership and proposed zoning map attached hereto as Exhibit B and incorporated herein by this reference (the "Zoning Map").

D. It is the intent of this Zoning Agreement to provide for the future development of the Grapevine Wash Properties in accordance with the Zoning Map and in compliance with the current provisions of the Town's Code, Land Use Ordinance, Standard Specifications for Design and Construction, and other applicable land use regulations as of the Effective Date (collectively "Land Use Regulations"), to terminate the Annexation and Development Agreement, and provide for dismissal of the Litigation.

E. The Town, acting pursuant to its authority under Section 10-9a-101, *et seq.* has made certain determinations with respect to the Grapevine Wash Properties, and in the exercise

of its legislative discretion, has elected to approve this Zoning Agreement after all necessary public hearings and procedures have been conducted.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1.     **Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Zoning Agreement.

2.     **Condition Precedent.**

**Approval of Zoning by Town Council.** As a condition precedent to the obligations of the Parties hereunder, this Zoning Agreement is contingent upon and shall only become effective at such time, and in the event that, the Leeds Town Council ("Council"), in the independent exercise of its legislative discretion, elects to approve the proposed rezoning of the Grapevine Wash Properties to the designations as depicted on the Zoning Map attached as Exhibit B. This Zoning Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the Leeds Town Council in deciding whether to approve or deny the application for the rezoning of the Grapevine Wash Properties. If this condition precedent is not satisfied, this entire Zoning Agreement has no force or effect.

3.     **Zoning Map.** The Zoning Map attached as Exhibit B depicts the zoning of the various parcels of property owned by the Property Owners that collectively constitute the Grapevine Wash Properties. Property Owners shall have the right to develop their respective properties in accordance with the zoning designations depicted on the Zoning Map subject to compliance with the relevant provisions of the Town's Land Use Regulations.

4.     **Termination of Annexation and Development Agreement.** The Parties agree that upon execution of this Zoning Agreement the Annexation and Development Agreement shall be automatically terminated in all respects including, but not limited to, all rights granted or vested thereunder, and any approvals related thereto, and a notice of termination of the Annexation and Development Agreement in substantially the form attached as Exhibit C shall be recorded in the Office of the Washington County Recorder against the Grapevine Wash Properties. The annexation of the Grapevine Wash Properties shall remain effective but all other provisions of the Annexation and Development Agreement shall be of no further force or effect.

5.     **Local District.** Pursuant to the Annexation and Development Agreement, the Grapevine Wash Basic Local District ("GWBLD") was created by Resolution 2011-01 dated March 23, 2011. Although the Annexation and Development Agreement will be terminated as provided in Section 4 above, the Parties recognize that it will be necessary to coordinate the financing, installation and ownership of public improvements that will have to be constructed in order to develop the Grapevine Wash Properties. When GWBLD wishes to finance a particular public improvement, it shall provide written notice to the Town of what public improvements it plans to finance, the timing and method. All public improvements funded and installed by GWBLD shall

be constructed according to the applicable standards adopted by the entity that will ultimately own and maintain the public improvements once they have been completed. After the completion and acceptance by the applicable governmental or utility entity, when dedicated or otherwise transferred, the public improvements shall be free and clear of any debt incurred to finance the cost of construction. The Town will accept such public improvements that are to be owned and maintained by the Town after they are constructed, inspected and accepted according to the Town's standards as set forth in the Land Use Regulations.

6. **Provision of Municipal Services.** The Parties understand and acknowledge that the Town will only be the service provider of residential waste collection and disposal service and curbside residential recycling collection service. The Property Owners or their successors and assigns shall be responsible for obtaining and paying any costs necessary for additional access to the Grapevine Wash Properties and the approval for and costs of constructing any off-site or on-site public or private infrastructure and improvements from third party service providers that are necessary to service any portion of the Grapevine Wash Properties. The Town shall reasonably cooperate, in good faith and not unreasonably withhold, condition or delay its consent, as necessary, in seeking approval and permits from third parties, including, without limitation, service providers, utilities, governmental authorities and federal agencies.

7. **Dismissal of Litigation.** Property Owners and the Town hereby agree that upon execution of this Zoning Agreement, a Stipulation and Motion for Order of Dismissal shall be executed by their respective counsel and filed in the Fifth Judicial District Court dismissing the Litigation with prejudice and upon the merits with all parties to bear their own respective costs and attorney's fees.

8. **Mutual General Releases.** As part of this Zoning Agreement, Property Owners and the Town, for and on behalf of themselves and their respective owners, members, managers, officers, employees, agents, indemnitors, insurers, successors and assigns, hereby release and forever discharge each other together with their respective owners, members, managers, officers, employees, agents, indemnitors, insurers, successors and assigns from any and all claims, counterclaims, demands, liabilities, damages, causes of action, costs and expenses, including attorney's fees arising out of or in any way related to the Litigation and the Annexation and Development Agreement.

9. **Vested Rights.**

9.1. **Vested Rights.** Property Owners shall have the vested right to have preliminary and final subdivision plats approved and develop their respective properties in accordance with and subject to compliance with the zoning designations for the Land Owners respective properties shown on the Zoning Map and the terms and conditions of the Town's Land Use Regulations in effect on the Effective Date of this Zoning Agreement. Each Land Owner shall have the right to make application and develop its property, independent of the other Land Owners. Each Land Owner independently has the responsibility to comply with this Zoning Agreement on its property and noncompliance by one Land Owner does not limit another Land Owner from developing its property.

**9.2. Reserved Legislative Powers.** The Parties acknowledge that the Town is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the Town those police powers that cannot be so limited. Notwithstanding the retained power of the Town to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Property Owners under the terms of this Zoning Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Property Owners under this Zoning Agreement shall be of general application to all development activity in the Town; and, unless the Town declares an emergency, Property Owners shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Grapevine Wash Properties under the compelling, countervailing public interest exception to the vested rights doctrine.

**10. Term of Agreement.** The term of this Zoning Agreement (the "Term") shall be for a period of fifteen (15) years from the Effective Date with two (2) renewals of five (5) additional years each so long as there are no defaults that remain uncured as of the extension date, unless it is terminated earlier or its Term is modified by written amendment to this Zoning Agreement, but the terms of this Zoning Agreement shall continue to be effective as to applications that have been submitted and development that has occurred within the Grapevine Wash Properties notwithstanding the termination of this Zoning Agreement.

**11. Successors and Assigns.**

**11.1. Binding Effect.** This Zoning Agreement shall be binding upon all successors and assigns of Property Owners and any Land Owner in the ownership or development of any portion of the Grapevine Wash Properties.

**11.2. Assignment.** Neither this Zoning Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Zoning Agreement. Any such assignment shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Zoning Agreement which shall be filed with the Town.

**12. Default.**

**12.1. Notice.** If a Land Owner or the Town fail to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide notice to the other Party as provided herein. If the Town believes that the default has been committed by a Land Owner, then the Town shall also provide a courtesy copy of the notice to the other Land Owners.

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

**12.2.1. Claim of Default.** Specify the claimed event of default;



**12.2.2. Identification of Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

**12.2.3. Specify Materiality.** Identify why the default is claimed to be material; and

**12.2.4. Optional Proposed Cure.** If the Town chooses, in its discretion, propose a method and time for curing the default which shall be of no less than sixty (60) days duration.

**12.3. Meet and Confer.** Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

**12.4. Remedies.** If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may have the following remedies:

**12.4.1. Legal Remedies.** The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance and termination, but not including damages.

**12.4.2. Enforcement of Security.** The right to draw on any security posted or provided by the defaulting Land Owner in connection with the development of the Land Owner's property and relating to remedying of the particular default.

**12.4.3. Withholding Further Development Approvals.** The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Grapevine Wash Properties on those properties owned by the defaulting Party.

**12.5. Public Meeting.** Before any remedy in Section 12.4 may be imposed by the Town, the Party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

**12.6. Emergency Defaults.** Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of the Town and that any delays in imposing such a default would also impair a compelling, countervailing interest of the Town then the Town may impose the remedies of Section 12.4 without meeting the requirements of Section 12.5. The Town shall give Notice to Property Owners and/or any applicable successor or assign of any public meeting at which an emergency default is to be considered and the allegedly defaulting party shall be allowed to address the Council at that meeting regarding the claimed emergency default.

**12.7. Extended Cure Period.** If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting Party is pursuing a cure with reasonable diligence.

**12.8. Cumulative Rights.** The rights and remedies set forth herein shall be cumulative.

**12.9. Force Majeure.** All time period imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the Town or other governmental authorities in any respect that materially affects the development of the Grapevine Wash Properties; or (b) by events reasonably beyond the control of Property Owners including, without limitation, inclement weather, war, strikes, unavailability of materials or services at commercially reasonable prices, and acts of God, but which does not include financial condition of the Property Owners or their successors.

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

To :

Capital Funding Limited Company, LLC  
Attn: Shree Sharma  
4535 Westview Drive  
Salt Lake City, Utah 84124

MISI Investments LLC/ The Simpkins 1975 Trust  
Attn: Dick Miller  
2150 South 1300 East, Suite 150  
Salt Lake City, UT 84106

MSH Investments, LLC  
Attn: Jon Michael Richter  
20 Mary Watersford Rd.  
Bala Cynwyd, PA 19004

Tuscan Lenders Group, L.L.C.  
Attn: Tracy Belliston  
692 North 350 East  
Lindon, UT 84042

With a copy to:

Town of Leeds  
Attn: Clerk/Recorder

Town of Leeds  
218 North Main Street  
Leeds, Utah 84746



Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

## GENERAL TERMS AND CONDITIONS

1. **Agreement to Run with the Land.** This Zoning Agreement shall be recorded in the Office of the Washington County Recorder against the Grapevine Wash Properties and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Grapevine Wash Properties.
2. **Entire Agreement.** This Zoning Agreement, together with the Exhibits hereto, integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective Parties hereto.
3. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
4. **Non-Liability of Town Officials or Employees.** No officer, representative, agent, or employee of the Town shall be personally liable to Property Owners, or any successor-in-interest or assignee of Property Owners, in the event of any default or breach by the Town or for any amount which may become due to Property Owners, or its successors or assignees, for any obligation arising out of the terms of this Zoning Agreement.
5. **No Third-Party Rights.** The obligations of the Parties set forth in this Zoning Agreement shall not create any rights in or obligations to any person, parties or entities other than to the Town and the Property Owners. The Town and Property Owners alone shall be entitled to enforce or waive any provisions of this Zoning Agreement to the extent that such provisions are for their benefit.
6. **Severability.** Should any portion of this Zoning Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Zoning Agreement had been executed with the invalid portions eliminated.
7. **Waiver.** No waiver of any of the provisions of this Zoning Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
8. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Zoning Agreement and shall continue in full force and effect throughout the term of this Zoning Agreement.
9. **Public Information.** The Parties understand and agree that all documents related to this Zoning Agreement will be public documents, as provided in UTAH CODE ANN. §§ 63G-2-101, *et seq.*

10. **Governing Law.** This Zoning Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
11. **Counterparts.** This Zoning Agreement may be executed in multiple counter-parts which shall constitute one and the same document.
12. **Amendment.** This Zoning Agreement may be amended by mutual agreement in writing between the Town, on the one hand, and the Property Owners or any Land Owner, on the other hand; provided that any such amendment shall have effect only on the parties to any such written amendment.
13. **Authority to sign.** MISI Investments LLC, MSH Investments, LLC, Tuscan Lenders Group, L.L.C. and Capital Funding Limited Company LLC are all limited liability companies, duly organized, validly existing and in good standing under the laws of the state of their formation and duly authorized to and qualified to do all of the things required of them under the terms of this Zoning Agreement. The Simkins 1975 Trust is a duly organized, validly existing trust in good standing under the laws of the state of its formation and duly authorized to and qualified to do all of the things required of it under the terms of this Zoning Agreement. The persons signing this Zoning Agreement on behalf of these entities have all of the requisite power and authority to execute this Zoning Agreement on behalf of their respective entities. The Town is a municipality and political subdivision of the State of Utah and has taken all of the steps necessary to authorize the execution of this Zoning Agreement on its behalf.

*(Signatures begin on following page)*

**IN WITNESS WHEREOF**, this Agreement has been executed by the Town of Leeds, acting by and through the Town of Leeds, Washington County, State of Utah, pursuant to Ordinance No. \_\_\_\_\_, authorizing such execution, and by a duly authorized representative of Property Owners as of the above-stated date.

**TOWN OF LEEDS**, a Utah municipality and political subdivision of the State of Utah.

By: \_\_\_\_\_

Wayne Peterson, Mayor

ATTEST:

\_\_\_\_\_  
, Town Clerk/Recorder

APPROVED AS TO FORM

\_\_\_\_\_  
Gary Kuhlmann, Town Attorney

**MISI INVESTMENTS LLC**

By: Richard H. Miller, its Manager

STATE OF UTAH )  
 )  
 ) :SS.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of May, 2016, personally appeared before me Richard H. Miller, who being duly sworn, did say that he is the Manager of MISI Investments LLC, and that the foregoing instrument was signed in behalf of said corporation and said Richard H. Miller duly acknowledged to me that he executed the same for the purposes therein stated.

NOTARY PUBLIC

**MSH INVESTMENTS, LLC**

By: \_\_\_\_\_  
Jon Michael Richter, its Manager

STATE OF PENNSYLVANIA     )  
  :ss.  
COUNTY OF MONTGOMERY    )

On the \_\_\_\_\_ day of May, 2016, personally appeared before me Jon Michael Richter, who being duly sworn, did say that he is the Manager of MSH Investments LLC, and that the foregoing instrument was signed in behalf of said corporation and said Jon Michael Richter duly acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
NOTARY PUBLIC

**TUSCAN LENDERS GROUP, L.L.C.**

By: \_\_\_\_\_  
Robert Anderson, its Manager

STATE OF UTAH                    )  
  :ss.  
COUNTY OF UTAH                )

On the \_\_\_\_\_ day of May, 2016, personally appeared before me Robert Anderson, who being duly sworn, did say that he is the Manager of Tuscan Lenders Group, L.L.C., and that the foregoing instrument was signed in behalf of said corporation and said Robert Anderson duly acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
NOTARY PUBLIC



**CAPITAL FUNDING LIMITED COMPANY, LLC**

By: Shree N. Sharma, its Manager

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of May, 2016, personally appeared before me Shree N. Sharma, who being duly sworn, did say that he is the Manager of Capital Funding Limited Company, LLC, and that the foregoing instrument was signed in behalf of said corporation and said Shree N. Sharma duly acknowledged to me that he executed the same for the purposes therein stated.

NOTARY PUBLIC

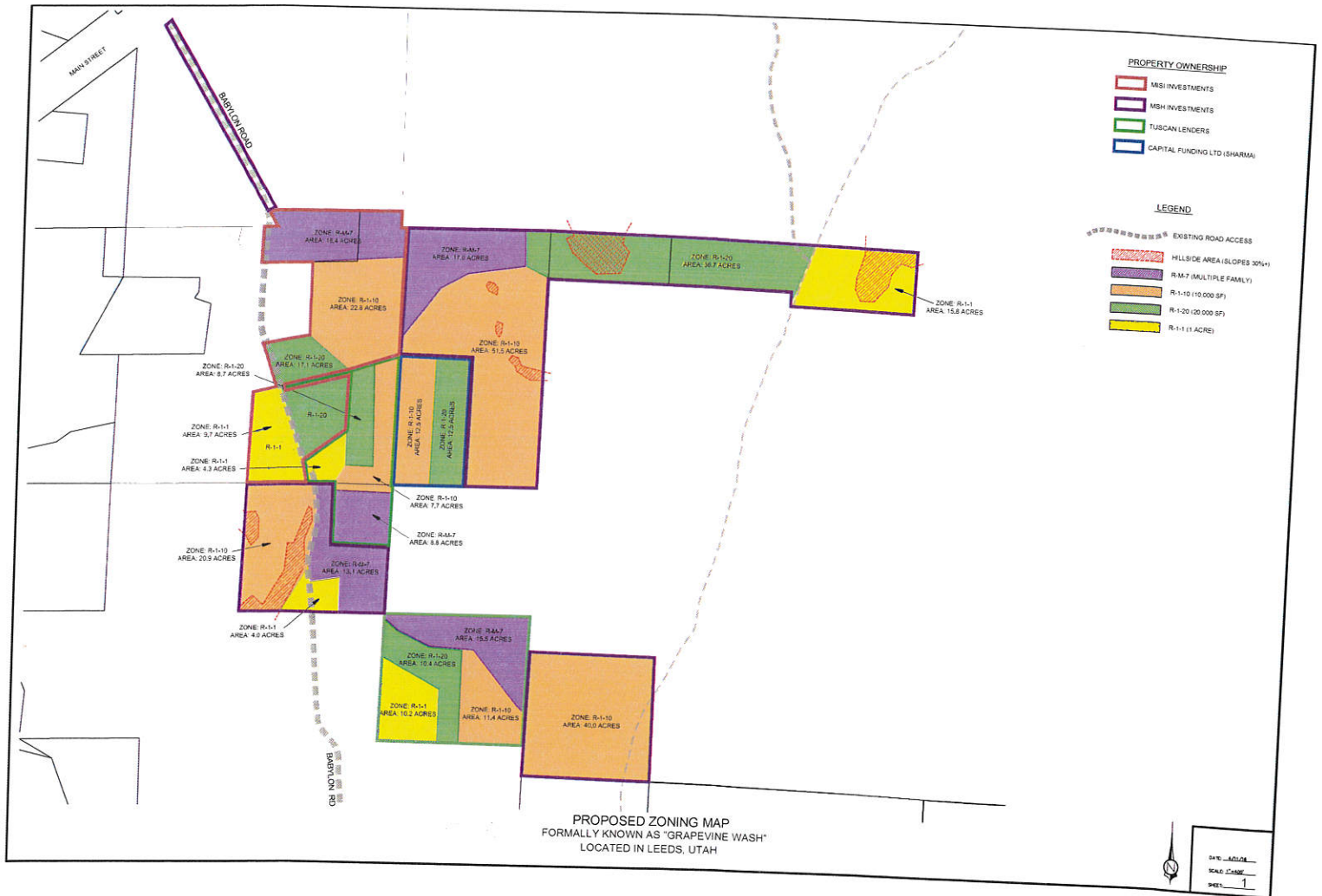
## THE SIMKINS 1975 TRUST

By: Kenneth Simkins, Trustee

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of May, 2016, personally appeared before me Kenneth Simkins, who being duly sworn, did say that he is the Trustee of The Simkins 1975 Trust, and that the foregoing instrument was signed in behalf of said trust and said Kenneth Simkins duly acknowledged to me that he executed the same for the purposes therein stated.

NOTARY PUBLIC





## **EXHIBIT C**

**After recording return to:**

Town of Leeds  
Attn: Town Clerk/Recorder  
218 North Main Street  
Leeds, Utah 84746

### **NOTICE OF TERMINATION OF ANNEXATION AND DEVELOPMENT AGREEMENT**

NOTICE is hereby given that the Grapevine Wash Town of Leeds Annexation and Development Agreement ("Agreement") dated October 28, 2009 and recorded with the Washington County Recorder as Document No. 20090049073 has been terminated. Except for annexation of the Grapevine Wash Properties, all rights granted or vested thereunder, and approvals related thereto have been terminated and are of no further force or effect.

PLEASE GOVERN YOURSELVES AND YOUR AFFAIRS ACCORDINGLY.

Dated this \_\_\_\_ day of May, 2016.

TOWN OF LEEDS, UTAH

By \_\_\_\_\_  
Town Clerk/Recorder