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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
04/12/2019 12:02 PM  
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DEP RT REC'D FOR LAYTON CITY CORP

10-063 - 0035

AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND  
GORDON STREET II LLC

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND  
GORDON STREET II LLC**

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 21<sup>st</sup> day of March, 2019, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and property owner GORDON STREET II LLC (hereinafter referred to as "Owner"), with City and Owner collectively referred to as the "Parties" and separately as "Party".

**RECITALS**

WHEREAS, in furtherance of the objectives of the Layton City General Plan, City has considered an application for a zone change of a certain property located at approximately 850 North 2200 West in Layton City (hereinafter the "Subject Area") from B-RP (Business and Research Park) to R-1-8 (Single Family Residential), R-1-8 (PRUD) (Single Family Residential, Planned Residential Unit Development) and C-TH (Condominium/Townhouse) as depicted on Exhibit A attached hereto; and

WHEREAS, Parties desire to enter into this Agreement to provide for the development of the Subject Area consisting of approximately 44.00 acres (hereinafter the "Development Area" as depicted on Exhibit A), in a manner consistent with the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to grant approval of R-1-8, R-1-8 (PRUD) and C-TH zoning on the Subject Area, subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to surrounding property values and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City finds that entering into the Agreement with Owner is in the vital and best interest of the City and the health, safety, and welfare of its residents.

NOW, THEREFORE, each of the Parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree as follows:

**ARTICLE I  
DEFINITIONS**

The following terms have the meaning and content set forth in this Article I, wherever used in this Agreement:

1.1 "City's Undertakings" shall mean the obligations of the City set forth in Article III.

1.2 "Owner's Undertakings" shall have the meaning set forth in Article IV.

1.3 "R-1-8" zoning shall mean a single family residential use district, "R-1-8 (PRUD)" zoning shall mean a single family residential use district with a planned residential unit development overlay, and "C-TH" zoning shall mean the Condominium/Townhouse zoning district. The use, maximum density, site and building design standards of the R-1-8 and R-1-8 (PRUD) zoning districts are regulated by Table 5-1 of the Zoning Regulation Chart. The R-1-8 (PRUD) is also regulated by Chapter 19.08 of the Zoning

Ordinance, and the C-TH zoning is regulated in Chapter 19.24 of Layton Municipal Code. These zoning districts are further restricted by the provisions set forth in Article IV.

## **ARTICLE II CONDITIONS PRECEDENT**

2.1 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the Layton City Council.

2.2 R-1-8 zoning, R-1-8 (PRUD) zoning and C-TH zoning consistent with Exhibit A is a condition precedent to Owner's Undertakings in Article IV.

## **ARTICLE III CITY'S UNDERTAKINGS**

3.1 Subject to the satisfaction of the conditions set forth in Article IV, City shall approve the rezone of the Subject Area from its present zoning B-RP to R-1-8, R-1-8 (PRUD) and C-TH, as depicted on Exhibit A, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any zoning amendment shall occur upon a finding by the City Council that it is in the best interest of the health, safety and welfare of the citizens of Layton City to make such a change at this time. All permits and site plan reviews and approvals shall be made pursuant to City ordinances. Nothing herein shall be construed as a waiver of the required reviews and approvals required by City ordinance.

3.2 The proposed zoning changes are as reflected on Exhibit A for the overall area.

## **ARTICLE IV OWNERS' UNDERTAKINGS AND RIGHTS**

After the Effective Date, and conditioned upon City's performance of its undertakings set forth in Article III, and provided Owner has not terminated this Agreement pursuant to Section 7.8, Owners agree to the following:

4.1 Zoning. Zoning and development of the Development Area shall comply with Article II. Once the Subject Property is zoned in accordance with Article II, development of the Development Area shall comply with all applicable City rules, regulations and codes.

- 4.1.1 The Subject Area, as depicted on Exhibit A and Exhibit B, shall comply with the standards and requirements of the R-1-8 (PRUD) and C-TH zone districts.
- 4.1.2 The total number, type, location and garage orientation of housing units shall be approximately the same as shown in Exhibit C (Concept Plan) with a maximum of 272 residential units that may be constructed, of which no more than 130 units may be Mansion Homes, and no more than 53 units shall be rear-loaded single family homes. No more than 28 units shall be single family detached homes with a minimum lot size of 5,000 square feet, and at least 46 units shall be a minimum lot size of 6,300 square feet. The total approximate area and location of open

- space shall also be the same as shown in Exhibit C.
- 4.1.3 Any proposal to rezone the Subject Area from R-1-8 (PRUD) and C-TH depicted on Exhibit A and Exhibit B to another zone shall require a rezone petition and amendment to this Agreement.
- 4.1.4 The maximum height of structures within the C-TH zoning of the Subject Area shall be two stories and twenty-eight feet (28').
- 4.1.5 The following materials shall be used for exterior construction of all residential units: brick, rock, stucco, or hardie board. Fifty percent (50%) of the front, or street-facing façades of each residential unit shall have twenty-five percent (25%) brick or rock masonry between the foundation and the roof eave alignment, excluding the surface area of garage, window and door openings. Vinyl and aluminum siding shall not be allowed.
- 4.1.6 Single family lots with a width of less than fifty feet (50') require alleys (rear lane drives) to provide primary vehicle access to garages and any parking spaces located at the rear of buildings.
- 4.1.6.1 The minimum front yard setback for residential units shall be twelve feet (12'). Garages fronting onto streets shall be set back at least twenty feet (20').
- 4.1.6.2 Residential buildings and lots that front onto common open space area(s) shall provide at least one (1) front entrance per building, with fencing and a sidewalk/pathway to delineate the privately-owned front yard from the common open space area. Shrubs/ornamental grasses shall be planted along both sides of the fencing to further enhance the boundary delineation between private and common open space areas.
- 4.1.6.3 All single family residential units shall have an open-air front porch, stoop or other front entrance feature. Front porches shall have a minimum depth of seven feet (7'). These front entrance features may encroach no more than five feet (5') into the front yard setback. Front porches shall not encroach within the seven foot (7') public utility and drainage easement (PU&DE) adjacent to all public streets.
- 4.1.7 Owner shall provide for and record enforceable covenants, conditions and restrictions (CCRs) providing architectural design consistency. Owner shall cause a Homeowners Association (HOA) to be constituted as part of CCRs with the duties of maintaining any shared amenities delineated in an approved final plat and to assure that residents maintain private yards and lots. The HOA shall be required to be managed by a professional management company to ensure efficient, timely and complete administration of HOA duties and responsibilities. The CCRs shall establish the City with a controlling interest in the HOA for the matter of voting to dissolve the HOA.
- 4.1.7.1 The homeowners within the development may elect to have the HOA maintain other portions of their private property, specifically the side and rear yards.
- 4.1.7.2 The HOA shall be responsible for the ownership and maintenance of all private utilities, private streets, open space areas, including landscape buffers, detention basins, trails and pathways, and any other shared amenities and fencing. The HOA shall also be responsible for maintenance of the park strips and any open space common areas along Gordon Avenue and 2200 West Street.
- 4.1.8 Fencing colors shall not be white or any other bright color with a light-reflecting glare, except along the east property boundary where white fencing may be installed to match the fencing color of existing off-site residential lots.

- 4.1.9 **Street trees** with a minimum caliper of two (2) inches shall be planted every thirty (30) feet in the parking strip of the public street section and on both sides of the private street located along the 975 North alignment, in accordance with Layton Municipal Code 19.16.075 – Permitted Trees Within Park Strips and Along Frontages, except where street trees would be placed closer than five feet (5') of any culinary or secondary waterlines. Street tree species should vary to create a unique street identity, visual variety, and to promote the health of the City's urban forestry. In the event that any of the trees or shrubs die or do not adequately grow, they shall be promptly replaced.

4.2 **Public Utilities.** Owner acknowledges and agrees that any development shall comply with any and all development standards, guidelines, ordinances, regulations, and statues as exist at time of development.

- 4.2.1 **Future Street Connections.** The alignment of all future streets shall be the same as shown in Exhibit C.
- 4.2.2 **Culinary Water.** All private mains shall be master metered. Individual City owned and maintained meters will not be allowed for townhomes or rear loaded single family homes.
- 4.2.3 **Storm Drain.** The capacity of the existing fifteen inch (15") storm drain main in 2200 West is inadequate to address the development of the property. The pipe size will need to be increased or an additional main will need to be installed. Onsite, above ground detention will be required. The release rate of the detention basin will be determined by the capacity of the proposed storm drain main in 2200 West, typically 0.2 cfs per acre. Because these improvements are development driven and were not included in the Storm Water Master Plan, a payback will not be established.
- 4.2.4 **Street Improvements.** A right hand turn pocket on 2200 West at Gordon Avenue will need to be dedicated and the turn pocket will need to be constructed as shown in Exhibit D – 2200 West Turn Pocket Drawing.

4.3 **Water Exactions.** Owners shall be responsible for complying with Layton City's Water Exactions requirements effective on the date of execution of this agreement.

4.4 **Precedence of this Agreement.** This agreement shall take precedence over any contrary provisions of any City Staff memorandums or representations.

4.5 **Not Considered Approvals.** Except as otherwise provided herein, these enumerations are not to be construed as approvals thereof, as any required approval process must be pursued independent hereof.

4.6 **Amendments.** Owner agrees to limit development to the uses and requirements provided herein unless any of the Subject Area is rezoned. In such event, City and Owner mutually agree to amend this agreement in writing to reflect such rezoning.

4.7 **Conflicts.** Except as otherwise provided, any conflict between the provisions of this Agreement and the City's standards for improvements, shall be resolved in favor of the stricter requirement.

**ARTICLE V  
GENERAL REQUIREMENTS AND RIGHTS OF CITY**

5.1 Issuance of Permits - Owner. Owner, or its assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Owner's Undertakings and shall make application for such permits directly to the Layton City Community and Economic Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Owner's Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

5.2 Completion Date. The Owner shall, in good faith, diligently pursue completion of the development of any portion of the subject area where construction is commenced.

5.3 Access to the Subject Area. For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Owner and its contractor, representatives of City shall have the right of access to the Subject Area without charges or fees during the period of performance of Owner's Undertakings. City shall indemnify, defend and hold Owner harmless from and against all liability, loss, damage, costs or expenses (including attorney's fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any person, property or improvements on the Subject Area arising from the negligence or omissions of City, or its agents or employees, in connection with City's exercise of its rights granted herein.

**ARTICLE VI  
REMEDIES**

6.1 Remedies for Breach. In the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting Party or any permitted successor to such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said thirty (30) day period, the Party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such default or breach, and shall continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action is not taken or diligently pursued, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to:

6.1.1 Cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations;

6.2 Enforced Delay Beyond Parties Control. For the purpose of any other provisions of this Agreement, neither City nor Owner, as the case may be, nor any successor in interest, shall be considered in breach or default of its obligations with respect to its construction obligations pursuant to this Agreement, in the event the delay in the performance of such obligations is due to unforeseeable causes beyond its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, or delays of contractors or subcontractors due to such causes or defaults of contractors or subcontractors. Unforeseeable causes shall not include the financial inability of the Parties to perform under the terms of this Agreement.

6.3 Extensions. Either Party may extend, in writing, the time for the other Party's performance of any term, covenant or condition of this Agreement or permit the curing of any default or breach upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not eliminate any other obligations and shall not constitute a waiver with respect to any other term, covenant or condition of this Agreement nor any other default or breach of this Agreement.

6.4 Rights of Owner. In the event of a default by Owner's assignee, Owner may elect, in its discretion, to cure the default of such assignee, provided, Owner's cure period shall be extended by thirty (30) days.

6.5 Appeals. If the Owner desires to appeal a determination made hereunder by Staff, said appeal shall be to the Planning Commission, whose decision shall be final. If the appeal is regarding the interpretation of this Agreement the appeal shall be to the City Council with a recommendation from the Planning Commission and Staff.

## ARTICLE VII GENERAL PROVISIONS

7.1 Successors and Assigns of Owner. This Agreement shall be binding upon Owner and its successors and assigns, and where the term "Owner" is used in this Agreement it shall mean and include the successors and assigns of Owner, except that City shall have no obligation under this Agreement to any successor or assign of Owner not approved by City. Notwithstanding the foregoing, City shall not unreasonably withhold or delay its consent to any assignment or change in ownership (successor or assign of Owner) of the Subject Area. Upon approval of any assignment by City, or in the event Owner assigns all or part of this Agreement to an assignee, Owner shall be relieved from further obligation under that portion of the Agreement for which the assignment was made and approved by City.

7.2 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed. The initial addresses of the Parties shall be:

To Owner:                               GORDON STREET II, LLC  
                                                  c/o Sheryl Starkey  
                                                  1256 West Parkside Lane  
                                                  Layton, UT 84041  
                                                  801/510-2473

To City:                                   LAYTON CITY CORPORATION  
                                                  437 North Wasatch Drive  
                                                  Layton, Utah 84041  
                                                  Attn: Alex R. Jensen, City Manager  
                                                  801/336-3800, 801/336-3811 (FAX)

Upon at least ten (10) days prior written notice to the other Party, either Party shall have the right to change its address to any other address within the United States of America.

If any Notice is transmitted by facsimile or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof, provided a copy of such Notice is deposited in regular mail on the same day of such transmission.

7.3 Third Party Beneficiaries. Any claims of third party benefits under this Agreement are expressly denied, except with respect to permitted assignees and successors of Owner.

7.4 Governing Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Utah.

7.5 Integration Clause. This document constitutes the entire agreement between the Parties and may not be amended except in writing, signed by the Parties.

7.6 Exhibits Incorporated. Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

7.7 Attorney's Fees. In the event of any action or suit by a Party against the other Party for reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other Party arising out of this Agreement, the prevailing Party in such action or suit shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable attorneys' fees.

7.8 Termination. Except as otherwise expressly provided herein, the obligation of the Parties shall terminate upon the satisfaction of the following conditions:

7.8.1 With regard to Owner's Undertakings, performance of Owner's Undertakings as set forth herein.

7.8.2 With regard to City's Undertakings, performance of City's Undertakings as set forth herein.

Upon either Party's request (or the request of Owner's assignee), the other Party agrees to enter into a written acknowledgment of the termination of this Agreement, or part thereof, so long as such termination (or partial termination) has occurred.

7.9 Recordation. This Agreement shall be recorded in reference to the property, and shall run with the land and be binding upon all successors in interest of the property.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

LAYTON CITY CORPORATION

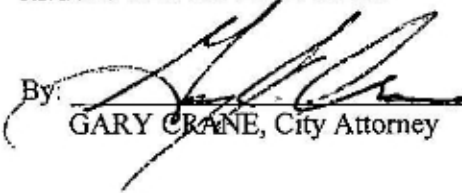


By:   
SCOTT FREITAG, Mayor

ATTEST:

By:   
KIMBERLY S READ, City Recorder

APPROVED AS TO FORM:

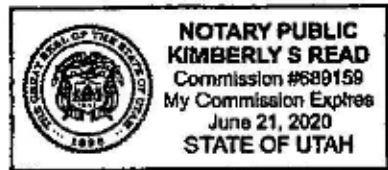
By:   
GARY CRANE, City Attorney

**CITY ACKNOWLEDGEMENT**

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

On this 26<sup>th</sup> day of March, 2019, personally appeared before me Scott Freitag, who being duly sworn, did say that he/she is the Mayor of LAYTON CITY, a municipal corporation of the State of Utah, and that the foregoing Agreement was signed in his/her capacity as Mayor on behalf of the City for approval of the Agreement.

Kimberly S Read  
Notary Public



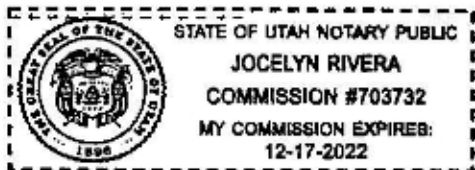
**OWNER ACKNOWLEDGMENT**

Sheryl Starkey  
GORDON STREET II, LLC  
Sheryl Starkey, Member of GORDON STREET II, LLC

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

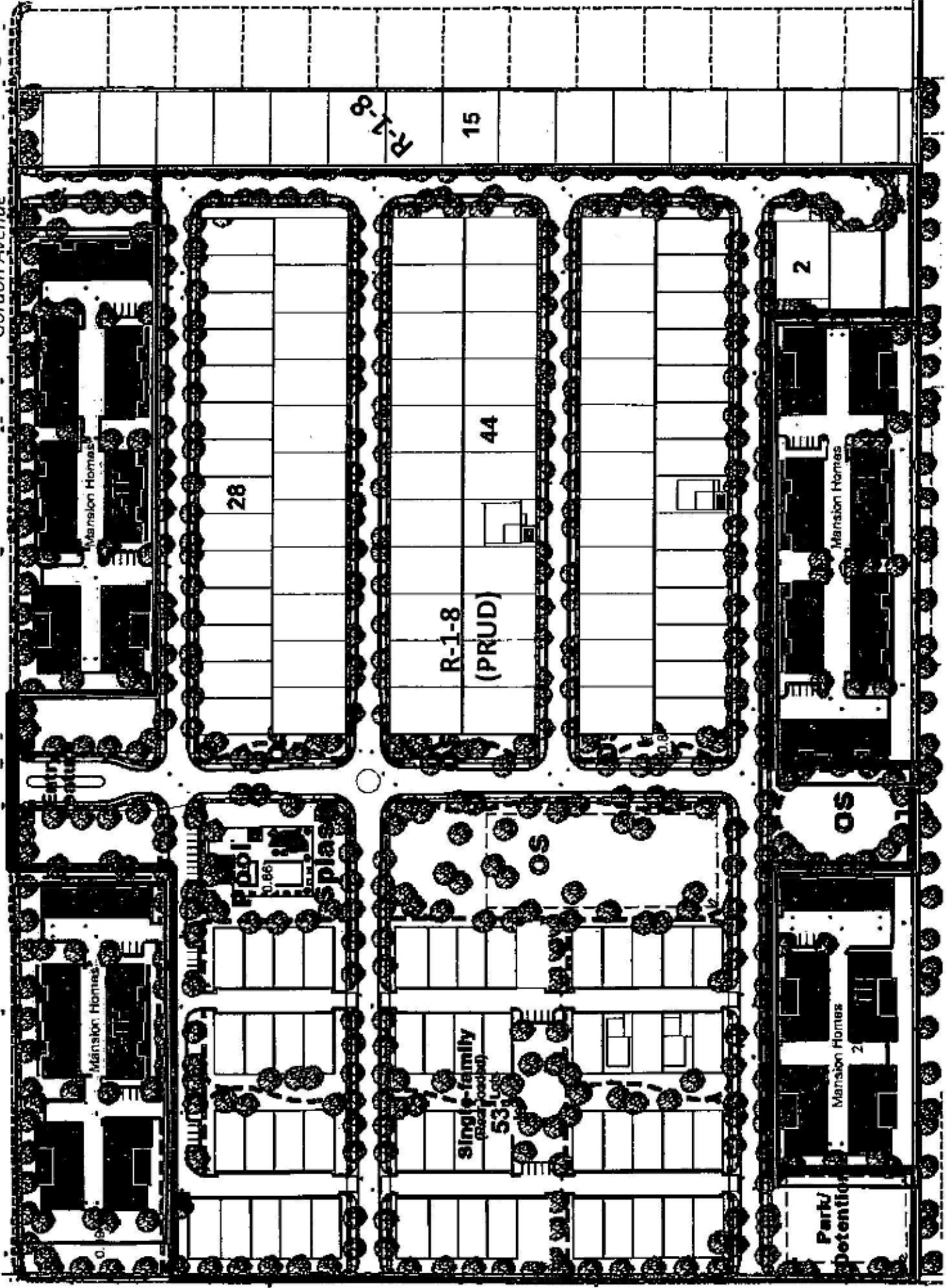
On this 22<sup>nd</sup> day of March, 2019, personally appeared before me Sheryl Starkey, who being duly sworn, did say that he/she is Member of GORDON STREET II, LLC, who is the legal property owner of record of the property subject to this Agreement and that he/she has executed this Agreement with full authority to do so.

J. Rivera  
Notary Public



# Exhibit "A" - Zoning Districts and Applicable Development Types

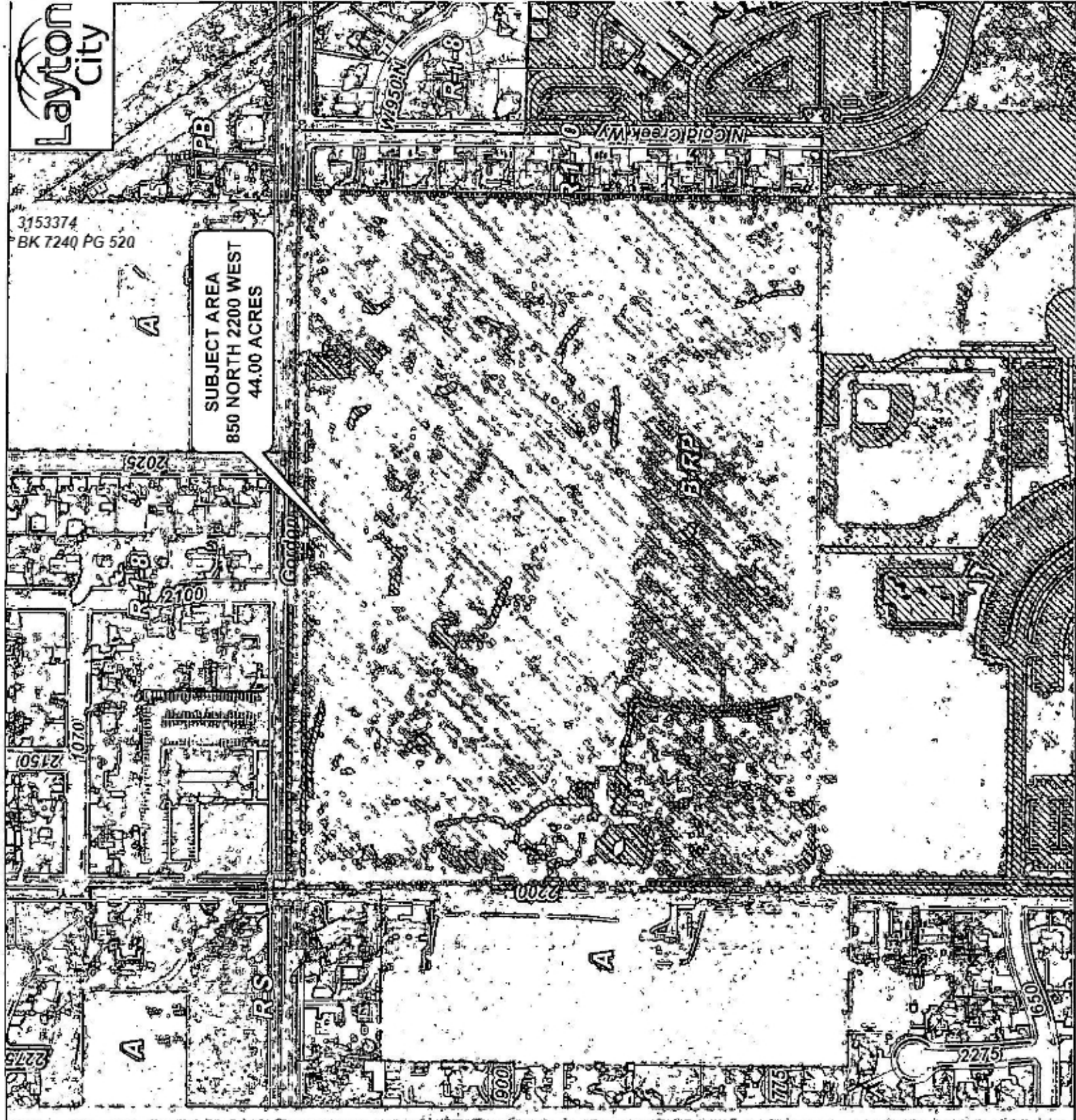
Gordon Avenue



2200 West

3153374  
BK 7240 PG 520

**SUBJECT AREA**  
850 NORTH 2200 WEST  
44.00 ACRES



**EXHIBIT B**

**Gordon Street II LLC  
Development  
Agreement**

**850 North  
2200 West**

**Subject Area  
44.00 Acres**

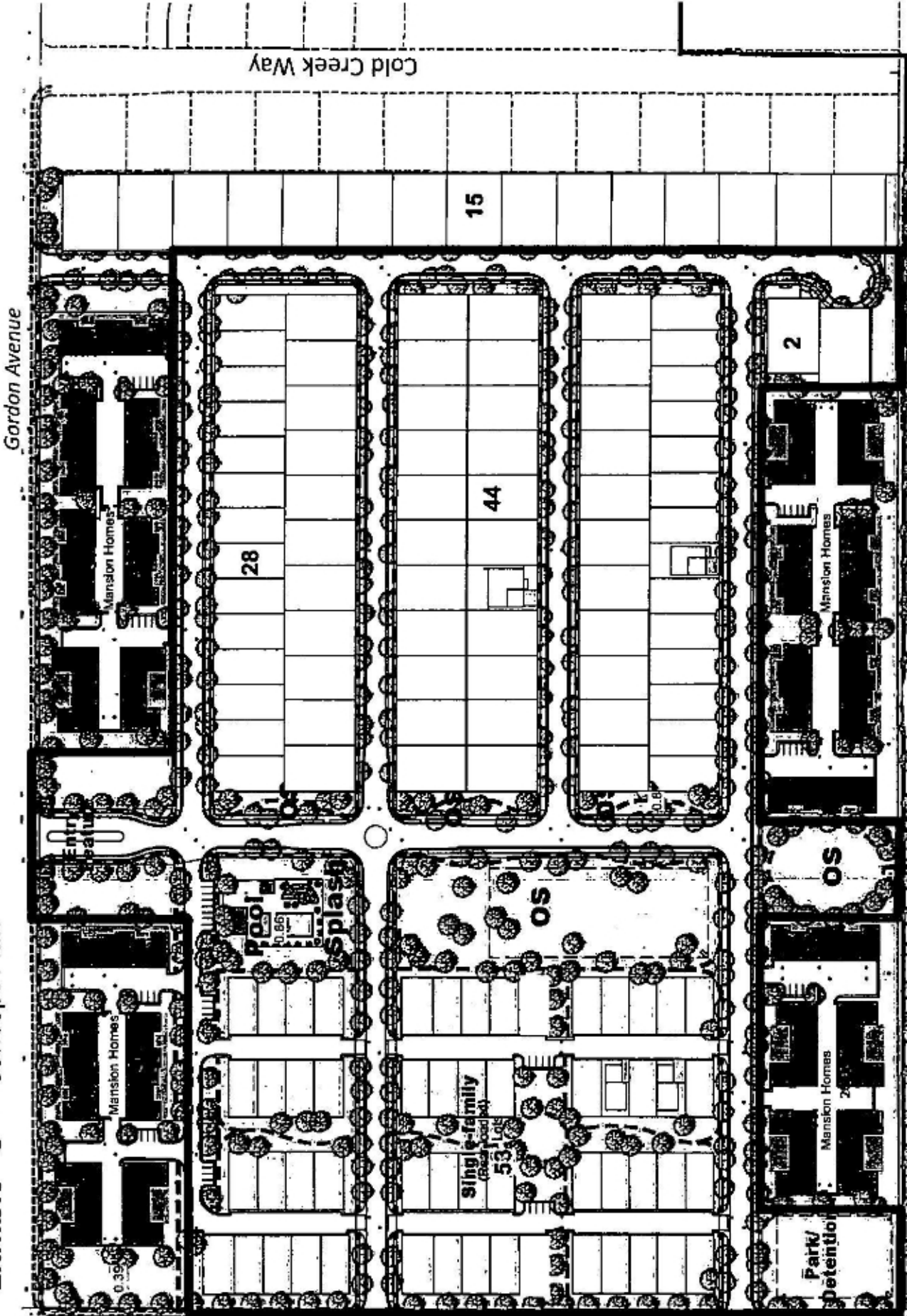
**Legend**

- City Boundary
- Interstate 15
- Highways
- Lakes
- Streams

- Project Area



Exhibit "C" - Concept Plan



C-TH Open Space Area (OS): 3.57 Acres (38.9% shown, 35% minimum) R-1-8 PRUD Open Space Area (OS): 8.03 Acres (34.9% shown, 30% minimum)

EXHIBIT D - 2200 West Turn Pocket Drawing



Layton City	PRELIMINARY - NOT FOR CONSTRUCTION		SWAN LAKES REDEVELOPMENT RIGHT TURN POCKET CONCEPT	
	DESIGNED BY A. BEAN	CHECKED BY A. BEAN	DATE 7/15/2017	DATE 7/15/2017
			SCALE 1" = 30' HORIZONTAL SCALE NONE	DATE 7/15/2017
			DRAWN BY J. WOODRUFF	DATE 7/15/2017

## LEGAL DESCRIPTION

Parcel 10-063-0035

BEG AT THE INTERSECTION OF THE S R/W LINE OF GORDON AVENUE & THE E R/W LINE OF 2200 WEST STR, SD PT BEING 33.00 FT N 89°50'40" E ALG THE SEC LINE & 42.0 FT S 0°11'10" W FR THE NW COR OF SEC 19-T4N-R1W, SLM; & RUN TH N 89°50'40" E 1597.23 FT ALG SD S R/W LINE; TH S 0°11'10" W 1200.00 FT; TH S 89°50'40" W 1597.23 FT TO THE E R/W LINE OF SD 2200 WEST STR; TH N 0°11'10" E 1200.00 FT ALG SD R/W LINE TO THE POB. CONT. 44.00 ACRES