

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND
HARRIS ENTERPRISES LLC**

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 14th day of February, 2019, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and property owner HARRIS ENTERPRISES LLC (hereinafter referred to as "Owner"), with City and Owner collectively referred to as the "Parties" and separately as "Party".

10-220-0404

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 1814 N 700 West (Layton Hills Parkway) in Layton City (hereinafter the "Subject Area") from B-RP (Business and Research Park) to MU, DO-1 (Mixed-Use, Mixed-Use Design Overlay) 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 3.36 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 MU, DO-1 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 "MU, DO-1" zoning shall mean the Mixed-Use zoning district with the Mixed-Use Design Overlay, the use, maximum density, site and building design standards of which, are regulated by Table 5-2 of the Zoning Regulation Chart and Chapter 19.25 of Layton Municipal Code. This zoning district and overlay area shall be 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 MU, DO-1 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 MU, DO-1 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 Subject Area shall comply with Article II. Once the Subject Area is zoned in accordance with Article II, development of the Subject Area shall comply with all applicable City rules, regulations and codes.

- 4.1.1 The Subject Area, as depicted on Exhibit A, shall comply with the standards and requirements of the MU, DO-1 zone district.
- 4.1.2 The total number, type, location and arrangement of buildings and parking areas for residential multi-family development shall be similar to the concept plan shown in Exhibit B and the building elevations shown in Exhibit C. The total approximate area and location of landscaping and open space amenity areas shall also be approximately the same as shown in Exhibit B.
- 4.1.3 Any proposal to rezone the Subject Area from MU, DO-1 depicted on Exhibit A to another zone shall require a rezone petition and amendment to this Agreement.
- 4.1.4 The following materials shall be used for exterior construction of all residential units: brick, rock, fiber cement board, stucco or comparable materials. Decorative metal cladding may be used as enhancement or accent material applied to no more than twenty percent (20%) of a building façade wall area. Vinyl siding shall not be allowed, and aluminum siding more commonly used for single family home and accessory structure applications shall not be allowed.
- 4.1.5 Fencing base material color shall not be white or any other bright color with a light-reflecting glare. Mural painting or art (not containing off-site advertising)

is limited to the west facing side of the existing masonry wall.

- 4.1.6 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 700 West 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.
- 4.1.7 The existing masonry wall which lies fifteen feet (15') from the east property boundary shall be maintained to withstand the impacts of natural elements (sun, rain, snow, ice, etc.), and remain standing in good repair.
- 4.1.8 Owner may retain ownership of the fifteen foot (15') landscape buffer area along the east side of the wall, or may deed the property to adjacent owners with a wall maintenance easement agreement. Owner shall notify adjacent home owners of wall maintenance access visits at least forty-eight (48) hours in advance.

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

- 4.2.1 **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.
- 4.2.2 **Storm Drain.** The capacity of the existing twenty-four inch (24") storm drain main in 700 West is inadequate to address the development of the property. The storm water from this site will need to be piped to discharge directly into the detention basin located on the property to the south.
- 4.2.3 **Land Drain.** There is an 8" private land drain located approximately 13' east of the back of curb of 700 West and an 8" private land drain located approximately 7' west of the wall. Owner shall be responsible to relocate the mains if impacted by the development and shall establish private utility easements in the new location.
- 4.2.4 **Street Improvements.** Owner shall install 5' sidewalk along 700 West. The north point of access to the property shall align with the drive entrance south of Target.

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;
- 6.1.2 Owner agrees not to contest the reversion of the zoning by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from MU, DO-1 to B-RP.

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

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
SCOTT FREITAG, Mayor

ATTEST:

By: Kimberly S Read
KIMBERLY S READ, City Recorder

APPROVED AS TO FORM:

for By: J. Moore
GARY CRANE, City Attorney

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 14th day of February, 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



Curt Harris

HARRIS ENTERPRISES LLC
Curt Harris, A Managing Member of HARRIS ENTERPRISES LLC

OWNER ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 6 day of February, 2019, personally appeared before me Curt Harris, who being duly sworn, did say that he/she is a Managing Member of HARRIS ENTERPRISES 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.



Lisa Hess Hansen
Notary Public



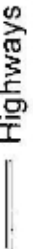
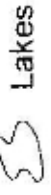
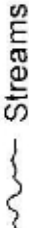
EXHIBIT "A"


Harris
Enterprises, LLC
Development
Agreement

1814 North
Layton Hills
Parkway

3.36 Acres

Legend

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

 - Subject Area

3145909
BK 7210 PG 378

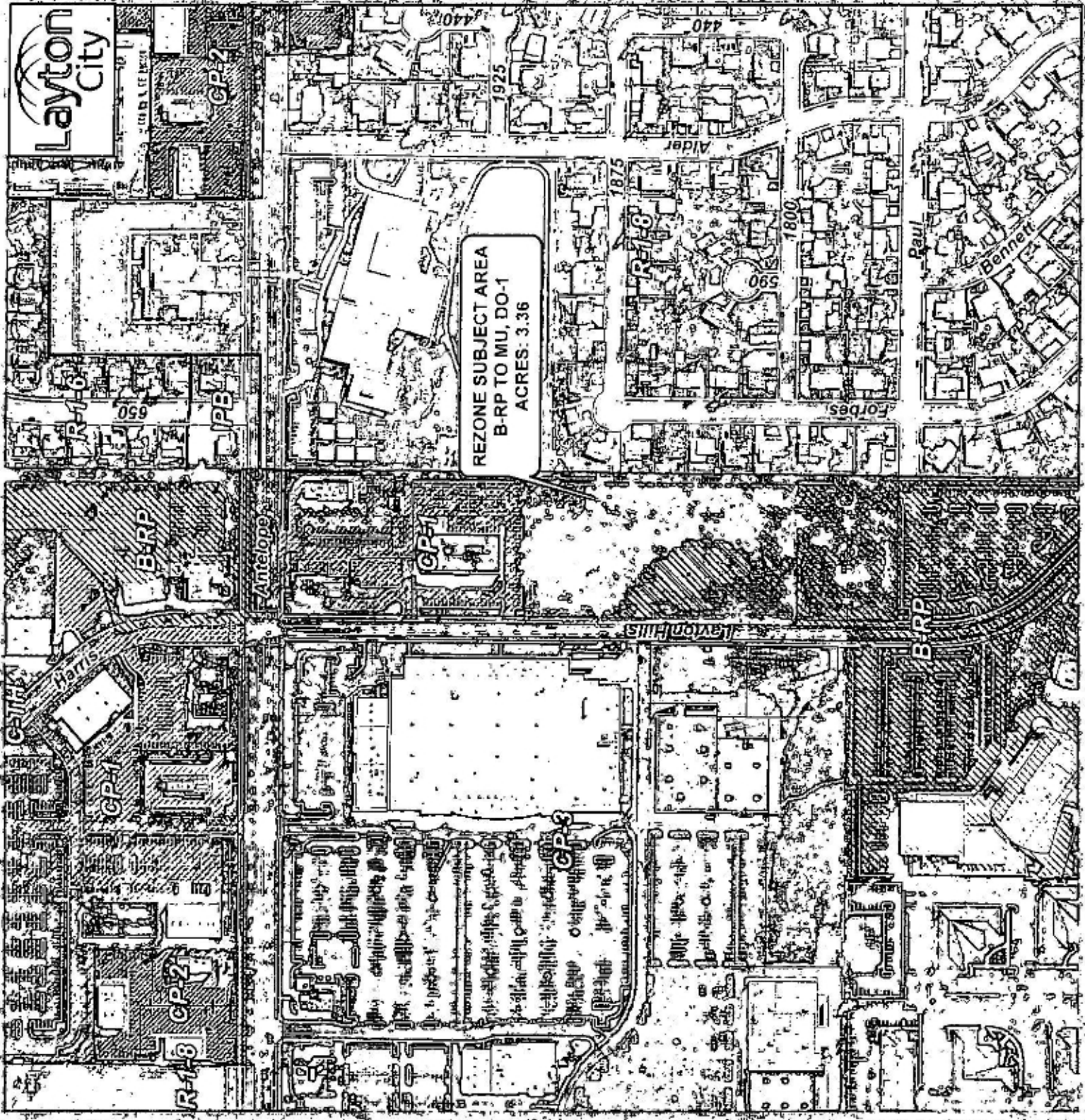
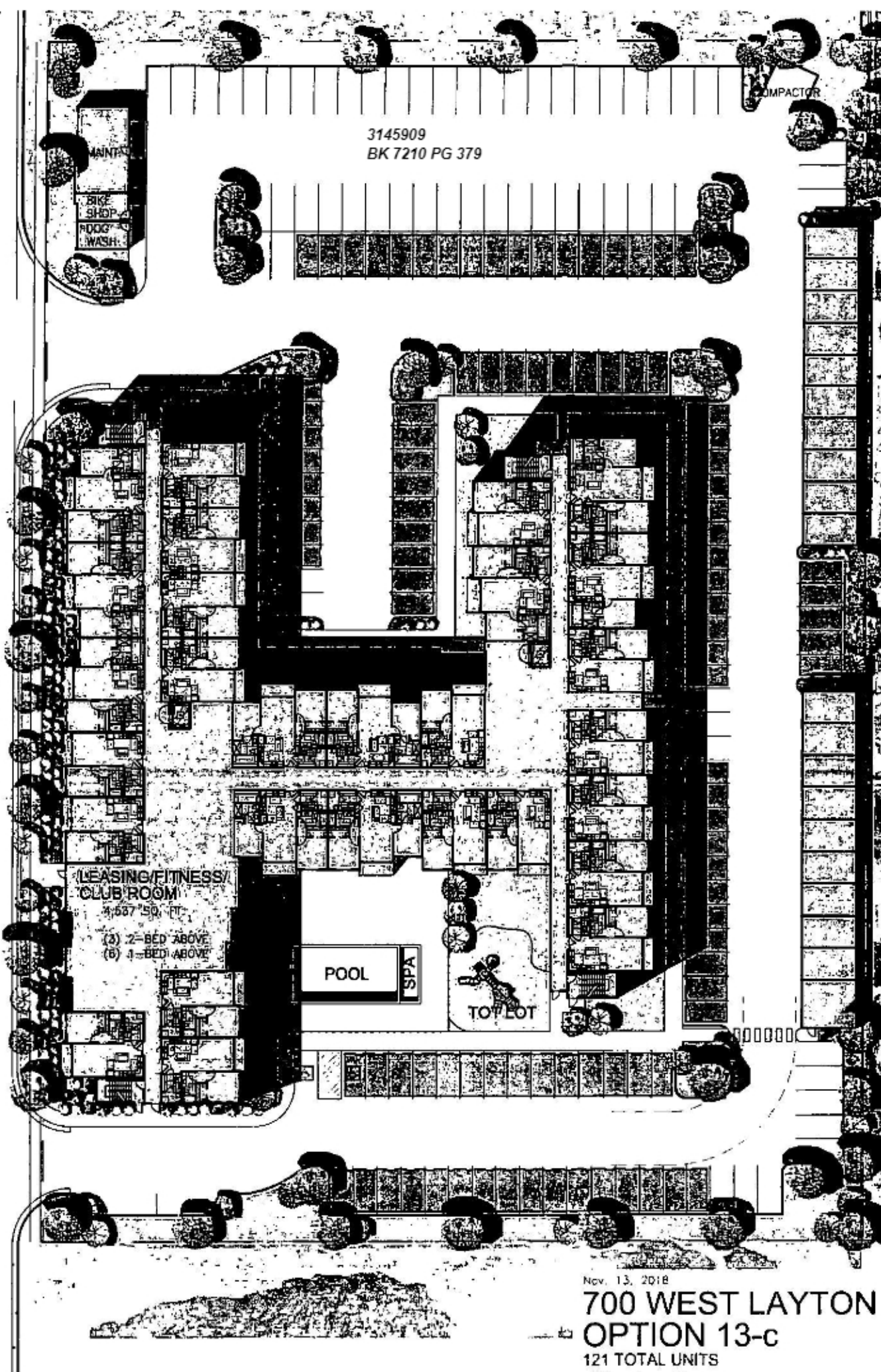


Exhibit "B" - Concept Plan

700 WEST



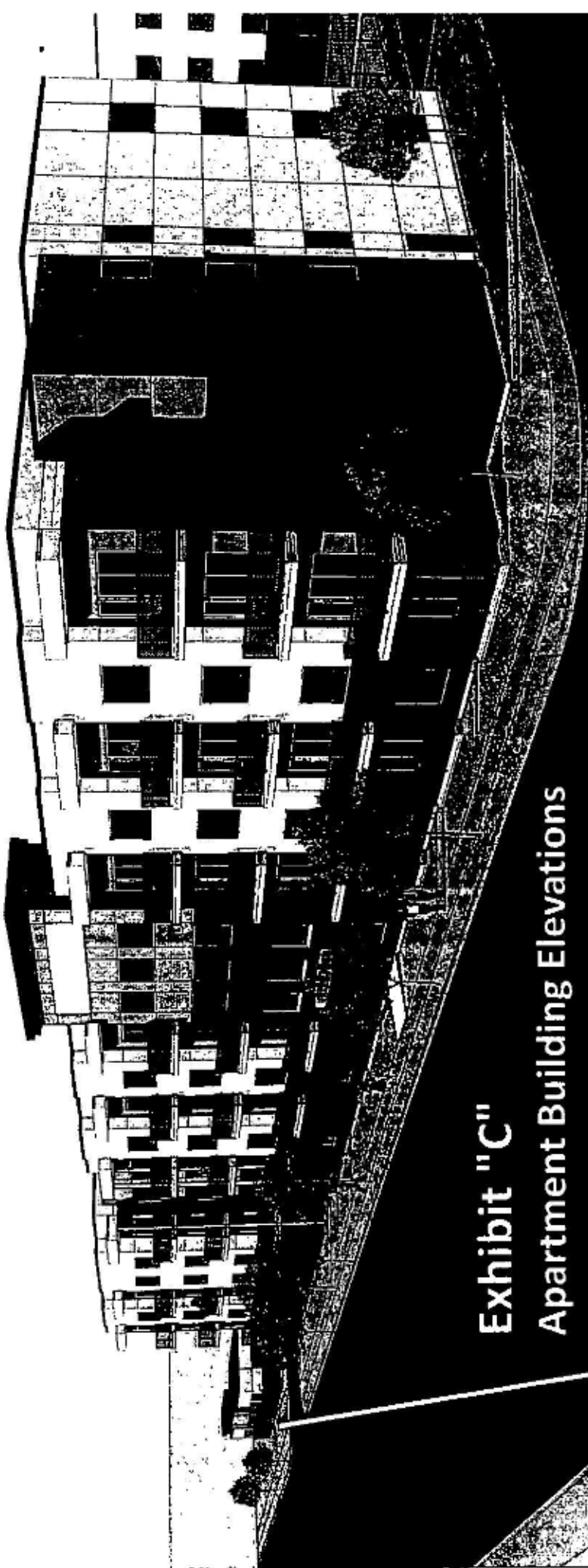
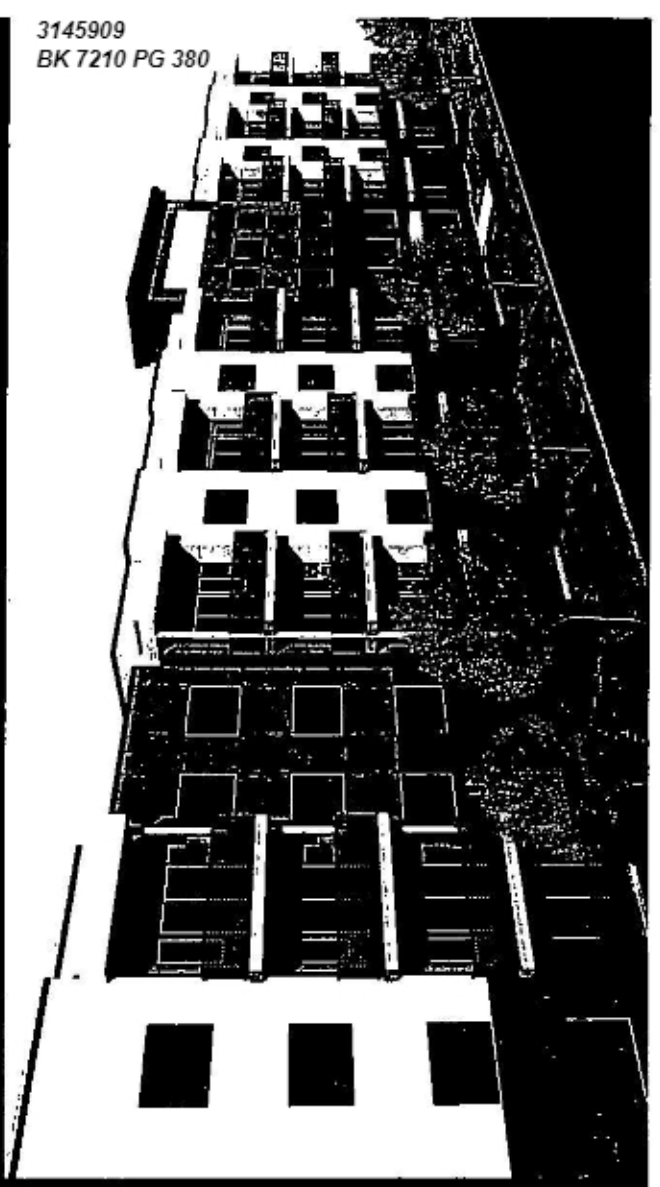


Exhibit "C"
Apartment Building Elevations



Accessory Maintenance Building fronting 700 West

LEGAL DESCRIPTION

PARCEL # 10-220-0404

ALL OF LOT 404, LAYTON MARKET CENTER PHASE IV CONTAINS
3.36 ACRES