

DEVELOPMENT AGREEMENT

This Development Agreement is executed in duplicate this ^{25th} day of August, 2015, by and between the City of Orem, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 56 North State Street, Orem, Utah 84057 (hereinafter referred to as the "City"); Ridgeline Capital, L.C., with its principal office located at 3411 South Mountain Vista Parkway, Springville, Utah 84663 (hereinafter referred to as "Ridgeline"); and Boardwalk Industries, LLC, a Utah limited liability company with its principal office located at 2825 East Cottonwood Parkway #527, Salt Lake City, Utah 84121 (hereinafter referred to as "Boardwalk").

RECITALS

WHEREAS Ridgeline owns three parcels of property in unincorporated Utah County located at approximately 1900 South Geneva Road and identified in the office of the Utah County Recorder as Parcel Nos. 19:036:073 (22.39 acres), 19:036:0034 (12.82 acres), and 19:036:0030 (1.79 acres) which three parcels are hereinafter collectively referred to as the "Property;" and

WHEREAS the Property is more particularly described in Exhibit "A" which is attached hereto and by reference is made a part hereof; and

WHEREAS Boardwalk has a contract to purchase the Property from Ridgeline; and

WHEREAS for purposes of this Agreement Ridgeline and Boardwalk and the representatives of either are collectively referred to herein as "Owner;" and

WHEREAS various owners of property in unincorporated Utah County have submitted an application to annex certain property (hereinafter referred to as the "Annexation Area") including the Property into the City; and

WHEREAS representatives of Owner have filed an application with the City requesting that concurrent with or subsequent to the annexation of the Property into the City, the City create and apply a new planned development zone known as the PD-43 zone to the Property that will allow for the development of a medium density residential development consisting of twinhomes, townhomes and other related uses; and

WHEREAS Owner has submitted a concept plan for the Property, a copy of which is attached hereto as Exhibit "B" that shows how the Property will be developed including the design and layout of residential units, streets, accesses, and future accesses; and

WHEREAS the City has concerns related to access and traffic impacts that will be created by the proposed development of the Property; and



WHEREAS the City believes that certain improvements need to be made to improve access to and from the proposed Project and to mitigate the negative traffic impacts resulting from development of the Property under the proposed PD-43 zone; and

WHEREAS in order to address the City's concerns about access and traffic impacts resulting from development of the Property under the PD-43 zone, Owner is willing to enter into this Development Agreement and develop the Property in accordance with the provisions of this Development Agreement; and

WHEREAS the City, acting pursuant to its authority under Utah Code Section 10-9-101, *et. seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has elected to approve this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Owner hereby agree as follows:

1. **Access.** The parties acknowledge that at the present time the only potential access to the Property is from Geneva Road. The parties anticipate that at some point in the future, access to the Property from that street commonly referred to as 2000 South in Orem and 2000 North in Provo (and for ease of reference hereinafter referred to as "2000 Street") will become available along the southern boundary of the Property and/or from the new Lakeview Parkway which is anticipated to be constructed adjacent to the western boundary of the Property and Owner desires and intends to provide additional access to the Property from one or both of these points. The parties further acknowledge and agree that at least two accesses are necessary for the construction of the number of residential units that are being proposed by Owner. The parties further acknowledge that regulations of the Utah Department of Transportation (UDOT) require an access to a residential development of the type and size being proposed by Owner to be located at least 660 feet away from an intersection and from another access. Owner acknowledges that under these regulations, the Property does not have enough frontage on Geneva Road for two accesses to the Property. However, pursuant to negotiations between UDOT, Owner, and the City, UDOT has agreed that Owner may locate a temporary access to the Property that is approximately 350 feet from the intersection of Geneva Road and 2000 Street as shown in the concept plan under the condition that this access will no longer be used to access residential development on the Property at such time as another access becomes available from 2000 Street or from the future Lakeview Parkway. Pursuant to such negotiations, the City and Owner agree that subject to UDOT approval, the Property may have two accesses from Geneva Road as shown in the concept plan subject to the following conditions:

1.1. **Access From 2000 Street.** Owner shall provide additional access to the Property from 2000 Street in the location shown on the concept plan as soon as such access becomes reasonably feasible. Access from 2000 Street shall be deemed to be reasonably feasible as soon as 2000 Street is improved and extended at least as far west as the access point to 2000 Street from the Property as shown on the concept plan. Owner shall also provide an additional access to the

Property from the future Lakeview Parkway as soon as such access becomes reasonably feasible. Owner shall bond for the construction of the access from 2000 Street in accordance with Article 17-6 of the City Code with the first phase of development on the Property.

1.2. Development to Plan for New Accesses. Owner shall construct the development on the Property in such a way that future access from the Property to 2000 Street and the future Lakeview Parkway is reasonably feasible. Owner shall stub a street to 2000 Street and to the edge of the Lakeview Parkway Preservation Corridor as shown in the concept plan.

1.3. Closure of Southern Geneva Road Access. Access to the residential units on the Property from the southern Geneva Road access shall be discontinued and physically blocked at such time as access to the Property from 2000 Street becomes available. The southern Geneva Road access may continue to be used to access the parcel at the corner of Geneva Road and 2000 Street provided such parcel is used for non-residential uses or provided that the access to the parcel is to a parking lot and not a private street. Owner shall bond for the costs of closing the southern Geneva Road access in accordance with Article 17-6 of the City Code with the first phase of development on the Property.

1.4. Notice of Access Changes. Owner shall place a note on the preliminary plat and all final plats that include any part of the Property indicating that an access to the Property from 2000 Street and the future Lakeview Parkway will be created in the location shown on the concept plan as soon as such access(es) becomes feasible. Owner shall also place a note on the preliminary plat and all final plats that include any part of the Property indicating that the southern Geneva Road access will be closed as soon as an access becomes available from 2000 Street. Owner agrees to place similar notes on all maps that are used to market the Property or units on the Property. Owner shall also include a section in the covenants, conditions and restrictions (CC&Rs) governing the Property indicating that an access to the Property from 2000 Street as shown in the concept plan will be created as soon as the creation of such access becomes feasible and that the southern Geneva Road access to the Property will be closed as soon as the access to the Property from 2000 Street becomes available.

1.5. Closure of Southern Access Not Required if UDOT Regulations Allow. In the event that UDOT regulations applicable to the Property change in the future such that at the time that Owner would otherwise be required to close the southern Geneva Road access under this Agreement, the southern access is then in compliance with UDOT regulations and UDOT gives its written approval to allow the southern Geneva Road access to remain open, then in that event Owner shall not be required to close the southern Geneva Road access pursuant to this Agreement. However, Owner's obligation to create an access to the Property from 2000 Street shall remain in full force and effect.

1.6. Access to Lakeview Parkway. The development on the Property shall include a street stubbed to the edge of the Lakeview Parkway Preservation Area as shown in the concept plan.

2. Dedication of Property for 2000 Street. Owner shall dedicate a portion of the Property to Provo City for the construction and improvement of 2000 Street (hereinafter referred to as the "2000 Street Dedication Area"). The 2000 Street Dedication Area shall be that portion of the Property located south of the back edge of the curb adjacent to 2000 Street as shown in the concept plan. Owner shall dedicate the 2000 Street Dedication Area to Provo City on or before the recording of any final plat for the Property and prior to the issuance of any building permit

for development on the Property. The 2000 Street Dedication Area shall also be designated on the final plat and site plan for the Property.

3. **Installation of Improvements Along Future 2000 Street.** Owner shall construct and install curb and gutter, a landscape strip and sidewalk along the northern boundary of the 2000 Street Dedication Area as shown on the concept plan and in accordance with the requirements of the proposed PD-43 zone concurrent with any phase of development that includes any units located within 100 feet of the northern boundary of the 2000 Street Dedication Area. Owner shall also bond for such improvements in accordance with the requirements of Article 17-6 or the Orem City Code concurrent with any final plat or site plan that includes any units located within 100 feet of the northern boundary of the 2000 Street Dedication Area. However, notwithstanding the foregoing, Owner shall not be obligated to install the curb and gutter improvements until such time as Provo City has acquired the property necessary to extend 2000 Street westward from Geneva Road adjacent to the southern edge of the Property and has approved a final design for the alignment of the 2000 Street extension. In the event that Provo does not acquire all such property and/or has not approved a final design for the extension of 2000 Street within three years from the time that Owner receives approval of a site plan for the Property or within one year after a final occupancy permit is received for the last unit or building shown on the concept plan, whichever is later, then the City shall not require Owner to install the curb and gutter along 2000 Street.

4. **Geneva Road Improvements.** Concurrent with the development of the Property, Owner shall construct and make improvements to the entire length of Geneva Road that is adjacent to the Property. Owner shall construct such improvements to Geneva Road as may be necessary to make that portion of Geneva Road located west of the centerline of Geneva Road conform with the approved cross-section for Geneva Road (south of Lakeview Parkway) which is attached hereto as Exhibit "C" and by reference is made a part hereof. The improvements to be constructed and installed by Owner include, but are not necessarily limited to, asphalt (sufficient to make the asphalt portion of Geneva Road located west of the centerline twenty-nine feet (29') in width), curb and gutter, a landscaped parkstrip eight feet (8') in width and a sidewalk six feet (6') in width (hereinafter collectively referred to as the "Geneva Road Improvements"). Owner shall construct the Geneva Road Improvements in conformance with UDOT construction standards and specifications. Owner shall bond for the Geneva Road Improvements in conformance with the requirements of Chapter 17 of the Orem City Code prior to the issuance of any building permit for new development on the Property. Following completion of the Geneva Road Improvements and acceptance thereof by the City/UDOT, Owner shall dedicate the Geneva Road Improvements to UDOT.

5. **Lakeview Parkway Corridor.** The parties acknowledge and agree that Provo City, the City of Orem, UDOT, Utah County and/or other entities intend to construct a new multi-lane thoroughfare known as the "Lakeview Parkway" adjacent to a portion of the western boundary of the Property. It is anticipated that a portion of the western edge of the Property will be needed for the construction of the Lakeview Parkway. In order to preserve the area of the anticipated Lakeview Parkway Corridor for acquisition by Provo, the City of Orem, UDOT, Utah County and/or other entities that may be involved in the construction of the Lakeview Parkway, Owner

agrees not to construct any structure in the westernmost one hundred ten feet (110') of the Property which is designated as the "Lakeview Parkway Preservation Area" in Exhibit "B." However, this restriction on construction in the Lakeview Parkway Corridor shall expire if a final plan for the Lakeview Parkway is adopted and approved that does not require the use of the property included in the Lakeview Parkway Preservation Area or if no final plan for the Lakeview Parkway has been adopted and approved within fifteen (15) years from the date of this Development Agreement.

6. Army Corps of Engineers Approval. Owner acknowledges that approval from the Army Corps of Engineers may be required for part of the Property before development may occur on such part of the Property. Owner agrees to obtain any approvals and permits required by the Army Corps of Engineers and to comply with any mitigation measures that may be required by the Army Corps of Engineers before proceeding with development of any part of the Property for which such approvals, permits or mitigation measures may be required.

7. Relocation of Taylor Drain. The parties acknowledge that the Taylor Drain is currently located on and runs through the Property. The Taylor Drain is a major conduit for the conveyance of City storm water. In order to accommodate the layout of Owner's concept plan, the Taylor Drain will need to be relocated. Owner agrees to relocate the Taylor Drain and to install new storm drain improvements (hereinafter referred to as the New Storm Drain Improvements") in the size and location shown in Exhibit "D" which is attached hereto and by reference is made a part hereof. The New Storm Drain Improvements shown in Exhibit "D" shall be constructed and installed by Owner in conformance with the City's construction standards and specifications. The New Storm Drain Improvements shall consist of three hundred twenty (320) linear feet of 15" storm drain pipe beginning at the northeast corner of the Ridgeline Property and extending southerly along Geneva Road to connect to the existing Taylor Drain, then 1,027 linear feet of 24" storm drain pipe extending southerly adjacent to Geneva Road from the Taylor Drain to the edge of 2000 Street, then 1,899 linear feet of 24" storm drain pipe extending westerly along the edge of 2000 Street, then 309 linear feet of 24" storm drain pipe extending northerly to connect to the existing Taylor Drain line, all as shown on the attached Exhibit "D." In connection with the installation of the New Storm Drain Improvements described herein, the existing Taylor Drain line located on the Ridgeline Property shall be abandoned and disconnected as also shown on Exhibit "D." Following completion of the New Storm Drain Improvements, Owner shall dedicate and convey the New Storm Drain Improvements to the City. Owner shall also grant the City an easement along the entire length of the New Storm Drain Improvements which easement shall be twenty feet (20') wide with the center line of such easement being generally the location of the New Storm Drain Improvements. The easement shall grant the City the right to use the easement area for the construction, operation, maintenance, upgrade, and repair of a storm water pipe and related appurtenances over, under, across and through the easement area.

8. Property to be Subject to Impact Fees. The parties acknowledge that it is likely that if the City Council annexes the Annexation Area (including the Property), that it will also likely adopt an ordinance imposing impact fees on development in the Annexation Area. The parties acknowledge that pursuant to Utah Code Section 11-36a-401(2), an impact fee enactment may

not take effect until 90 days after the day on which the impact fee enactment is approved. The parties understand that this provision was enacted for the protection of property owners and developers to allow the same a period of time in which to protest or contest an impact fee enactment. The parties additionally acknowledge that in order to discourage development in the Annexation Area before the impact fee enactment can take effect and a financing mechanism can be put in place to pay for municipal utility improvements, City Staff would recommend and the City Council would be likely to initially apply a low density residential zone such as the OS-5 zone to all property in the Annexation Area at the time it approves the annexation of the Annexation Area. The parties further acknowledge that City Staff would recommend and the City Council would be likely to maintain a low density residential zone such as the OS-5 zone on all property in the Annexation Area for at least 90 days until the impact fee enactment takes effect. At the expiration of the 90 day period, the parties anticipate that the City Council would consider applications from individual property owners in the Annexation Area to rezone their respective properties to a zoning classification that would allow higher residential densities and/or commercial development. Owner hereby expressly states and affirms that because Owner desires to begin the development of the Property as quickly as possible after annexation and because Owner desires to have the PD-43 zone applied to the Property immediately after annexation, that it would be in Owner's best interest to waive the 90 day waiting period for an impact fee enactment to become effective as to the Property in order to receive a positive recommendation from City Staff to immediately apply the PD-43 zone to the Property. Owner further acknowledges that Owner would suffer substantial delay, expense and loss if it is required to wait 90 days before receiving a positive recommendation from City Staff to rezone the Property to the PD-43 zone. Therefore, in the event the City Council annexes the Annexation Area and adopts an impact fee ordinance that applies impact fees to development in the Annexation Area and applies the PD-43 zone to the Property, then Owner expressly agrees that all development on the Property shall be subject to such impact fees adopted by the City Council notwithstanding that the 90 day period has not elapsed, and Owner expressly agrees to waive the 90 day period as to all development on the Property. Owner further agrees that in consideration of City Staff's recommendation to apply the PD-43 zone to the Property immediately after annexation of the Property into the City, Owner shall not object to, nor contest in any way, the application of impact fees adopted by the City Council to development on the Property.

9. Agreement Considered Mitigation of Impact. In consideration for the agreement of Owner to develop the Property in conformity with this Agreement, the City staff shall make a recommendation to the Orem City Council to consider the terms of this Development Agreement as sufficient mitigation of the potential adverse impacts resulting from the request to annex the Property into the City and to apply the PD-43 zone to the Property.

10. No Guarantee of Annexation or Desired Zoning. The City makes no representation that the request of Owner to annex the Property into the City or to apply the PD-43 zone to the Property will be approved by the Orem City Council. Therefore, this Agreement shall not be binding upon Owner unless the request to annex the Property into the City and to apply the PD-43 zone to the Property is approved by the Orem City Council at its meeting on August 25-(26), 2015.

11. **No Limitation on Exercise of Police Power.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.
12. **Compliance With All Applicable Laws.** Owner expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Owner from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats and a site plan (if applicable), including the payment of fees and compliance with all other applicable ordinances, resolutions, including the Orem City Zoning and Subdivision Ordinances and design and construction standards.
13. **Agreement to be Recorded.** Upon the approval of the annexation of the Property into the City and the rezone of the Property to the PD-43 zone by the Orem City Council, this Agreement may be recorded against the Property and shall be deemed to run with the land and shall be binding on all successors and assigns of Owner in the ownership or development of any portion of the Property.
14. **Indemnification.** Owner agrees to indemnify and hold the City harmless from and against any demand, claim, action, damages or loss of any type arising or resulting from the development of the Property except such demands, claims, actions, damages, or losses that are caused by the City's (or its employees') own negligence or willful misconduct.
15. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their operation. The parties further represent that each of them has authority to enter into this Agreement and that the individuals signing this Agreement on behalf of each party have authority to bind the party represented by the signing individual.
16. **Applicable Law.** This Agreement shall be interpreted pursuant to the laws of the State of Utah.
17. **Time of Essence.** Time shall be of the essence of this Agreement.
18. **Interpretation.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or

through his agents prepared the same, it being acknowledged that both parties have participated in the preparation hereof.

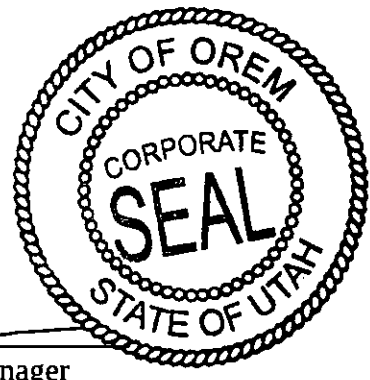
19. **Modifications**. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

20. **Assignment**. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement.

21. **Relationship of Parties**. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

22. **Incorporation of Recitals**. The Recitals to this Agreement are incorporated by reference into the Covenants section of this Agreement as if fully set forth herein.

SIGNED and ENTERED INTO this 4th day ^{new} 25th ~~day~~ of May, 2016, 2015.



City of Orem, by:

James P. Davidson
James P. Davidson, Orem City Manager

ATTEST: Donna R. Weaver
Donna Weaver, City Recorder

ENT 43848:2016 PG 9 of 13

Ridgeline Capital, L.C.

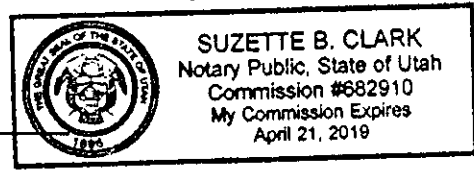
By: [Signature], manager

STATE OF UTAH)
:ss.

COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 19 day of ~~August~~ ^{January, 2016}, 2015, by Kyle Bateman, as the Manager of Ridgeline Capital, L.C., who acknowledged that he signed this Agreement on behalf of Ridgeline Capital, L.C.

[Signature]
Notary Public



Boardwalk Industries, LLC

By: [Signature]

STATE OF UTAH)
:ss.

COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 9 day of ~~August~~ ^{November}, 2015, by Jeff Mansell, as the Managing Member of Boardwalk Industries, LLC, who acknowledged that he signed this Agreement on behalf of Boardwalk Industries, LLC.

[Signature]
Notary Public

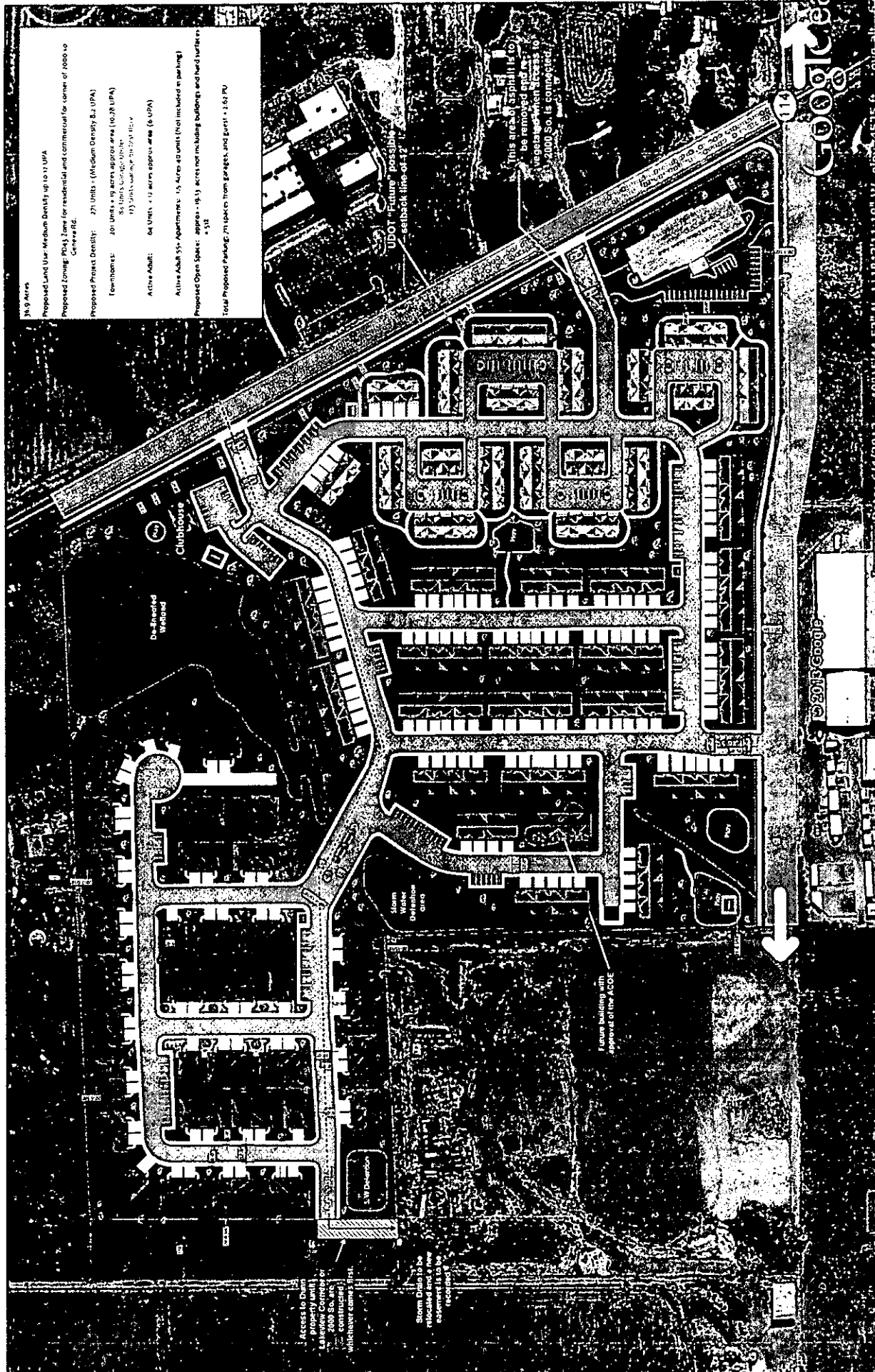


Lakeview Fields Overall Property Boundary

Beginning at a point located South 89°31'44" West along section line 706.95 feet and North 9.64 feet from the Southeast corner of Section 28, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along a fence line called out in a boundary line agreement recorded as Entry 122779:2009 in the office of the Utah County Recorder the following four courses and distances: 1) South 77°01'58" West 33.08 feet, 2) North 89°58'43" West 644.42 feet, 3) South 1°01'14" West 27.45 feet, and 4) South 89°08'51" West 686.26 feet; thence North 1°17'00" West 728.21 feet; thence South 87°33'00" West 586.27 feet; thence North 00°00'34" East along a fence line 529.19 feet; thence along a fence line the following five courses and distances: 1) North 88°33'31" East 330.50 feet, 2) North 89°17'38" East 232.96 feet, 3) North 77°04'51" East 8.66 feet, 4) North 88°41'15" East 717.06 feet, and 5) North 84°27'44" East 39.63 feet; thence South 26°51'00" East 344.56 feet; thence South 27°48'10" East 1032.46 feet to the point of beginning.

Area = 37.127 Acres

36.9 Acres
Proposed Land Use: Medium Density up to 12 UPA
Proposed Zoning: PD3 (Law for residential and commercial for corner of 2000 so Geneva Rd.
Proposed Project Density: 27 Units - (Medium Density 8, UPA)
Townhomes: 20 Units + 10 acres approx area (10,20 UPA)
84 Units Single Units
113 Units Medium Density UPA
Active Adult: 64 Units + 1/2 acres approx area (8 UPA)
Active Adult 55+ Apartments: 1/2 Acres 40 units (not included in parking)
Proposed Open Space: approx - 19.3 acres not including buildings and hard surfaces
+ 5.11
Total Proposed Parking: 271 spaces from garages and garst + 1.67 PV



Access to Chain Property Unit
All new construction shall be constructed in accordance with the applicable zoning code.

Storm Drain to be relocated and a new assessment to be required.

Future building with approval of the ACDE

Future parking garage

Future area of hospital to be removed and replaced with a 20,000 sq. ft. community center

Future building with approval of the ACDE

Future building with approval of the ACDE

Future building with approval of the ACDE

Future building with approval of the ACDE

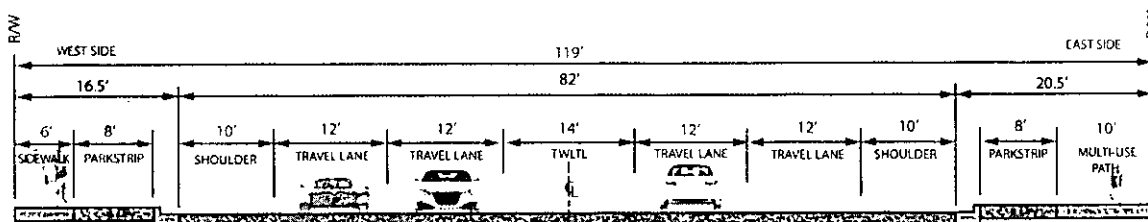
Future building with approval of the ACDE

Future building with approval of the ACDE

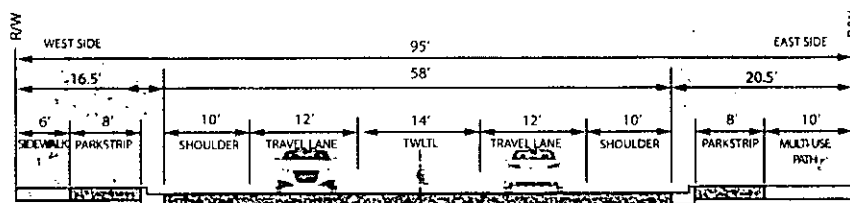
Future building with approval of the ACDE

Future building with approval of the ACDE

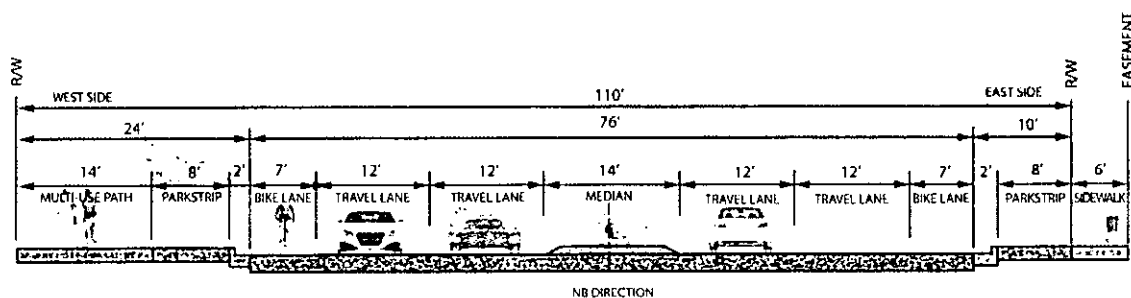
Geneva Road – 119' ROW (North of Lakeview Parkway)

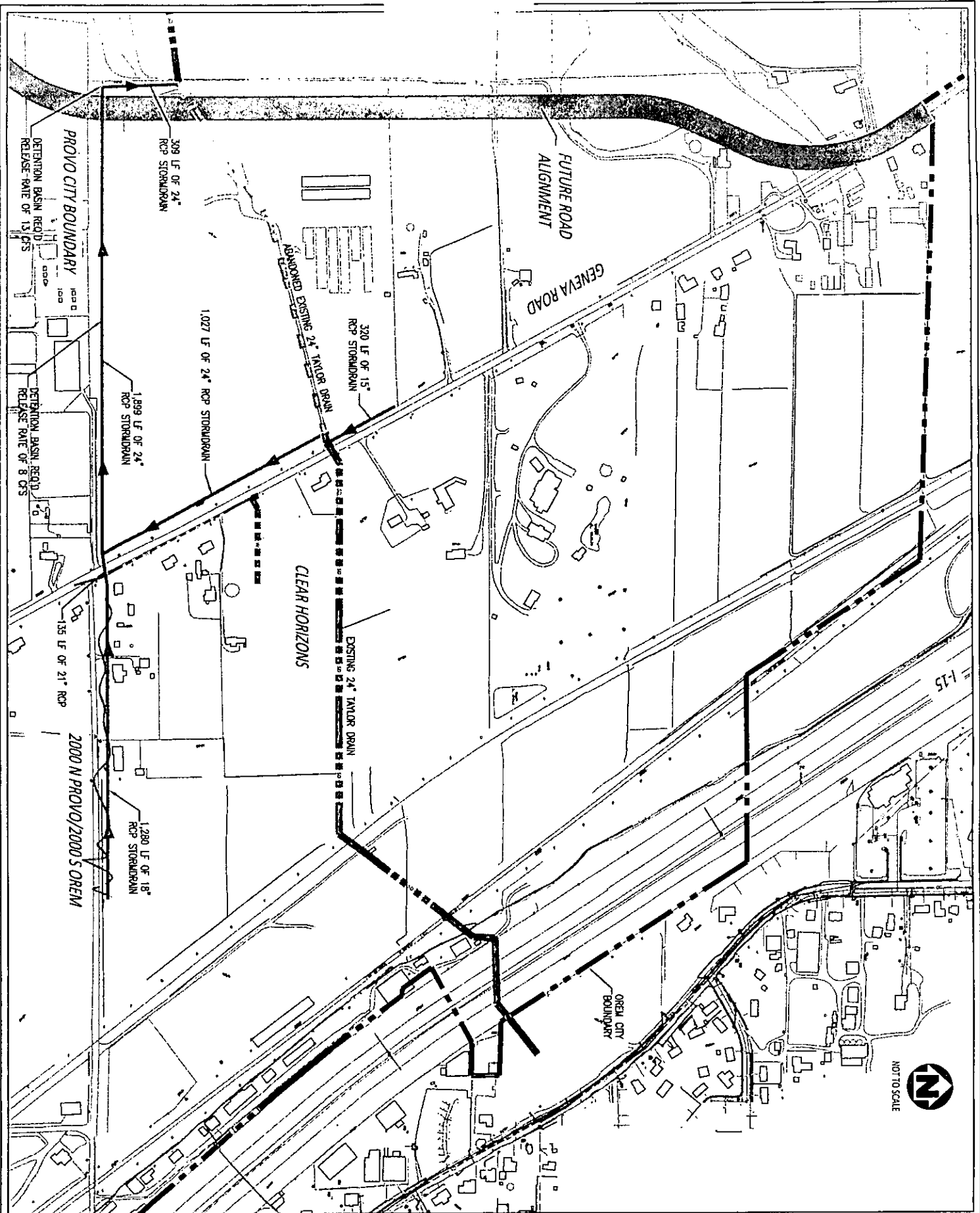


Geneva Road – 95' ROW (South of Lakeview Parkway)



Lakeview Parkway – 110' ROW (6' Easement)





UT-3

Southwest Orem Annexation Area

X:\Misc\SW Orem\dwg\Impact Fee Base Map 08-05-15.dwg

Storm Drain Design

CITY OF OREM

DEVELOPMENT SERVICES
ENGINEERING DIVISION
56 NORTH STATE ST
OREM, UT 84057



| | | |
|---------|------|-------------|
| DESIGN | TRB | AUGUST 2015 |
| DRAWN | TRB | AUGUST 2015 |
| CHECKED | SKK | AUGUST 2015 |
| REV | DATE | BY |
| | | |
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|----------------------|-------------------------------|
| APPROVAL RECOMMENDED | |
| DATE | CITY ENGINEER |
| APPROVED | |
| DATE | DEVELOPMENT SERVICES DIRECTOR |