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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
06/14/2018 12:45 PM
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DEP RT REC'D FOR LAYTON CITY CORP

09-050-0096

RETURNED

JUN 14 2018

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON
CITY AND FORT PIERCE MANAGEMENT, LLC**

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND
FORT PIERCE MANAGEMENT, LLC**

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 16 day of May, 2018, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and property owner Fort Pierce Management, 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 1000 East 3000 North in Layton City (hereinafter the "Subject Area") from M-1 (Light Manufacturing/Industrial) to C-TH (Condominium/Townhouse) and CP-1 (Planned Neighborhood Commercial), as depicted on Exhibit A attached hereto; and

WHEREAS, the total area proposed for rezone of the Subject Area consists of approximately 7.37 acres and is depicted on Exhibit A; and

WHEREAS, Parties desire to enter into this Agreement to provide for the development of the Subject Area consisting of 7.37 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 C-TH and CP-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 "C-TH" zoning shall mean a condominium/townhouse use district, the use, maximum density, site and building design standards of which are restricted by the provisions set forth in Article IV, and regulated in Chapter 19.24 of the Zoning Ordinance.

1.4 "CP-1" zoning shall mean the Planned Neighborhood Commercial zoning district, the principal and accessory structure setbacks, building heights, and lot coverage requirements of which are regulated in Table 6-2 of Layton Municipal Code.

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 C-TH and CP-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 of M-1 to C-TH and CP-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 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 portions of the Subject Area, as depicted on Exhibit A, shall comply with the standards and requirements of the C-TH and CP-1 zone districts, as applicable. Any proposal to rezone the Subject Area from C-TH or CP-1 as depicted on Exhibit A to another zone shall require a rezone petition and amendment to this Agreement.

4.1.2 The maximum height of structure within the C-TH zone shall be thirty-five feet (35') as allowed in Chapter 19.24, except in areas within forty feet (40') of adjacent off-site single family residential uses, the maximum height of structure shall be two stories and twenty-five feet (25').

- 4.1.3 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, in accordance with Layton Municipal Code 19.16.075 – Permitted Trees Within Park Strips and Along Frontages, except where street trees would not be placed closer than 5' of any culinary or secondary waterlines. Street tree species should vary between streets 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 Connection.** A future street will be stubbed near the center of the of the south boundary line of the Subject Area as part of the construction of the Mecham Meadows Subdivision. Owner shall be responsible to provide a street connection between the stubbed street and 3000 North (State Highway 193). The street connection to Highway 193 shall provide consolidated access for adjacent highway-fronting properties to the west, including property with current easement access to the highway that could reasonably access the future street connection. The Owner shall install necessary street improvements to address safety and limited access requirements in accordance with UDOT standards.
- 4.2.2 **Culinary Water.** Owner shall be responsible for the construction and installation of all on-site and off-site culinary water improvements. It is anticipated that Mecham Meadows will stub a twelve inch (12") transmission line and an eight inch (8") service line in the future street to be stubbed near the center of the south boundary line.
- 4.2.2.1 There is a twelve inch (12") dry line in 1025 East for a future transmission line that will need to extend through the project. This line is a system improvement to be installed prior to construction of the road. Owner shall provide the City with a cost estimate of the transmission line prior to its installation. The City shall either pay to have its own contractor install the line or reimburse the cost to the developer. The City shall reimburse the Owner the amount based on actual invoices. The payment by the City for the improvements may be made through any revenue source deemed appropriate by the City and authorized by law. If the City elects to have the developer install the line, the City will reimburse the developer within six months of the submittal to the City by developer, actual invoices for the installation of the line.
- 4.2.2.2 Owner shall be eligible for a project improvement payback to share the cost of boring an eight inch (8") pipe under Highway 193 if future off-site development on parcel 09-050-0068 connects to this improvement. Such payback shall not be guaranteed by the City. The shared percentage of cost payback shall be based on the proportional share of developable acres served by the line, limited to the undeveloped portion of parcels 09-050-0068 and 09-050-0096. The payback shall be based on the actual invoices to complete the boring.

- 4.2.3 **Sanitary Sewer.** It is anticipated that Mecham Meadows will stub a sanitary sewer drain main in the future street to be stubbed near the center of the south boundary line.
- 4.2.4 **Storm Drain.** It is anticipated that Mecham Meadows will stub a storm drain main in the future street to be stubbed near the center of the south boundary line. This storm drain line was sized to address 1.47 cfs. Any drainage exceeding this amount will need to be detained. The basin will be required to be sized for a 100 year storm event.
- 4.2.5 **Land Drain.** It is anticipated that Mecham Meadows will stub an 8 inch (8") land drain main in the future street to be stubbed near the center of the south boundary line. A land drain system may be required for any homes that are specified in a geotechnical report as required per Layton City Municipal Code 18.40.020.

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;
or
- 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 C-TH (Condominium/Townhouse) and/or CP-1 (Planned Neighborhood Commercial) to M-1 (Light Manufacturing/Industrial).

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: FORT PIERCE MANAGEMENT, LLC
c/o Neil J. Wall, Managing Member for Burton Lane Storage, LC
PO Box 2000
Layton, Utah 84041
801/444-0001

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.

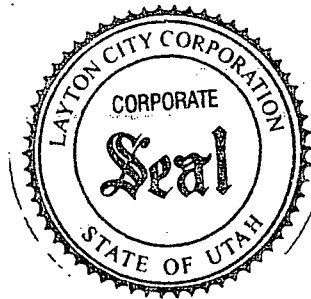
7.8.2 With regard to City's Undertakings, performance of City's Undertakings as set forth herein.

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: 
ROBERT J STEVENSON, Mayor

ATTEST:

By: 
KIMBERLY S READ, City Recorder

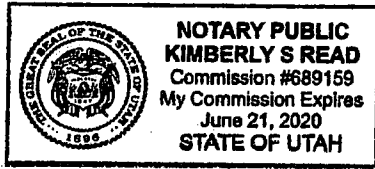
APPROVED AS TO FORM:

By: 
GARY CRANE, City Attorney

CITY ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 5th day of June, 2018, personally appeared before me Robert J Stevenson, 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.



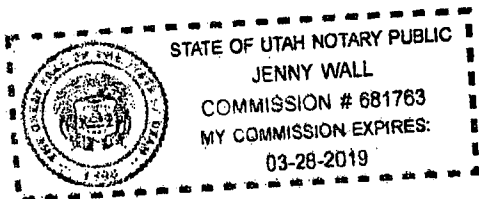
Kimberly S Read
Notary Public

OWNER ACKNOWLEDGMENT

[Signature]
FORT PIERCE MANAGEMENT, LLC
Neil J. Wall, Managing Member for Burton Lane Storage, LC

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this IV day of May, 2018, personally appeared before me Neil J. Wall, who being duly sworn, did say that he/she is Managing Member of the Burton Lane Storage, LC, Manager of Fort Pierce Management, 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.



Jenny Wall
Notary Public



EXHIBIT "A"

Fort Pierce
Management, LLC
Development
Agreement

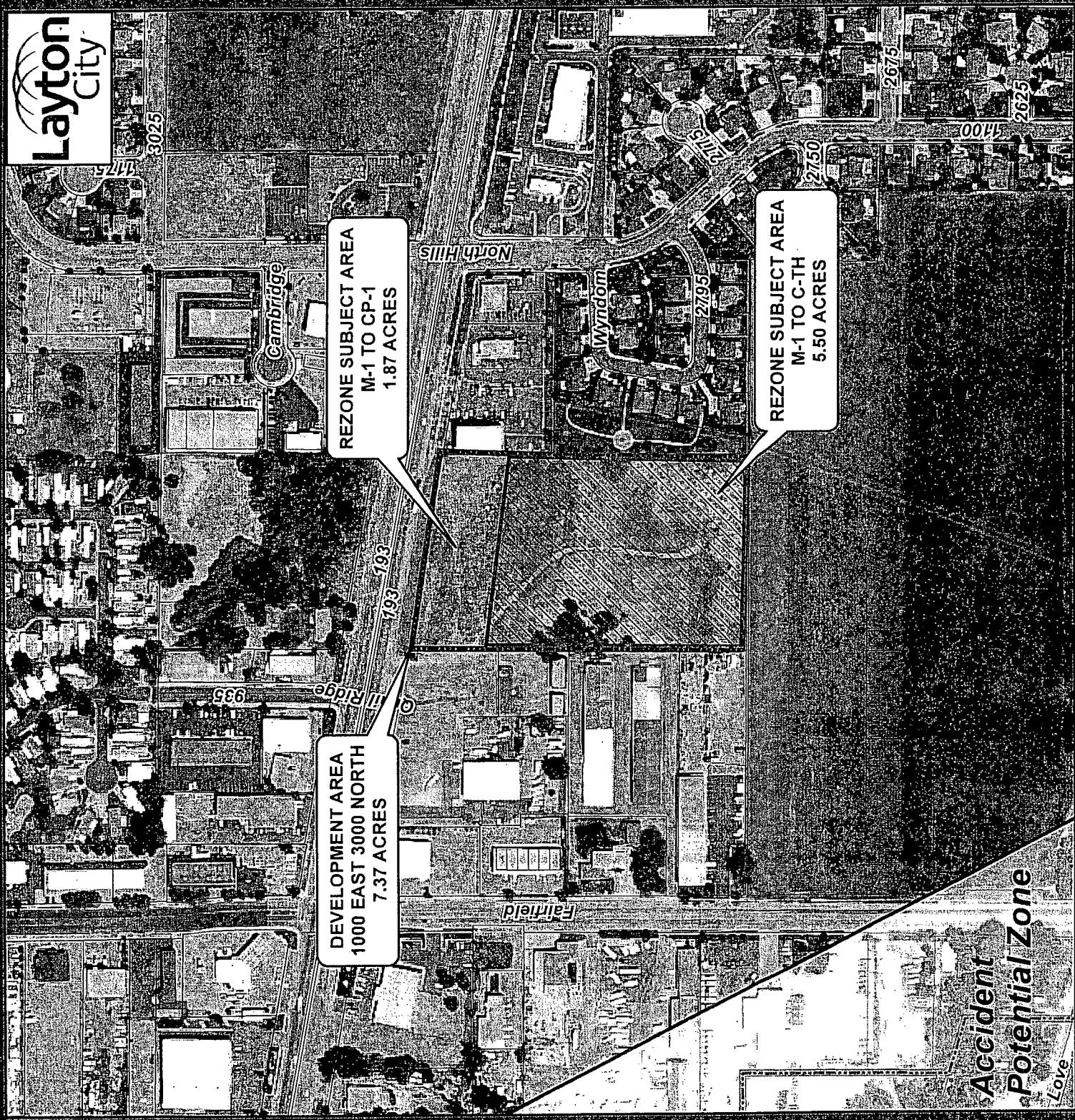
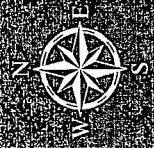
1000 East
3000 North
(Approximate)

7.37 Acres

Legend

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

Development Area



REZONE SUBJECT AREA
M-1 TO CP-1
1.87 ACRES

DEVELOPMENT AREA
1000 EAST 3000 NORTH
7.37 ACRES

REZONE SUBJECT AREA
M-1 TO C-TH
5.50 ACRES

Accident
Potential Zone

LEGAL DESCRIPTION

(PARCEL 09-050-0096)

BEG AT A PT ON S LINE OF A CERTAIN STATE ROAD S 0[^]22'
W 486.5 FT & S 79[^]58' E 445.3 FT FR NW COR OF SEC 10-
T4N-R1W, SLB&M; TH S 79[^]58' E 445.3 FT ALG SD ROAD;
TH S 0[^]22' W 694.2 FT; TH N 89[^]38' W 439.0 FT; TH N
0[^]22' E 768.9 FT TO THE POB. CONT. 7.37 ACRES