

DEVELOPMENT AGREEMENT FOR HERON'S LANDING

(1437 E 2300 N)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 18 day of May, 2021 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and Solstice Homes, LLC, a Utah limited liability company (or its assignee, RDM Land & Development, LLC, a Utah limited liability company), hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner, or will be the owner of, approximately 18.5 acres of land located within the City of Provo as is more particularly described on EXHIBIT 1, attached hereto and incorporated herein by reference (the "Property").

B. On June 16, 2020, the City Council approved Ordinance 2020-24, vesting zoning (the "Vesting Ordinance"), based on the Conceptual Site Plan set forth on EXHIBIT 2 ("Site Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. The City has the authority to enter into this Agreement pursuant to Utah Code Section 109a102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.



H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the R1.7 Residential Zone, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Site layout variations to the Concept Plan, as defined and approved by the City’s Community Development Director, such as the street layout, and the lot locations and dimensions, may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

a. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees to:

i. Limit Density. Limit the overall density of the project to no more than 4 units per acre of net density.

ii. No Sewer Lift Station. All sewer will be gravity sewer with no lift stations allowed.

- iii. Sanitary Sewer Outfall. All construction and obtaining necessary easements and right-of-way for the sanitary sewer outfall will be the sole responsibility of the Developer. Sewer shall connect in the intersection of 730 West 1820 South.
 - iv. Storm Drain Outfall. All construction and obtaining necessary easements and right-of-way for the storm drain outfall will be the sole responsibility of the Developer. Storm Drain shall connect in the intersection of 730 West 1820 South.
 - v. Lakeview Parkway Street Improvements. At or before the recording of any final plat, the Developer will pay the City the sum of \$124,070.00 as its contribution to the construction of Lakeview Parkway along the frontage of the development.
4. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.
5. Vested Rights and Reserved Legislative Powers.
- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.
 - i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:
 - 1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
 - 2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are

required to comply with State and Federal laws and regulations affecting the Project;

3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
 4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
 5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law, except that the City agrees that such fees shall not change for a period of twelve (12) months after execution of this Agreement.
 6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected except that the City agrees that such Impact Fees shall not change for a period of twelve (12) months after execution of this Agreement.
- b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.
6. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of

written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

- a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:
 - i. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.
 - 1. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.
 - 2. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.
 - 3. The rights and remedies set forth herein shall be cumulative.

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

To the Developer: RDM Land & Development, LLC
PO Box 951109
South Jordan, UT 84095
Attn: Don Mathews
Phone: 801-512-9141

Solstice Homes, LLC
4685 S Highland Drive
Holladay, Utah 84117
Attn: Chris Ensign:
Phone: 858-232-4928

To the City:

City of Provo
Attn: City Attorney
351 W Center Street

Provo, UT 84601
Phone: (801) 852-6140

8. General Term and Conditions.
- a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
- b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.
- c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.
- d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements.
- e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.
- f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.
- g. Agreement to Run with the Land. This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended to and shall be

deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

- h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.
- i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.
- j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
- k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner, and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.
- l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.
- m. Termination.
 - i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within two years (2) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.
 - ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted

prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

9. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer as provided herein.
- a. The Developer may assign the rights and responsibilities under this agreement to Don Mathews and RDM Land & Development, LLC without further notice to or consent from the City.
 - b. Notice. For any other assignment, Developer or its assignees shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.
 - c. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
 - d. Grounds for Denying Assignment. The City consents to an assignment to the assignee designated in subparagraph a., above. The City may only withhold its consent to an assignee other than that designated in subparagraph a., above if the City is not reasonably satisfied with the assignee's likely financial ability to perform the obligations of Developer proposed to be assigned.
 - e. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.
10. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.
11. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

12. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

13. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

14. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY:

CITY OF PROVO

ATTEST:

By: Jessica Steiner
Dept. City Recorder

By: Michelle Kaufusi
Mayor Michelle Kaufusi



DEVELOPER:

Solstice Homes, LLC

By: Chris Ensign
Name: Chris Ensign
Title: Manager

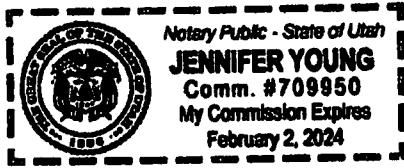
And

RDM Land & Development, LLC

By: _____
Name: Don A. Mathews
Title: Manager

STATE OF UTAH)
 :SS
 COUNTY OF ~~UTAH~~ Salt Lake

On the 5 day of May, 2021, personally appeared before me Chris Ensign, who being by me duly sworn, did say that he is the Manager of Solstice Homes, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

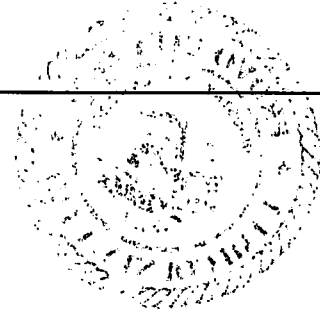


Jennifer Young
Notary Public
Residing at: Cottonwood Heights UT

STATE OF UTAH)
 :SS
 COUNTY OF UTAH)

On the ___ day of _____, 2021, personally appeared before me Don A. Matthews, who being by me duly sworn, did say that he is the Manager of RDM Land & Development, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public
Residing at:



12. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

13. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

14. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY:

CITY OF PROVO


ATTEST:

By: _____
City Recorder

By: _____
Mayor Michelle Kaufusi

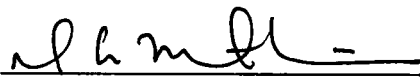
DEVELOPER:

Solstice Homes, LLC

By:  _____
Name: Chris Ensign
Title: Manager

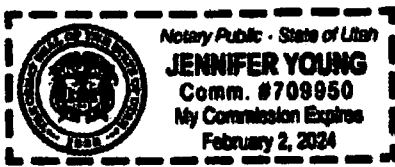
And

RDM Land & Development, LLC

By:  _____
Name: Don A. Mathews
Title: Manager

STATE OF UTAH)
 :SS
COUNTY OF ~~UTAH~~ Salt Lake

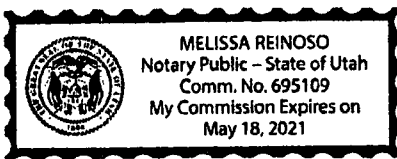
On the 5 day of May, 2021, personally appeared before me Chris Ensign, who being by me duly sworn, did say that he is the Manager of Solstice Homes, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.



Jennifer Young
Notary Public
Residing at: Cottonwood Heights UT

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

On the 12 day of MAY, 2021, personally appeared before me Don A. Matthews, who being by me duly sworn, did say that he is the Manager of RDM Land & Development, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.



Melissa Reinoso
Notary Public
Residing at: South Jordan, Utah

Exhibit 1**Legal Description of the Property**

Property in Provo City, Utah:

Beginning at a point on the Southerly Right-of-Way Line of 1560 South Street, said point being North 89°46'32" East 520.75 feet and South 1,571.60 feet from the Northwest Corner of Section 13, Township 7 South, Range 2 East, Salt Lake Base and Meridian; and running;

thence South 00°22'30" West 1,386.83 feet to a point on the Northerly Right-of-Way of Lakeview Parkway;

thence North 46°05'32" West 219.72 feet along the Northerly Right-of-Way of said Lakeview Parkway;

thence Northwesterly 200.53 feet along the arc of a 1,115.00 foot radius curve to the left (center bears South 43°54'37" West and the chord bears North 51°14'31" West 200.26 feet with a central angle of 10°18'15") along the Northerly Right-of-Way of said Lakeview Parkway;

thence Northwesterly 420.53 feet along the arc of a 1,115.00 foot radius curve to the left (center bears South 33°26'03" West and the chord bears North 67°22'14" West 418.05 feet with a central angle of 21°36'35") along the Northerly Right-of-Way of said Lakeview Parkway;

thence North 30°00'00" West 66.07 feet;

thence North 01°00'00" East 678.84 feet;

thence South 87°55'40" East 31.51 feet;

thence North 00°39'33" East 211.70 feet to a point on the Southerly Right-of-Way of said 1560 South Street;

thence North 89°57'00" East 382.00 feet along the Southerly Right-of-Way of said 1560 South Street;

thence North 89°44'57" East 314.66 feet along the Southerly Right-of-Way of said 1560 South Street to the point of beginning.

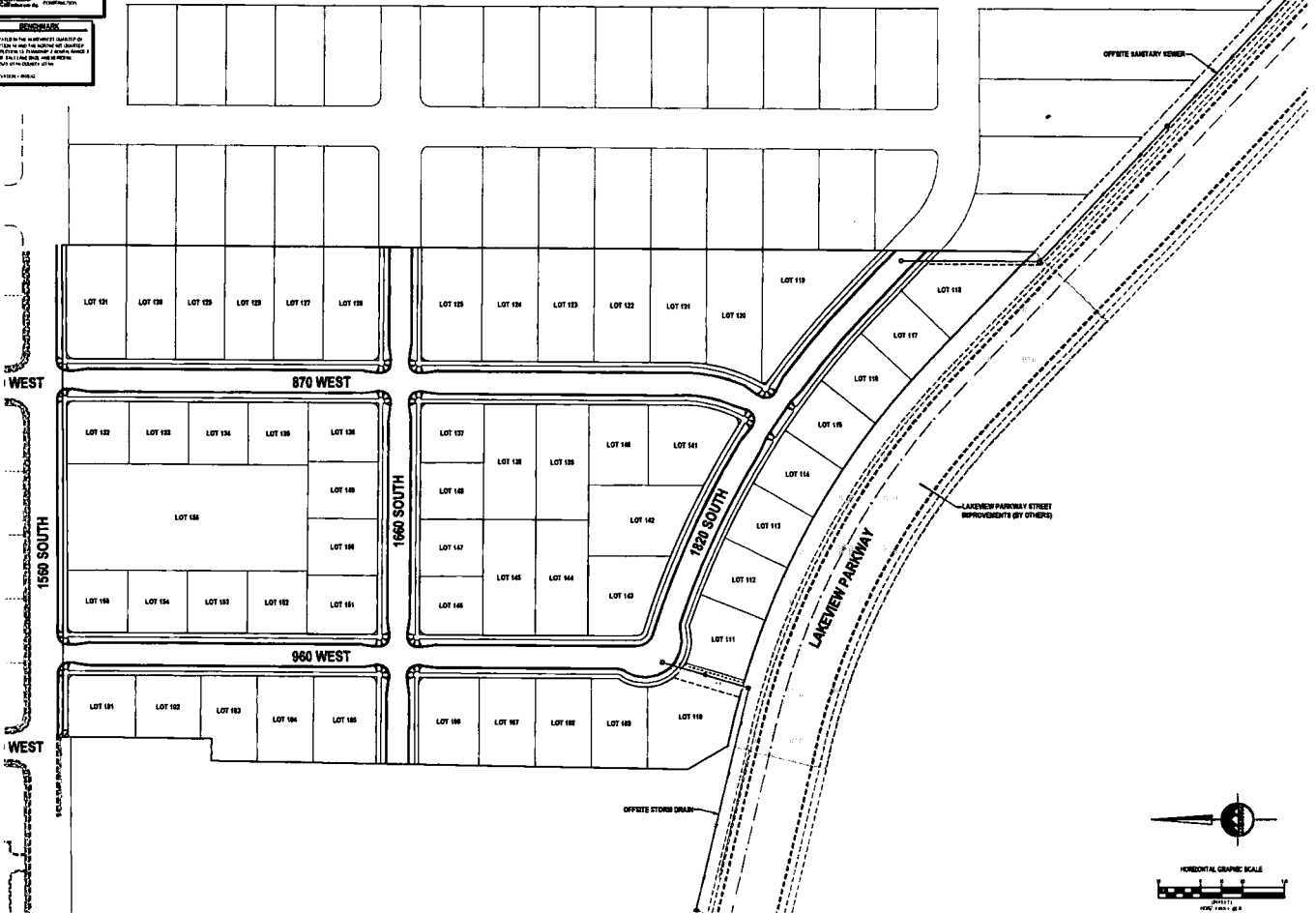
Contains 803,603 square feet or 18.448 acres.

Exhibit 2
Concept Plan

611
 CALL BEFORE YOU DIG
 800.455.7244
 www.611.org

NOTICE
 THIS PLAN IS THE PROPERTY OF THE ENGINEER. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS PLAN WITHOUT THE WRITTEN CONSENT OF THE ENGINEER IS PROHIBITED.

11/14/2021 - 04:02



ENSIGN
 THE STANDARD IN ENGINEERING

SALT LAKE CITY
 45 W. 1000 S., Suite 500
 Salt Lake, UT 84119
 Phone: 801.355.0029

LAYTON
 Phone: 801.541.1100

FORDELL
 Phone: 435.843.2000

CEDAR CITY
 Phone: 435.352.1433

HIGHFIELD
 Phone: 435.884.2821

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HERON'S LANDING
 960 WEST 1660 SOUTH
 PROVIDO, UTAH

EXHIBIT 2