

RECORDED

JUN 01 2015

CITY RECORDER

WHEN RECORDED, RETURN TO:

Wade R. Budge
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Parcel 1 - 14-14-200-005

Parcel 2 - 14-14-400-005

12073146

06/18/2015 08:57 AM \$0.00

Book - 10335 Pg - 1007-1017

GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

SL CITY RECORDER

PO BOX 145455

SALT LAKE CITY UT 84114

BY: DKA, DEPUTY - MI 11 P.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between **SALT LAKE CITY CORPORATION**, a political subdivision of the State of Utah ("City") and **NATOMAS MEADOWS, LLC**, a Utah limited liability company ("Developer"). City and Developer may be referred to herein collectively as "Parties."

RECITALS

A. Developer is the owner of approximately 73.43 acres of land located between 5600 West and Mountain View Corridor right of way and between 1300 and 2100 South Streets in Salt Lake County, Utah, which land is more particularly described on the attached Exhibit A (the "Subject Property").

B. In 2013, Developer applied to rezone the Subject Property to the Light Manufacturing (M-1) zoning district, a zoning district which authorizes the uses set forth in Salt Lake City Code § 21A.33.040.

C. In support of its application, Developer submitted concept plans showing its intended use of the Subject Property and its plans to develop uses allowed in the Light Manufacturing (M-1) zoning district.

D. On December 11, 2013, the Salt Lake City Planning Commission held a duly noticed public hearing on Developer's rezone request and voted in favor of Developer's request.

E. After receiving the positive recommendation from the Salt Lake City Planning Commission, the City Council held work sessions and public hearings to consider Developer's rezone request.

F. The City Council reviewed Developer's concept plan for separate warehouse uses and parcels as depicted on the attached Exhibit B.

G. The City Council requested that Developer agree to provide trail uses within the landscaped areas parallel to the west side of 5600 West and one side 1730 South in such a manner as would allow Developer to satisfy its landscaping requirements while providing a community trail benefit.

H. On May 6, 2014, at duly noticed public hearings, the City Council approved the rezone of the Subject Property to Light Manufacturing (M-1) by enacting Salt Lake City Ordinance No. 19 of 2014 (the "Ordinance").

I. In enacting the Ordinance, City conditioned the approval upon Developer entering into a development agreement with City. This Agreement is the development agreement referenced in the Ordinance.

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CITY RECORDER'S OFFICE
P.O. BOX 145515
SALT LAKE CITY, UTAH 84114-5515

Ent 12073146 BK 10335 PG 1007

J. City, acting pursuant to its authority under Municipal Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, -803, as amended, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations of Salt Lake City, in the exercise of its legislative discretion, has elected to approve and enter into this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance on the foregoing recitals, City and Developer agree as follows:

1. **Incorporations of Recitals.** The Parties hereby incorporate the foregoing recitals into this Agreement.

2. **Agreement to Dedicate.** The Utah Department of Transportation owns and administers 5600 West Street, a state-owned public road adjacent to the Subject Property. At such time as Developer subdivides the Subject Property, Developer shall dedicate an area equal to thirty-five (35) feet in width along the Subject Property to the Utah Department of Transportation for the sole purpose of widening 5600 West Street.

3. **Trails.**

a. **5600 West Street Trail.** At such time as Developer applies for and obtains the first building permit for construction and erection of a building on the Subject Property, Developer shall begin the construction and continue to completion the installation of a ten foot (10') wide soft surface trail with a two foot (2') wide landscape buffer along one side of the trail, in the approximate location depicted on the attached Exhibit C.

b. **1730 South Street Trail.** At such time as Developer applies for and obtains a building permit to construct and erect a building on a lot adjoining 1730 South Street, Developer shall begin the construction and continue to completion the installation of a ten foot (10') wide soft surface trail with a two foot (2') wide landscape buffer along one side of the trail, in the approximate location depicted on the attached Exhibit C. The trail contemplated by this subsection shall be installed along the north side of 1730 South Street.

c. **Setback/ No Decrease in Developable Area.** The trails to be constructed hereby shall be constructed within the setback and landscaping areas for the Subject Property and shall not decrease the size of any lot within the Subject Property or result in the decrease in the size of a building that would be otherwise be allowed without the installation of a trail or trails. The Parties may elect to dedicate the trails constructed hereby to a governmental entity and such a dedication shall not violate the terms of this subsection (c).

4. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

5. **Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement.

6. **Construction/Interpretation.** This Agreement has been reviewed and revised by legal counsel for both the City and 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.

7. **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

8. **Covenants Running with the Land/Amendments.**

a. The provisions of this Agreement shall constitute real covenants, contract and property rights, and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots within the Subject Property shall only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot.

b. This Agreement may be amended only by a writing executed by Developer and an authorized executive official or representative for City.

9. **Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement.

10. **Remedies.** Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement.

11. **Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

12. **Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

13. **No Third-Party Beneficiaries.** This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

14. **Force Majeure.** No liability or breach of this Agreement shall result from delay in performance or nonperformance caused, directly or indirectly, by circumstances beyond the reasonable control of the Party affected ("Force Majeure"), including, but not limited to, fire, extreme weather, terrorism, explosion, flood, war, power interruptions, the act of other governmental bodies, accident, labor trouble or the shortage or inability to obtain material,

service, personnel, equipment or transportation, failure of performance by a common carrier, failure of performance by a public utility, or vandalism.

15. **Entire Agreement, Counterparts and Exhibit**. Unless otherwise noted herein, this Agreement is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A – Legal Description of the Subject Property

Exhibit B – Concept Plan for Subject Property

Exhibit C – Depiction of Trail Segments

16. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES.** Developer represents that it has not: (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

17. **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT.** City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor ("GRAMA"). All materials submitted by Developer pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Developer. Any materials for which Developer claims a privilege from disclosure shall be submitted marked as "Business Confidential" and accompanied by a concise statement of reasons supporting Developer's claim of business confidentiality. City will make reasonable efforts to notify Developer of any requests made for disclosure of documents submitted under a claim of business confidentiality. Developer may, at Developer's sole expense, take any appropriate actions to prevent disclosure of such material. Developer specifically waives any claims against City related to disclosure of any materials required by GRAMA.


[Signature Page to Follow]

EFFECTIVE as of the 1 day of June, 2015.

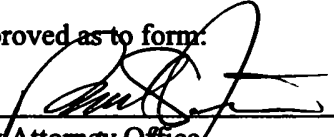
CITY:

SALT LAKE CITY CORPORATION, a
municipal corporation of the State of Utah

ATTEST:

By: 
Salt Lake City Recorder, Cindi Mansell

By: 
Its: Mayor or Designee

Approved as to form:

City Attorney Office
Date: 5/14/15

RECORDED
JUN 01 2015
CITY RECORDER




DEVELOPER:

NATOMAS MEADOWS, LLC, a California
limited liability company

By: KWS Utah, LLC, a Nevada limited
liability company
Its: Sole Member

By: KWS Companies Management, Inc., a
Nevada corporation

By: 
Kern Schumacher, President

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

The foregoing Development Agreement was acknowledged before me this 22nd day of May, 2015 by Rodney Becker, the Mayor of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, on behalf of the corporation.



ex: 12/17/17

Rachel Ann George Chavarria
NOTARY PUBLIC
Salt Lake County

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

The foregoing Development Agreement was acknowledged before me this 1st day of June, 2015 by CINDI MARSH of the City Recorder's Office of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, on behalf of the corporation.

Janyce Fowles
NOTARY PUBLIC

STATE OF Arizona)
 : SS
COUNTY OF Maricopa)



The foregoing instrument was acknowledged before me this 23rd day of April, 2015, by Kern Schumacher, as President of KWS Companies Management, Inc., a Nevada corporation, the sole member of KWS Utah, LLC, a Nevada limited liability company, the sole member of NATOMAS MEADOWS, LLC, a California limited liability company.



Christina Okey
NOTARY PUBLIC
Residing at:
Maricopa, AZ

EXHIBIT A
[Legal Description]

PARCEL 1 ID # 14-14-200-005

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY SITUATE IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE EXISTING WESTERLY RIGHT OF WAY LINE OF 5600 WEST STREET, WHICH POINT IS 32.96 FEET SOUTH 00°14'53" WEST ALONG THE SECTION LINE AND 40.00 FEET NORTH 89°45'07" WEST AND 112.73 FEET SOUTH 00°14'53" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 14; AND RUNNING THENCE SOUTH 00°14'53" WEST 2,514.49 FEET ALONG SAID EXISTING WESTERLY RIGHT OF WAY LINE; THENCE SOUTH 00°15'18" WEST 114.67 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE WEST 860.82 FEET; THENCE NORTH 1,382.70 FEET; THENCE NORTH 08°03'05" EAST 1,170.55 FEET; THENCE NORTH 82°57'48" EAST 713.65 FEET TO THE POINT OF THE BEGINNING.

PARCEL 2 ID # 14-14-400-005

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY SITUATE IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE EXISTING WESTERLY RIGHT OF WAY LINE OF 5600 WEST STREET, WHICH POINT IS 32.96 FEET SOUTH 00°14'53" WEST ALONG THE SECTION LINE AND 40.00 FEET NORTH 89°45'07" WEST AND 2,627.22 FEET SOUTH 00°14'53" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE OF SAID STREET AND 249.67 FEET SOUTH 00°15'18" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE FROM THE NORTHEAST CORNER OF SAID SECTION 14; AND RUNNING THENCE SOUTH 00°15'18" WEST 1,314.52 FEET ALONG SAID EXISTING WESTERLY RIGHT OF WAY LINE TO THE EXISTING FRONTAGE ROAD RIGHT OF WAY LINE OF SR-201 TO THE BEGINNING OF A 348.30- FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THENCE SOUTHWESTERLY 375.25 FEET ALONG THE ARC OF SAID CURVE (NOTE: CHORD TO SAID CURVE BEARS SOUTH 61°03'15" WEST 357.39 FEET) ALONG SAID FRONTAGE ROAD RIGHT OF WAY LINE; THENCE SOUTH 30°11'15" WEST 55.65 FEET ALONG SAID RIGHT OF WAY LINE; THENCE NORTH 37°39'52" WEST 578.11 FEET; THENCE NORTH 23°03'40" WEST 193.54 FEET; THENCE NORTH 08°27'29 WEST 575.11; THENCE NORTH 331.02 FEET; THENCE EAST 860.22 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
[Concept Plan for Subject Property]

21094480.3

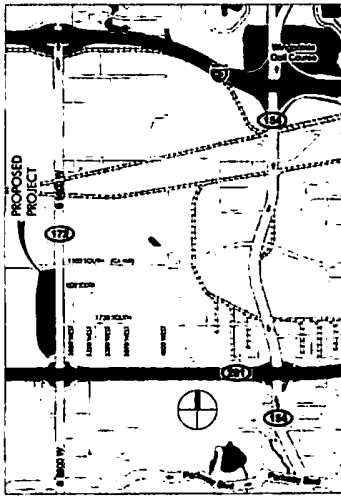
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EXHIBIT B

SITE LOCATION N.T.S.



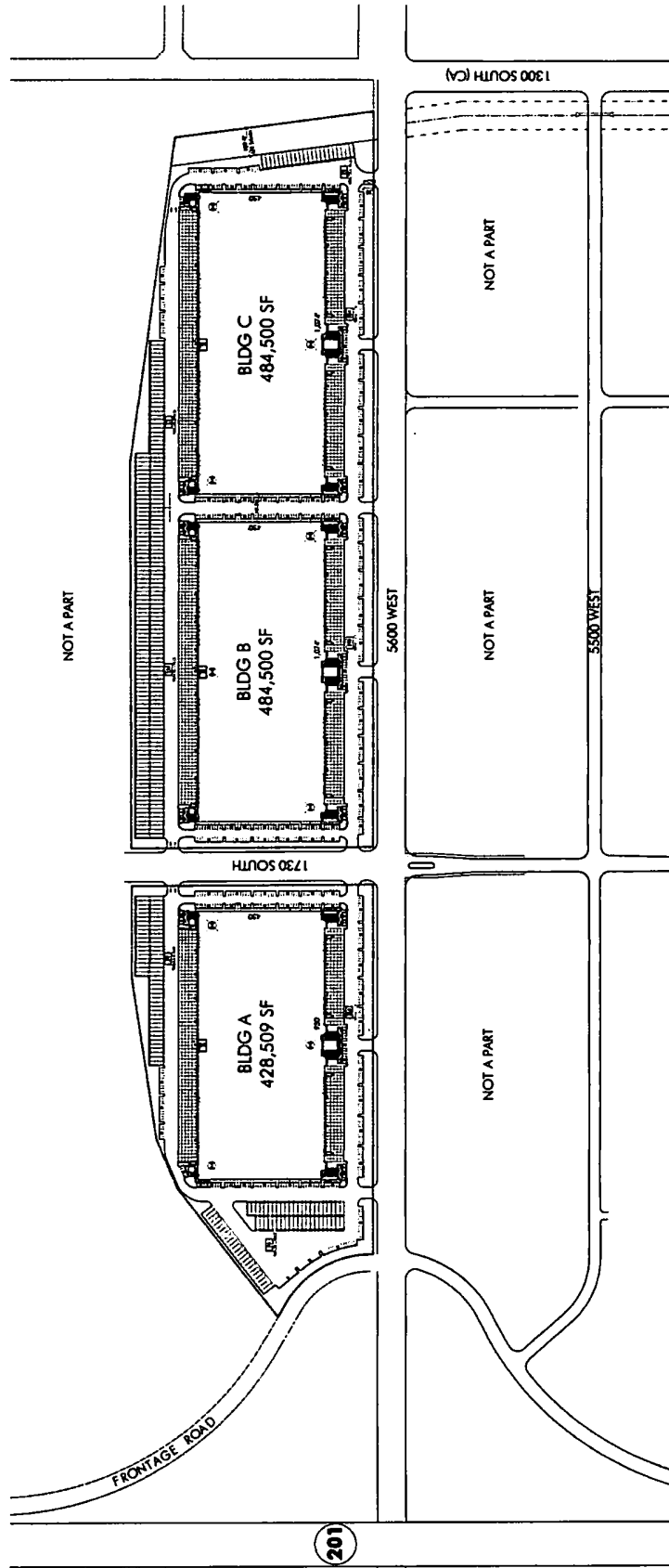
SITE DEVELOPMENT SUMMARY

MASTER PLAN AREA = ±73.43 ACRES

BUILDINGS	AREA	VEHICLE PARKING	TRAILER PARKING	TRUCK DOCKS
BUILDING A	428,509 SF	358 STALLS	135 STALLS	71
BUILDING B	484,500 SF	290 STALLS	158 STALLS	85
BUILDING C	484,500 SF	284 STALLS	75 STALLS	85
TOTAL	1,397,509 SF	932 STALLS	368 STALLS	241

BUILDING COVERAGE RATIO 43.69 %

⊗ SOIL SAMPLE DRILL LOCATION



DIAGRAMMATIC MASTER PLAN

SHEET NO. A1.1

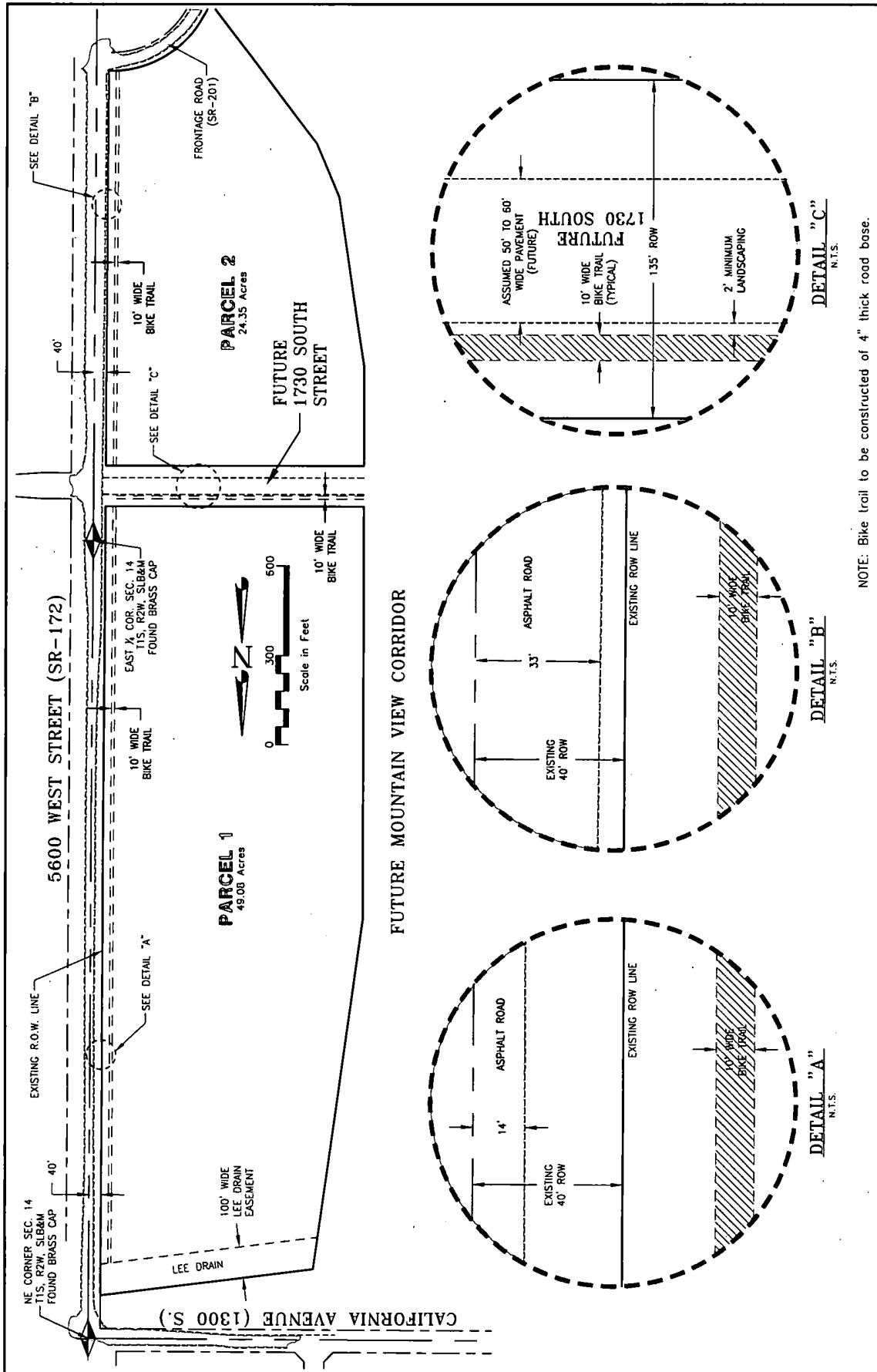


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EXHIBIT C
[Depiction of Trail Segments]

21094480.3



NOTE: Bike trail to be constructed of 4" thick road base.

DRAWN BY: JLM/ALS		DATE: 08/11/11	PROJECT NO: 2124-05
CHECKED BY: JLM/ALS		DATE: 08/11/11	SHEET NO: 1 OF 1
APPROVED BY: JLM/ALS		DATE: 08/11/11	SCALE: AS SHOWN
PROJECT NAME: FREEPORT 6800 WEST PROJECT		SHEET NO: 1 OF 1	
PROJECT LOCATION: BIKE TRAIL EASEMENT - EXHIBIT C		DATE: 08/11/11	
PROJECT OWNER: NATOMAS MEADOWS, LLC		DATE: 08/11/11	
PROJECT ADDRESS: SALT LAKE CITY, SALT LAKE COUNTY, UTAH		DATE: 08/11/11	
PROJECT CONTACT: PROPERTY OF SALT LAKE CITY RECORDER'S OFFICE		DATE: 08/11/11	
PROJECT PHONE: P.O. BOX 145515		DATE: 08/11/11	
PROJECT FAX: SALT LAKE CITY, UTAH 84114-5515		DATE: 08/11/11	

