

**AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND  
BETWEEN LAYTON CITY AND PERRY CANYON L.L.C.**

SE 1/4 41n-24J

12-082-0035 0036 (Approximately 3300 West Gordon Avenue, north side)

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 15 day of FEB., 2007, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City") and PERRY CANYON L.L.C. (hereinafter referred to as "Owner"). 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 an annexation of property into the City and zone change therefore from the present zoning of A (Agriculture) to R-1-8 (Single Family Residential), of said property, located at approximately 3300 West on the north side of Gordon Avenue in Layton City (hereinafter the "Subject Area"); and

WHEREAS, the total area proposed for annexation consists of approximately 5.67 acres, which is depicted on Exhibit "A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, Owner is the Owner of the above described property and has presented a proposal for development of the Subject Area to the City, which provides for development in a manner consistent with the overall objectives of Layton City's General Plan; and

WHEREAS, Parties desire to enter into this Agreement to provide for the annexation, and for the rezoning of the Subject Area, in a manner consistent with the overall objectives of the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to annex, and to grant R-1-8 zoning approval for the Subject Area (as shown on Exhibit "A"), subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to the Subject Area and surrounding property values and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City believes 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:

E 2247694 B 4228 P 116-123

RICHARD T. MAUGHAN

DAVIS COUNTY, UTAH RECORDER

02/27/2007 08:42 AM

FEE \$0.00 Pgs: 8

DEP RTT REC'D FOR LAYTON CITY

The following terms have the meaning and content set forth in this Article I, wherever used in this Agreement:

1.1 "Owner's Property" shall mean that property owned by Owner, as depicted on Exhibit "A".

1.2 "City" shall mean Layton City, a body corporate and politic of the State of Utah. The principal office of City is located at 437 North Wasatch Drive, Layton, Utah 84041.

1.3 "City's Undertakings" shall mean the obligations of the City set forth in Article III.

1.4 "Owner" shall mean PERRY CANYON L.L.C. The principal mailing addresses for Owner is listed in paragraph 7.2.

1.5 "Owner's Undertakings" shall have the meaning set forth in Article IV.

- 1.6 "Subject Area" shall have the meaning set forth in the Recitals hereto.
- 1.7 "Exhibit A" shall have the meaning set forth in the Recitals hereto.

## **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 Owner agrees to restrict the uses permitted under an R-1-8 zoning designation, as set forth herein.

## **ARTICLE III CITY'S UNDERTAKINGS**

- 3.1 Subject to the satisfaction of the conditions set forth in Section 2.2 and Article II, City shall approve the annexation of the Subject Area, and the rezone of the Subject Area from its present zoning of A to R-1-8, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any annexation or 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.

- 3.2 The proposed zoning change is as reflected on Exhibit "A."

## **ARTICLE IV OWNER'S UNDERTAKINGS**

Conditioned upon City's performance of its undertakings set forth in Article III with regard to the annexation and to the zoning change of the Subject Property, and provided Owner has not terminated this Agreement pursuant to Section 7.8, Owner agrees to the following:

- 4.1 **Zoning**
  - a. Development of the property designated for R-1-8 zoning, once zoned R-1-8, shall comply with all applicable City rules, regulations and codes.
- 4.2 **Payback Agreements**
  - a. Owner agrees to payback \$21,406.17 to Green and Green Development for storm drainage improvements constructed which serve Owner's property. Said payback is to be paid in full at the time of application for any final approval of a subdivision on Owner's property.
  - b. Owner agrees to payback \$10,310.00 to City for storm drainage improvements constructed which serve Owner's property. The cost of said improvements was over and above the program cost for the improvements as outlined the City's Capital Improvements and Capital Facilities Plans. Said payback is to be paid in full at the time of application for any final approval of a subdivision on Owner's property.
  - c. Owner agrees to pay all storm drainage impact fees as found in the City Consolidated Fee Schedule that is applicable at the time of application for final approval of each separate phase.
- 4.3 **Utility Design and Construction**
  - a. Owner agrees to design and construct all utilities, as determined necessary by the City Engineer, to properly serve the subdivided property

**Amendments.** Owner agrees to limit development to the above uses upon all properties within the Subject Area, and if other uses are desired, Owner agrees to seek amendment of this Agreement before pursuing the development of those uses.

**Conflicts.** Any conflict between the provisions of this Agreement and the City's codified requirements shall be resolved in favor of the more strict 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 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, reasonably pursue completion of the development. Each phase or completed portion of the project must independently meet the requirements of this Agreement and the City's ordinances and regulations, such that it will stand alone, if no further work takes place on the project.

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 attorneys' 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 in this paragraph.

## **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; and

6.1.2 If the remedy of reversion is pursued, the defaulting Owner agrees not to contest the reversion of the zoning on undeveloped portions of the Subject Area, by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from R-1-8 to A.

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 Extension. Any 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 operate to 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.

## 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: **PERRY CANYON L.L.C.**  
165 East 1550 South  
Perry, Utah 84302

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 City and the Owner.

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 Attorneys' 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 of Owner's Undertakings as set forth herein.

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

Upon an Owner'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 will be recorded in the Davis County Recorder's Office.

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.

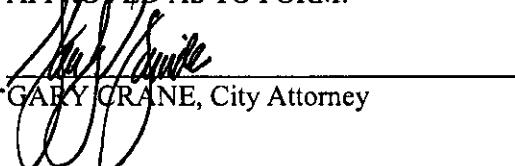
LAYTON CITY CORPORATION,

By:   
STEPHEN CURTIS, Mayor

ATTEST:

By:   
THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:

For:   
GARY CRANE, City Attorney

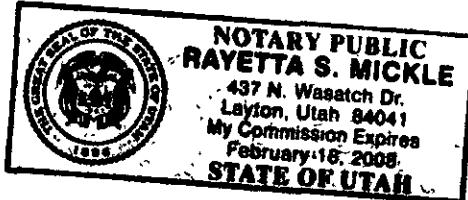


Signed by

PERRY CANYON L.L.C., Petitioner

  
Robert L. Thurgood, Partner

Subscribed and sworn to me this 29 day of January, 2007

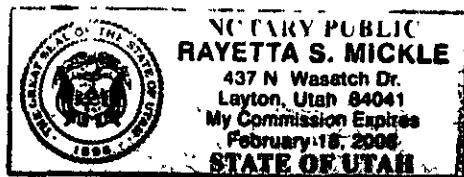


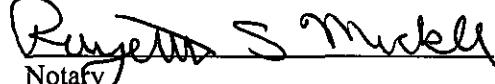
Signed by

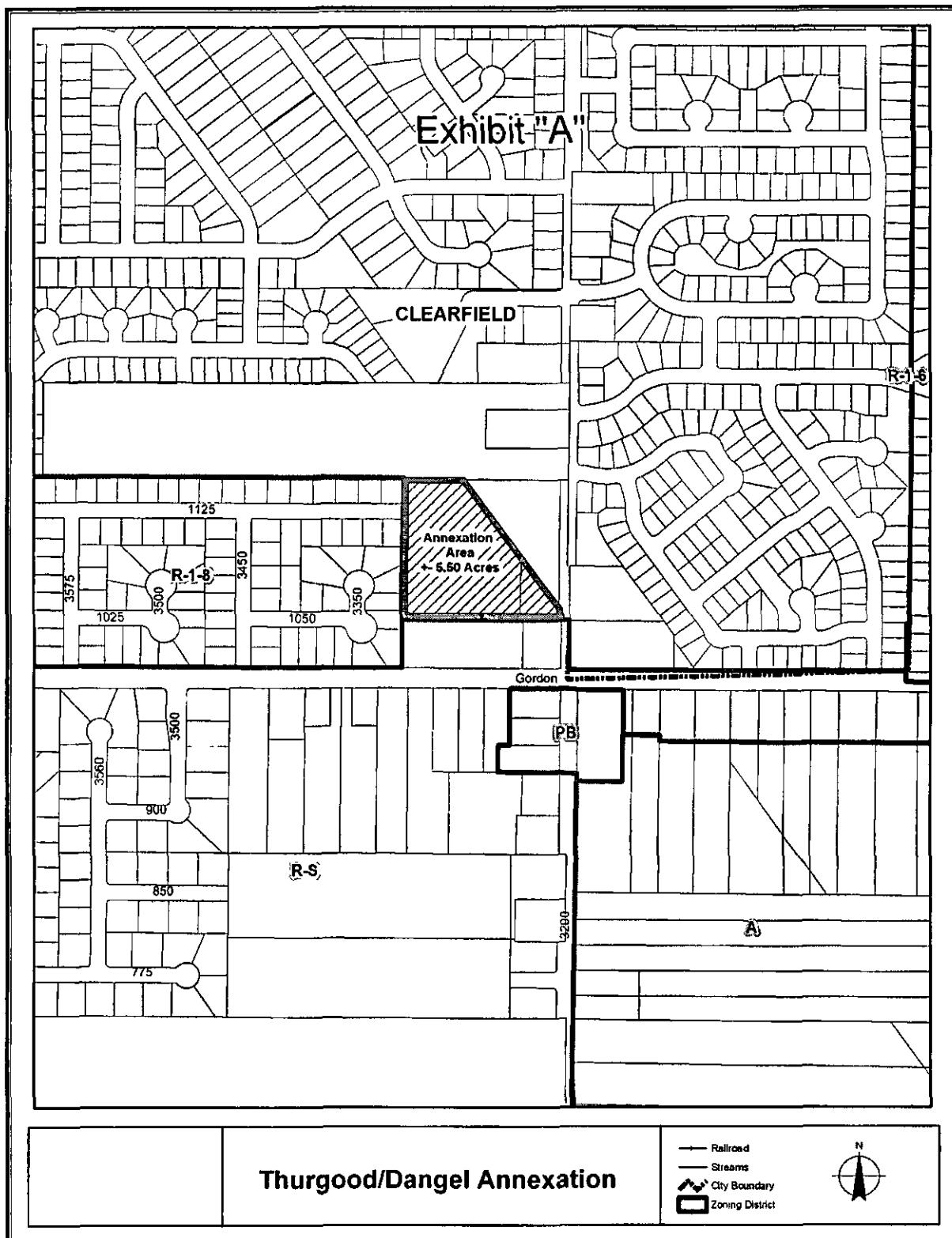
PERRY CANYON L.L.C., Petitioner

  
Ken R. Crockett, Partner

Subscribed and sworn to me this 24 day of January, 2007



  
Rayetta S. Mickle  
Notary



## BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE EAST LINE OF 3200 WEST STREET(SAID POINT BEING LOCATED NORTH 00°14'55" EAST ALONG SECTION LINE 233.03 FEET AND WEST 33.00 FEET FROM THE SOUTHEAST CORNER OF SECTION 14, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING IS S 89°56'35" E BETWEEN THE SOUTH QUARTER AND SOUTHEAST QUARTER OF SAID SECTION) AND RUNNING THENCE NORTH 89°56'35" WEST ALONG NORTH LINE OF LAYTON CITY AT A POINT 233.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION) 616.38 FEET TO THE EAST LINE OF COVENTRY PARK NO. 2 AS RECORDED WITH THE OFFICE OF THE DAVIS COUNTY RECORDER SAID LINE BEING THE EAST LINE OF LAYTON CITY; THENCE NORTH 00°21'12" EAST ALONG SAID LINES 550.77 FEET TO THE NORTHEAST CORNER OF SAID SUBDIVISION AND THE SOUTH LINE OF CLEARFIELD CITY LIMITS; THENCE SOUTH 89°56'35" EAST ALONG SAID LINE 230.79 FEET; THENCE SOUTH 36°26'05" EAST 643.78 FEET TO SAID WEST LINE; THENCE SOUTH 00°14'55" WEST ALONG SAID WEST LINE 33.20 FEET TO THE POINT OF BEGINNING.

CONTAINS - 239,677 SQ. FT. 5.50 ACRES