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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
01/20/2012 10:10 AM  
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DEF RTT REC'D FOR LAYTON CITY

11-076-0067, 0068, 0069

Agreement for the Annexation and Development of land between  
Layton City and S & J 5, LLC  
October 20, 2011

**AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN  
LAYTON CITY AND S & J 5, LLC**

**THIS AGREEMENT** for the annexation and development of land (hereinafter referred to as this "Agreement") is made and entered into this 20<sup>th</sup> day of Oct, 2011 between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and S & J 5, LLC (hereinafter collectively referred to as "Owner"). City and Owner are collectively referred to as the "Parties" and individually as a "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 located at approximately the southwest corner of 815 West Weaver Lane in Layton City (hereinafter the "Annexation Area");

**WHEREAS**, the total area proposed for annexation consists of approximately 18.654 acres, which is described and depicted on Exhibit A attached hereto (hereinafter Exhibit A);

**WHEREAS**, Owner 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;

**WHEREAS**, Parties desire to enter into this Agreement to provide for the annexation and development 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;

**WHEREAS**, City is willing to annex 18.654 acres (hereinafter "Annexation Area") and zone the Subject Area subject to Owners agreeing to certain development limitations and undertakings described herein, which will provide protection for 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 Owners 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, covenants and agrees 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 "Owner's Property" shall mean that property owned by Owner, as depicted on Exhibit C.
- 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 S & J 5, LLC. 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 "R-1-8" zoning shall mean a single-family use district, the minimum lot area, setbacks and frontage, as well as the principal and accessory structures within which, are restricted by Table 5-1 of the Zoning Regulation Chart.
- 1.7 "Subject Area" shall have the meaning set forth in the Recitals hereto. The Subject Area is depicted on Exhibit "A" hereto.

1.8. "Annexation Area" shall have the meaning set forth in the Recitals hereto. The Annexation Area is depicted on Exhibit "A" hereto.

## ARTICLE II CONDITIONS PRECEDENT

2.1 The following are conditions precedent to Owner's obligations under this Agreement, including without limitation Owner's Undertakings in Article IV: (a) City's approval of this Agreement, including approvals of City's Planning Commission and Council, and full execution of this Agreement by City, and (b) Zoning of the Subject Area consistent with Exhibit B. Once annexed, the City will act promptly to zone the Subject Area consistent with Exhibit B, and as depicted in Exhibit B, which includes:

2.1.1 18.654 acres of R-1-8 (single family) zoning as shown in Exhibit F as a concept plan.

2.2 With respect to zoning, Owner agrees to design and construct superior quality structures and amenities and to comply with the arterial street landscaping provisions of Chapter 19.16 of the Layton City Code for the designated area along Layton Parkway.

## ARTICLE III CITY'S UNDERTAKINGS

3.1 City shall approve this Agreement (including approvals by the City's Planning Commission and Council) prior to its decision to annex the Subject Area, and shall not file the annexation plat with the Davis County Recorder until the Subject Area is zoned pursuant to, and consistent with, Article II.

## ARTICLE IV OWNER'S 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, Owner agrees to the following:

4.1 **Zoning.** Zoning and development of the Subject Area shall comply with Article II as outlined in Exhibit "B". Once the Subject Property is annexed and zoned in accordance with Article II, development of the Subject Area shall comply with all applicable City rules, regulations and codes.

4.2 **Culinary Water.** Based on the City water model, the available fire flow with an 8-inch, dead end, water line is 2,074 gallons per minute. The Fire Marshall will determine the required fire flow for the type of development being proposed. Additional water line improvements may be required to meet the required fire flow.

4.2.1 Future development to the west will require a water line connection at Weaver Lane to create a "looped" system.

4.3 **Sanitary Sewer.** The as-built location of the existing sanitary sewer main along the south boundary of the Subject Area must be provided on preliminary subdivision plans. Said sewer line must be located in a public street and may be required to be relocated or realigned to be located in said public street.

4.4 **Flood Control.** Davis County Flood Control will require an access easement along Kays Creek for maintenance purposes. The location and width of said access easement, as well as development approval along the creek channel, will be required for preliminary plat approval.

4.5 **Kays Creek Trail.** The extension of the Kays Creek Trail, along the north side of Kays Creek, is required along the southern boundary of the Subject Area. Owner shall dedicate to the City, through a easement or property deed, a 20-foot wide area along the north side of Kays Creek that abuts the north top of

the creek bank. Said trail area shall also include the provision of a 10-foot wide trail that meets the typical multi-use trail standard of the Layton City Parks and Recreation Department (Exhibit D).

4.5.1 If Owner, or subsequent developer of the Subject Area, deeds the trail property fee simple to the City, and constructs the trail to City standards, then park impact fee credits shall be granted to an amount (1) equal to one-half (1/2) the value of the property as established by closing documents between the Owner and subsequent developer and (2) the full construction cost of the trail.

4.6 **Storm Drainage.** On-site detention for storm water is required for both the "North Parcel" and the "South Parcel" (see Exhibit "C"). The detention area for the "South Parcel" shall be located along the southern boundary of the Subject Area and adjacent to Kays Creek.

4.6.1 The detention area for the "South Parcel" may be designed as a pond that is also intended to function as an open space amenity for the subdivision, or designed in a linear fashion along the southern boundary of the Subject Area as an incorporated open space amenity running parallel to or part of the Kays Creek Trail.

4.6.2 If Owner chooses to develop the detention pond, the maintenance responsibility for said pond shall remain with the Owner's development in perpetuity. If a linear detention basin is incorporated into the space for the Kays Creek Trail extension, then the City shall be responsible for the maintenance of the basin along with the trail.

4.6.3 Storm drain detention and outfall systems are subject to final design and approval by the City Engineer.

4.7 **Land Drain.** A land drain system will be required throughout the development of the Subject Area, pursuant to a design approved by the City Engineer.

4.8 **Water Exactions.** Owner shall be responsible for complying with Layton City's Water Exactions requirements effective on the date of execution of this agreement. The City agrees to accept up to three acre feet of water per acre of land developed in the form of irrigation shares from Davis/Weber Canal Company, Holmes Creek Irrigation, or Kays Creek Irrigation.

4.9 **Layton Parkway.** All lots within the proposed subdivision shall access local streets and no access will be allowed to Layton Parkway.

4.9.1 A street connection for the "North Parcel" (see Exhibit "C") must align with the entrance to Weaver Park Subdivision or be offset by at least 260 feet. The "South Parcel" (see Exhibit "C") must connect to 850 West in Weaver Meadows Subdivision.

4.9.2 Owner shall install an 8-foot masonry wall and associated landscape buffer along the frontage of Layton Parkway consistent with the requirements of Section 19.16.090 of the Layton Municipal Code. The design and engineering standards for said wall and landscape area shall be consistent with the wall and landscape specifications approved and constructed for the portion of Layton Parkway just east of the Subject Area as depicted on Exhibit "E". Said wall and landscape area shall be installed, as approved by the City Engineer and the Community and Economic Development Department, prior to final subdivision plat recordation of any first phase on the south or north side of Layton Parkway. The first phase development on the south side of Layton Parkway shall install the masonry wall and landscaping along the south side of Layton Parkway. The first phase development on the north side of Layton Parkway shall install the masonry wall and landscaping along the north side of Layton Parkway.

4.9.3 A homeowners association shall be formed by the recordation of covenants providing for the collection of a fee to maintain the landscape buffer area. Maintenance of the landscape buffer area shall include the maintenance of the sidewalk, park strip area and the masonry wall.

4.10 **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.

4.11 **Amendments.** Owner agrees to limit development to the uses provided herein. If other uses are desired, Owner agrees to seek amendment of this Agreement before pursuing approval of those uses.

4.12 **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 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 Owner's Property 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 without limitation 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 exercise by City, its agents or employees 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.

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 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 all or any portion of Owner's Property. 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 Owners: S & J 5, LLC  
Sid R. Roberts & Jeanette F. Roberts  
840 North 3625 West  
Layton, Utah 84041  
801/444-2891

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.** The recordation of any documents or plats shall be as follows:

7.9.1 Notice of this Agreement will be recorded in the Davis County Recorder's Office.

7.9.2 The Parties agree that the annexation plat will only be recorded with the Davis County Recorder's Office after the zoning amendments contemplated in Article II have been completed by the City Council.

7.10 **Recording Amendments.** Any subsequent amendment to this Agreement may be recorded as agreed by the Parties.

7.11 **Exhibits.** The following Exhibits are attached to and form a part of this Agreement:

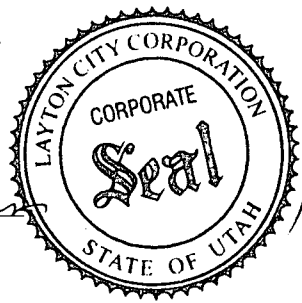
- |             |   |                                 |
|-------------|---|---------------------------------|
| Exhibit "A" | - | Description of Annexation Area  |
| Exhibit "B" | - | Description of Rezone Area      |
| Exhibit "C" | - | Description of Owner's Property |
| Exhibit "D" | - | Kays Creek Trail Area           |
| Exhibit "E" | - | Description of 8' Masonry Wall  |
| Exhibit "F" | - | Concept Plan                    |

**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: 

J. STEPHEN CURTIS, Mayor



ATTEST:

By: *Thieda Wellman*  
THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:

*Gary Crane*  
GARY CRANE, City Attorney

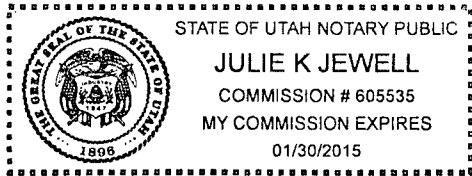
SUBMITTING DEPARTMENT:

*William T. Wright*  
William T. Wright, Director  
Community & Economic Development

Signed by

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to me this 20<sup>th</sup> day of October, 2011. by J. Stephen Curtis



*Julie K. Jewell*  
Notary 1/30/2015

Signed by

\_\_\_\_\_  
\_\_\_\_\_

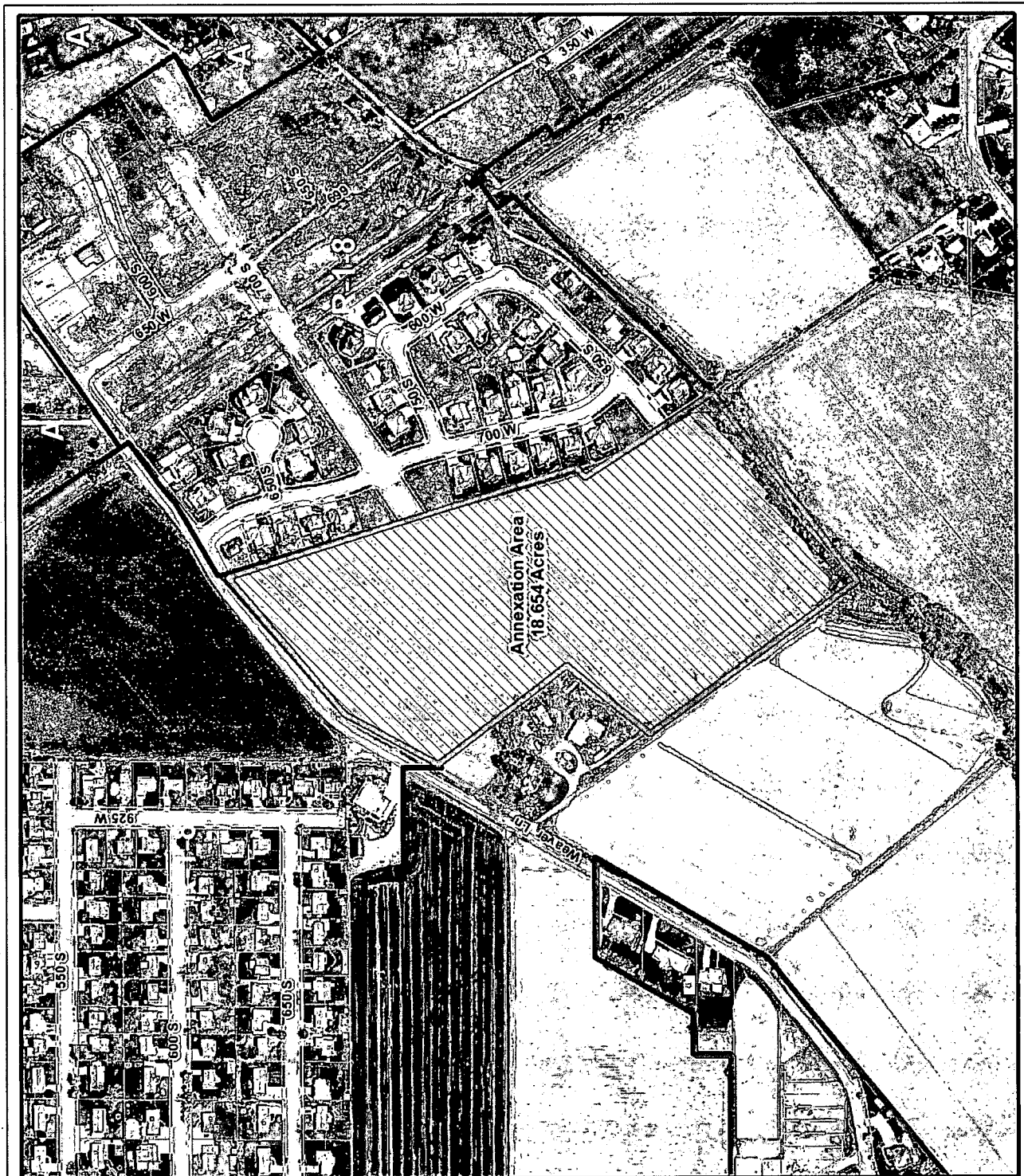
Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary

\_\_\_\_\_



EXHIBIT "A"








**EXHIBIT  
"A"**

**ANNEXATION  
AREA**

**S & J 5, LLC  
Annexation  
Agreement**

**LEGEND**

-  Layton Zoning
-  Boundary
-  Property
-  Lakes
-  Streams



1 inch = 333.33 feet



# EXHIBIT "B"



**EXHIBIT "B"**

**REZONE AREA**

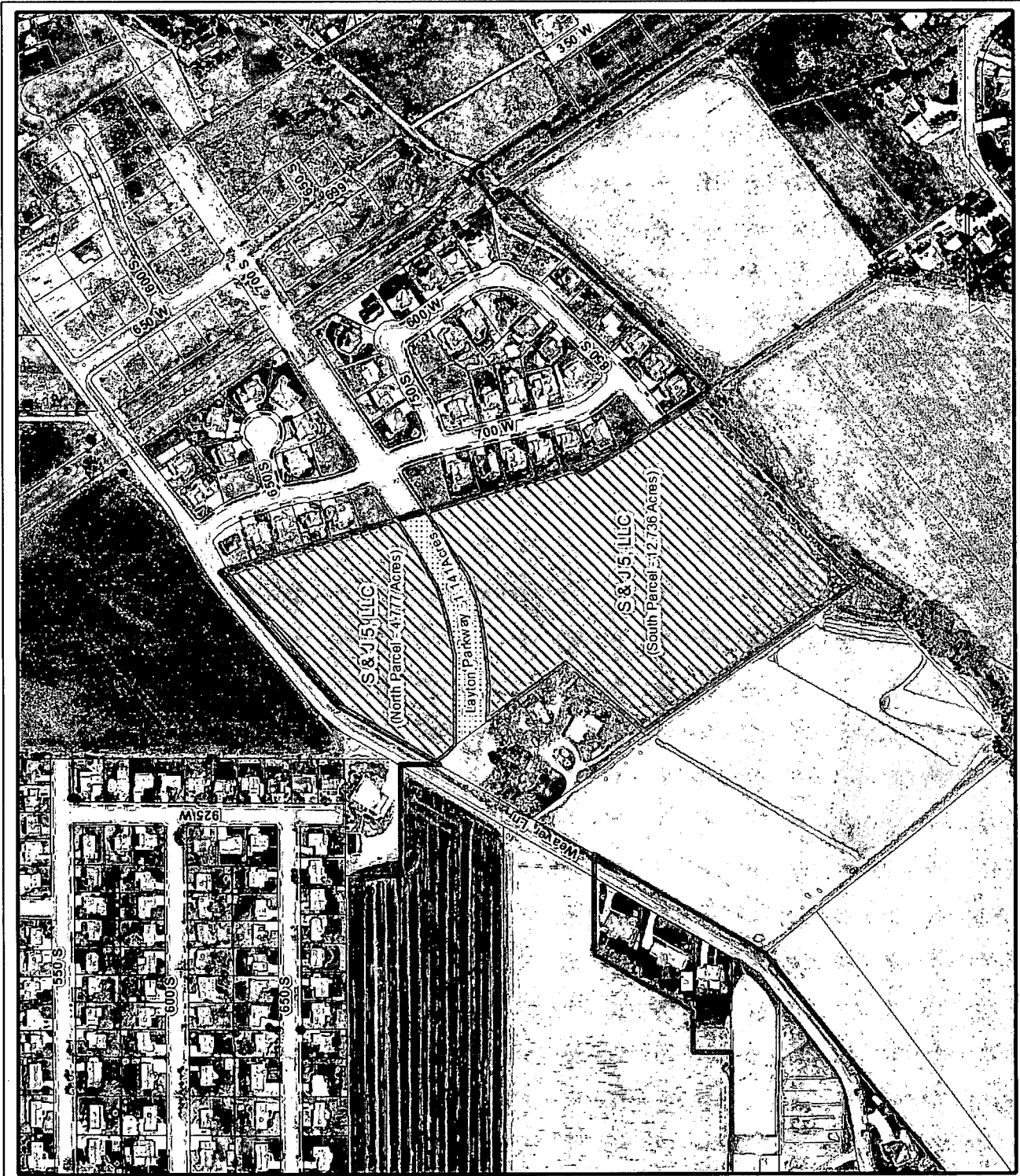
**S & J 5, LLC  
Annexation Agreement**

**LEGEND**

- Layton Zoning
- Boundary
- Property
- Lakes
- Streams

1 inch = 333.33 feet

# EXHIBIT "C"



## EXHIBIT "C"

OWNER'S PROPERTY

S & J 5, LLC  
Annexation Agreement

**LEGEND**

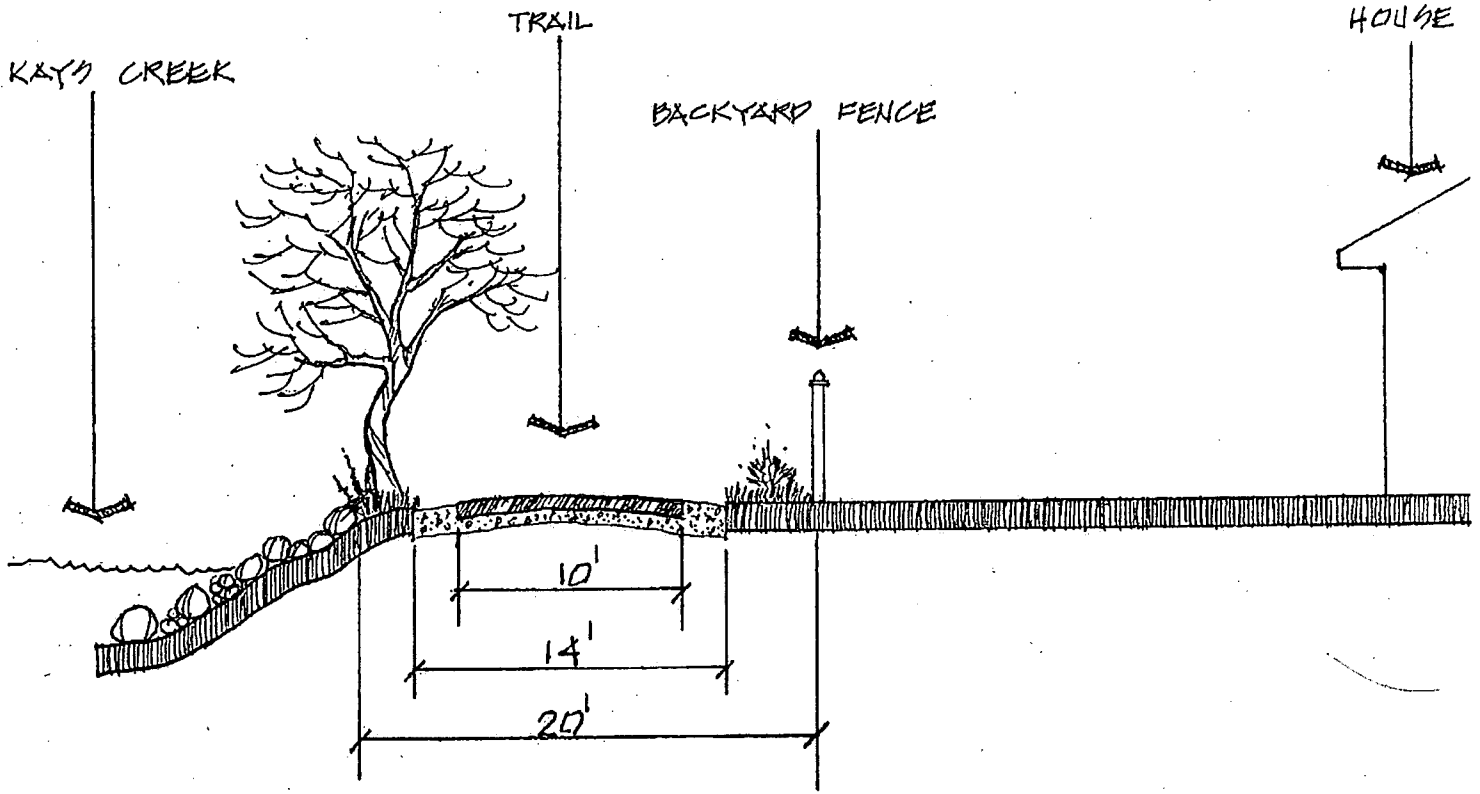
- Boundary
- Property
- Lakes
- Streams



1 inch = 333.33 feet



EXHIBIT "D"  
Kays Creek Trail Area



\* NOTES

- 20' FROM NORTH EDGE OF CREEK BANK TO BE DEEDED TO CITY IN FEE SIMPLE OR AS EASEMENT.
- TRAIL TO BE CONSTRUCTED OF 3" COMPACTED ASPHALT ON 3" COMPACTED ROAD BASE W/ 2' AFRONS OF 6" DEEP COMPACTED ROAD BASE EACH SIDE OF ASPHALT.

**EXHIBIT "E"**  
8' Masonry Wall Example

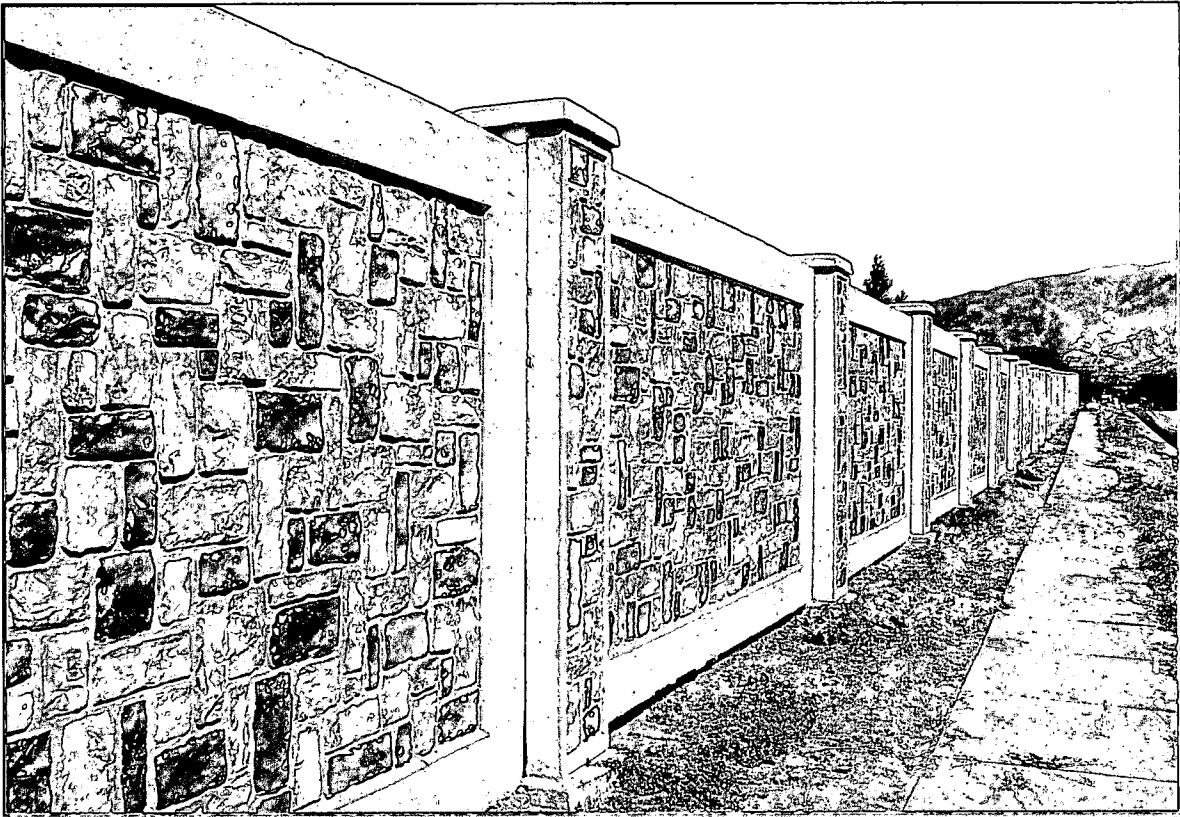
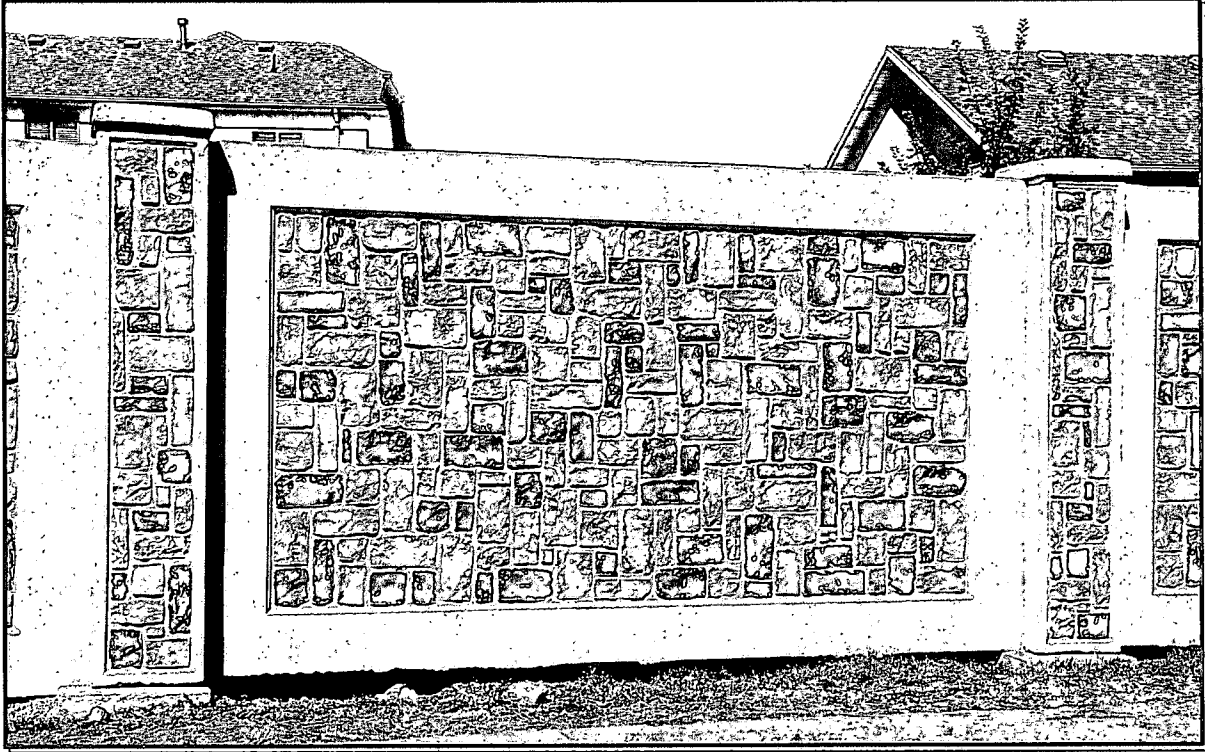
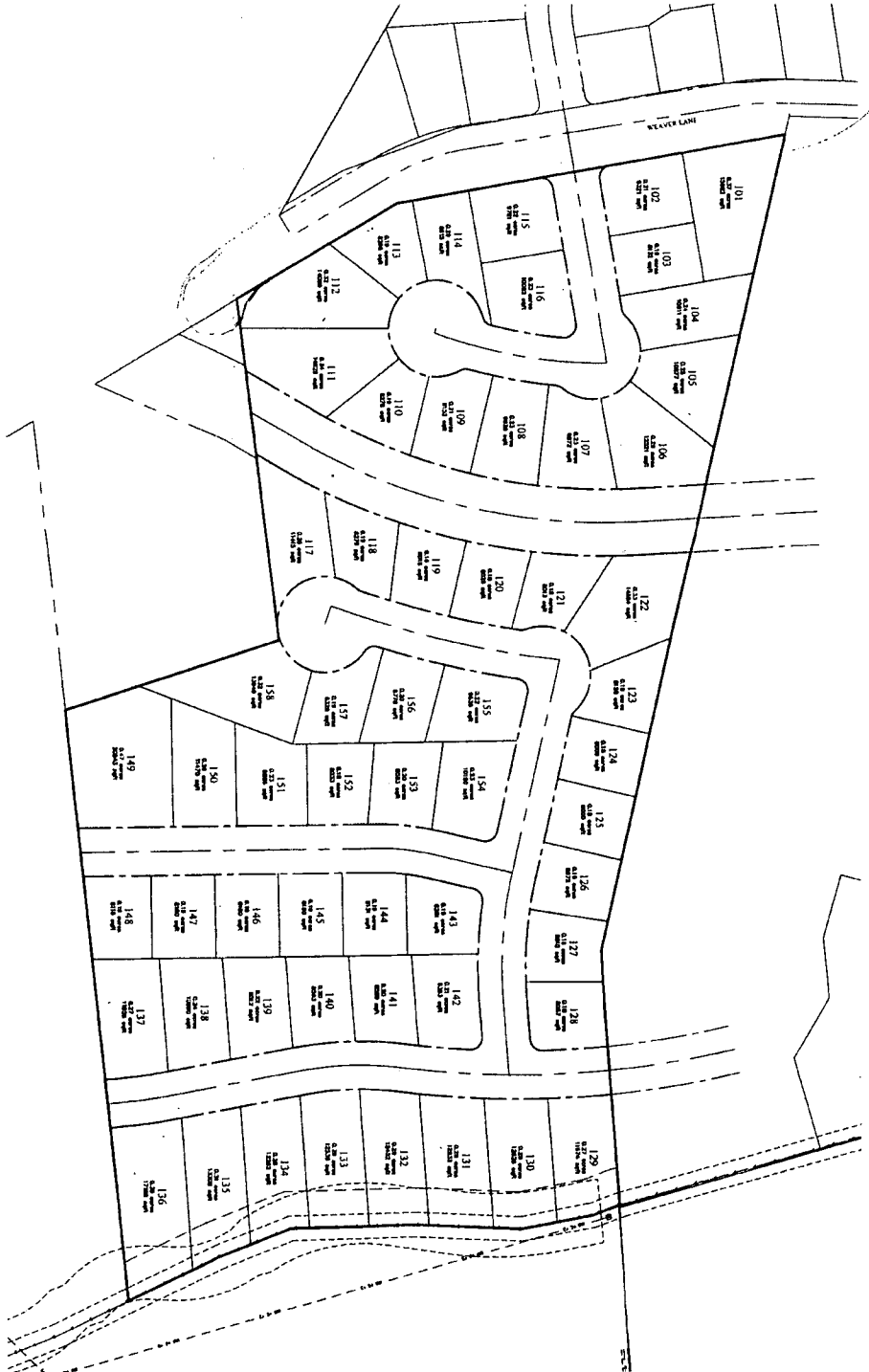


EXHIBIT "F"



CONCEPT NARRATIVE  
 CONCEPT B  
 TOTAL DENSITY 3.11 UNITS/ACRE



GENERAL NOTE:  
 INFORMATION PROVIDED IS THE BEST AVAILABLE DATA AT TIME OF PREPARATION AND MAY CHANGE AS  
 ACTUAL FOR ANY REASON. PLAN SHOWN IS FOR ILLUSTRATIVE PURPOSES ONLY.



DESIGNED BY:

BEGINNING AT A POINT ON THE EXISTING CORPORATE LIMITS OF LAYTON CITY, SAID POINT BEING A POINT ON THE WEST BOUNDARY OF WEAVER MEADOWS PHASE 1, BEING SOUTH 00°11'52" WEST, 728.48 FEET AND NORTH 89°48'08" WEST, 412.54 FEET FROM CENTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE ALONG SAID WEST BOUNDARY OF SAID WEAVER MEADOWS PHASE 1 AND THE EXISTING CORPORATE CITY LIMITS LINE OF LAYTON CITY THE FOLLOWING TWO (2) COURSES: 1) SOUTH 17°01'00" EAST, 1044.71 FEET; 2) SOUTH 34°05'00" EAST, 314.87 TO A POINT ON THE CENTERLINE OF KAYS CREEK; THENCE ALONG THE CENTERLINE OF SAID KAYS CREEK AND TO AND ALONG THE NORTH BOUNDARY OF SAID OLD FARM AT KAYS CREEK SUBDIVISION PHASE 1 THE FOLLOWING SEVEN (7) COURSES: 1) SOUTH 39°54'06" WEST, 37.10 FEET; 2) SOUTH 49°27'30" WEST, 91.10 FEET; 3) SOUTH 62°17'18" WEST, 134.26 FEET; 4) SOUTH 58°26'27" WEST, 154.41 FEET; 5) SOUTH 38°43'09" WEST, 97.88 FEET; 6) SOUTH 34°33'58" WEST, 104.47 FEET; 7) SOUTH 33°59'03" WEST, 20.03 FEET; THENCE NORTH 36°08'15" WEST, 733.34 FEET; THENCE NORTH 42°03'08" EAST, 281.83 FEET; THENCE NORTH 36°44'40" WEST, 399.19 FEET; THENCE 30.46 FEET ALONG A 50.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 14°49'32" WEST, 29.99 FEET) TO A POINT OF REVERSE CURVATURE; THENCE 16.11 FEET ALONG A 15.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 01°30'50" WEST, 15.35 FEET); THENCE NORTH 29°15'00" EAST, 212.34 FEET; THENCE NORTH 50°00'00" EAST, 495.79 FEET TO THE POINT OF BEGINNING.

CONTAINS: 812,484 SQFT OR 18.652 ACRES