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Office of the Davis County Recorder

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
06/28/2016 11:36 AM
FEE \$0.00 Pgs: 14
DEP RT REC'D FOR LAYTON CITY



Davis
COUNTY

Location: T12S

Recorder
Richard T. Maughan
Chief Deputy
Laile H. Lomax

THE UNDERLYING DOCUMENT ATTACHED HERETO IS AN ORIGINAL DOCUMENT SUBMITTED FOR RECORDING IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, UTAH. THE DOCUMENT HAS INSUFFICIENT MARGIN SPACE FOR THE REQUIRED RECORDING ENDORSMENT STAMP. THIS PAGE BECOMES THE FRONT PAGE OF THE DOCUMENT FOR RECORDING PURPOSES.

THE DOCUMENT HEREIN RECORDED IS A

Agreement
(Document Type)

11-087-0077 pt
Tax Serial Number(s)

AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND BARLOW CORPORATION.

11-087-0077 pt

THIS AGREEMENT for the annexation and development of land (hereinafter referred to as this "Agreement") is made and entered into this 17th day of March, 2016, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and BARLOW CORPORATION (hereinafter individually referred to as "Owner"). City and Owners 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 1700 West Weaver Lane in Layton City (hereinafter the "Annexation Area");

WHEREAS, the total area proposed for annexation consists of approximately 8.47 acres, which is described and depicted on Exhibit A attached hereto (hereinafter Exhibit A);

WHEREAS, Parties desire to enter into this Agreement to provide for the annexation and development of the Annexation 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 8.47 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 Annexation 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 "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.

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

1.3 "Owners" shall mean BARLOW CORPORATION "Owner" shall mean any of the Owners. The principal mailing addresses for Owner are listed in paragraph 7.2.

1.4 "Owners' Undertakings" shall have the meaning set forth in Article IV.

1.5 "R-S PRUD" zoning shall mean a single-family use district with a planned residential unit development overlay, 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 and Chapter 19.08 of the Zoning Ordinance.

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

**ARTICLE II
CONDITIONS PRECEDENT**

2.1 The following are conditions precedent to Owners' 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, (b) Zoning of the Subject Area, and (c) recordation of the annexation plat for the Annexation Area. Once annexed, the City will act promptly to zone the Subject Area R-S PRUD.

2.2 Owners agree to construct only detached single-family and attached two, three and four unit homes and permitted amenities in the R-S PRUD zone.

**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 and this Agreement has been fully executed by all parties.

**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 7.7, Owners agree to the following:

4.1 **Zoning.** Zoning and development of the Subject Area shall comply with Article II. 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.

4.1.1. The architectural plans, building elevations, and building materials for the homes shall be similar to that of the single-family residential structures located in the Cottages at Fairfield project at the northeast corner of Fairfield Road and Church Street in Layton. The following materials shall be used for exterior construction: brick, rock, stucco, or hardy board. The front, or street-facing façade of each home, shall have 75% brick or rock masonry. Two, three and four-unit buildings shall exhibit a prominent shift in the façade(s) where the separate units meet which is predominantly visible from a public or private street. Each shift shall be in the form of either a ten foot (10') change in building façade alignment or a ten foot (10') change in roofline height, or a combined change in façade and roofline totaling ten feet (10'). Vinyl siding shall not be allowed. The maximum height for the buildings is 30 feet.

4.1.2. The homes shall include an attached two car garage as a minimum. The detached homes shall have a minimum square footage of no less than 1,500 square feet. The attached homes shall have a minimum square footage of no less than 1,300 square feet. The calculation of square footage shall only be for living space and shall not include the garage.

4.1.3. Owner shall provide for and record enforceable covenants, conditions and restrictions (CCRs) providing architectural design consistency. Owner shall cause a Homeowners Association (HOA) to be constituted as part of CCRs with the duties of maintaining the front yards of the lots and any amenities delineated in an approved final plat. The HOA shall be required to be managed by a professional management company to ensure efficient, timely and complete administration of HOA duties and responsibilities. The CCRs

shall establish the City with a controlling interest in the HOA for the matter of voting to dissolve the HOA.

4.1.4. The homeowners within the development may elect to have the HOA maintain other portions of their private property, specifically the side and rear yards.

4.1.5. The HOA shall be responsible for the ownership and maintenance of all private utilities, private streets, landscaping, and fencing.

4.2 **Culinary Water.** Development of the Subject Area will require Owner to install and connect an 8-inch water line to the 12-inch water line in the intersection of Weaver Lane and Stonebridge Drive. Said 8-inch line is required to be installed within the Weaver Lane right-of-way and extend to the southwest to the western boundary of the Annexation Area to provide culinary water service to the Annexation Area.

4.2.1. Owner shall be responsible, when applicable, for the acquisition of all necessary easements for the construction and installation of all culinary water improvements.

4.2.2. Owner shall be responsible for the construction and installation of all on-site and off-site culinary water improvements.

4.3 **Sanitary Sewer.** The 8-inch sanitary sewer line in Weaver Lane provides service to the Annexation Area. This 8-inch sewer line has two associated payback requirements.

4.3.1. The 8-inch line connects to a sewer lift station, which has an associated payback requirement for any properties that connect to the 8-inch line and are serviced by the lift station. The lift station payback to be collected from Owner upon development of the Annexation area is \$1,428 per acre.

4.3.2. The 8-inch line also has an associated payback requirement for any properties that connect to the line. The proportional share of the payback to be collected from Owner upon development of the Annexation Area is \$4,065.46.

4.3.3. The sanitary sewer lift station requires improvements before any additional homes will be allowed to connect to the system. The costs of the improvements will be divided among all benefited properties with each paying their proportionate share.

4.4 **Storm Drain.** The storm drain to service the Annexation Area will need to discharge into Kay's Creek, which runs through the Annexation Area. Storm drain discharge into Kay's Creek requires approval from Davis County Flood Control.

4.4.1. A storm water detention basin, for a minimum of a 10-year storm will be required prior to connection and discharge into Kay's Creek.

4.4.2. Owner shall design, construct and install a storm drain system in the Weaver Lane right-of-way sized to address the storm water runoff from properties to the northeast of the Annexation Area, including the property owned by Davis County School District for future Jr. High School, site as depicted on Exhibit C.

4.4.3. Owner shall design, construct and install a storm drain line in the right-of-way of the public road through the Subject Area that extends north from Weaver Lane. Said storm drain line shall be sized to handle storm water projected to be generated from development of the property located to the northwest of the Subject Area.

4.5 **Street Improvements.** Owner shall be responsible for the construction of all on-site and off-site street improvements of Weaver Lane from the beginning of the unimproved section (approximately 200 feet southwest of the intersection of Stonebridge Drive and Weaver Lane) to the southwest corner of the Annexation Area as depicted on Exhibit C.

4.5.1. Weaver Lane improvements required at Owner's expense shall include all curb and gutter on the north and south sides of the street; sidewalk on the north side and sidewalk on the south side of Weaver Lane from the existing east end to east boundary of the Future Kay's Creek Estates Park property as depicted on Exhibits B and C.

4.5.2. Complete construction of Weaver Lane shall include a full 36 feet of asphalt and a turn-around cul-de-sac at the west end of Weaver Lane as depicted on Exhibits B and D. The Owner shall be eligible for a payback for 10 feet of the asphalt, roadbase, and subgrade installed in Weaver Lane.

4.5.3. Owner shall dedicate property for the full right-of-way of Weaver Lane through this area.

4.5.4. Owner shall bond for all street improvements west of the culvert at the time of recording of the first phase of development. If development of the Annexation Area does not occur west of the culvert within 18 months of posting of the bond, the City shall call the bond and require said street improvements to be completed in accordance with City ordinance.

4.5.5. City shall coordinate the removal and replacement of the Kay's Creek culvert with Davis County Flood Control. The culvert improvements shall be paid for by the City and Davis County Flood Control. The culvert improvements shall be completed before any development can occur west of the culvert.

4.5.6. If Owner desires to proceed with development west of Kay's Creek prior to the construction and installation of the Kay's Creek culvert, Owner will be required to complete the construction and installation of the culvert and then enter into a payback agreement for the improvements.

4.6 **Land Drain.** A land drain system is required for any home with a footing and foundation drain or as specified in a geotechnical report required as part of the subdivision review and approval process.

4.6.1 The land drain in Weaver Lane has an associated payback requirement for the development of parcel 11-087-0048. The proportional share to be collected from Owner upon development of the Annexation Area is \$2,677.84.

4.7 **Water Exactions.** Owner shall be responsible for complying with Layton City's Water Exactions requirements effective on the date of execution of this agreement.

4.8 **West Davis Corridor.** The West Davis Corridor (WDC) is proposed to be located directly west of the Annexation Area as depicted on Exhibit B. Owner will work with the Utah Department of Transportation (UDOT) to insure that the WDC alignment is accommodated with the development of the Annexation Area.

4.8.1. Owner shall provide for the construction of an 8-foot trex fence along the area UDOT has identified for the WDC as depicted on Exhibit B. Said fence shall not be constructed through the designated FEMA flood plain.

4.9 **Trails and Parks Improvements.** Owner shall be responsible for the provision and completion of certain trail improvements within the Annexation Area.

4.9.1. Owner shall provide for the connection of the Kay's Creek Trail through the Annexation Area and along the north side of the creek as depicted on Exhibit B. Owner shall dedicate a twenty foot (20') trail easement to the City for said trail, which shall meet Layton City trail standards with 10 feet of asphalt and 2 feet of road base on each side of the trail. The trail shall be constructed by the City at a later time. Owner shall install and maintain landscaping up to the north side of this twenty-foot (20') wide trail easement.

4.9.2. Owner shall provide for and incorporate a trail connection at the western boundary of the Annexation Area where Kay's Creek intersects to the north-south Shorelands Trail along the West Davis Corridor. Owner shall work with UDOT and Layton City to determine the best location for said trail connection at the West Davis Corridor.

4.10 **Precedence of this Agreement.** This agreement shall take precedence over any contrary provisions of any City staff memorandums or representations.

4.11 **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.

4.12 **Amendments.** Owner agrees to limit development to the uses provided herein unless any of the Subject Area is rezoned. In such event, City and Owner agree to amend this agreement to reflect such rezoning.

4.13 **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.** Owners 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 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 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 Owners: Barlow Corporation
377 North Main Street
Layton, Utah 84041
Attn: Duncan Barlow
801/898-0642

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)

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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 **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.

7.7 **Termination.** Except as otherwise expressly provided herein, the obligation of the Parties shall terminate upon the satisfaction of the following conditions:

7.7.1 With regard to Owner's Undertakings, performance of Owner of Owner's Undertakings as set forth herein.

7.7.2 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.

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

7.8.1 Notice of this Agreement will be recorded against the Subject Area in the Davis County Recorder's Office.

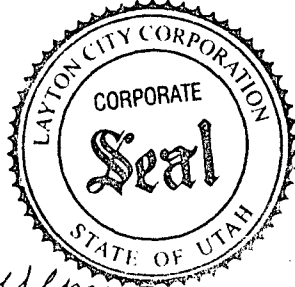
7.8.2 The Parties agree that the annexation plat will only be recorded with the Davis County Recorder's Office after the zoning amendments contemplated in Article II have been completed by the City Council.

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

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

- Exhibit "A" - Description of Annexation Area
- Exhibit "B" - Conceptual PRUD Plan
- Exhibit "C" - Description of Annexation Area, Davis School District Property, and Weaver Lane Improvement Area
- Exhibit "D" - Drawing of Weaver Lane Cross Section

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: [Signature]
ROBERT J STEVENSON, Mayor

ATTEST:

By: [Signature]
THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:

[Signature]
GARY CRANE, City Attorney

Signed by:

BARLOW CORPORATION

[Signature] PROS
DUNCAN E BARLOW

Subscribed and sworn to me this 24th day of May, 2016.

[Signature]
Notary

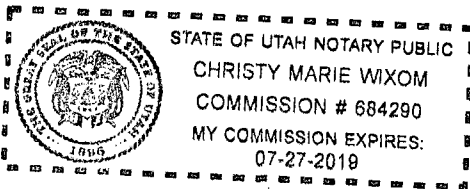
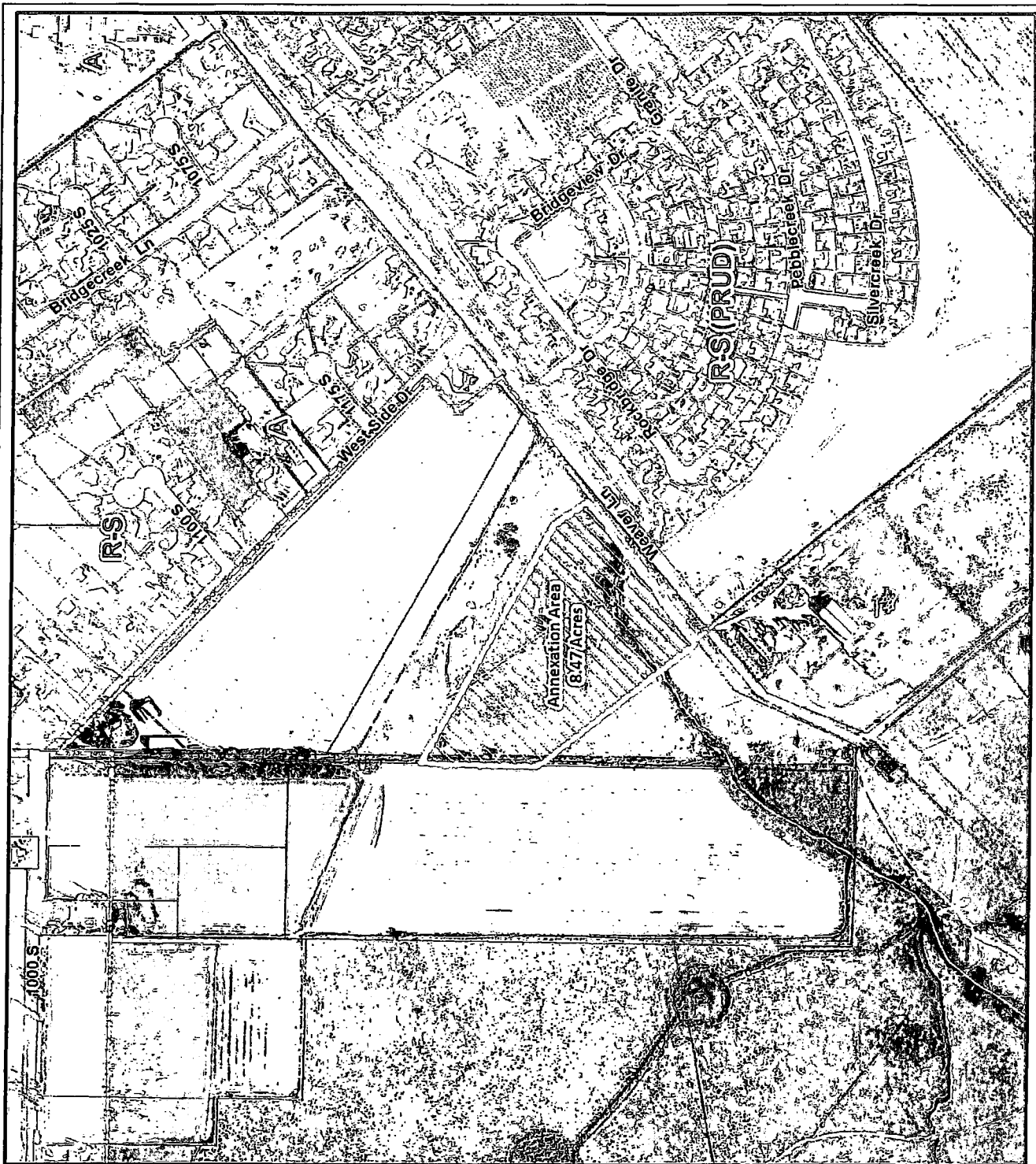


EXHIBIT "A"
Annexation Area

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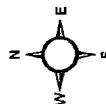
**Barlow
Corporation
Annexation**

**Approx.
1700 West
Weaver Lane**

8.47 Acres

LEGEND

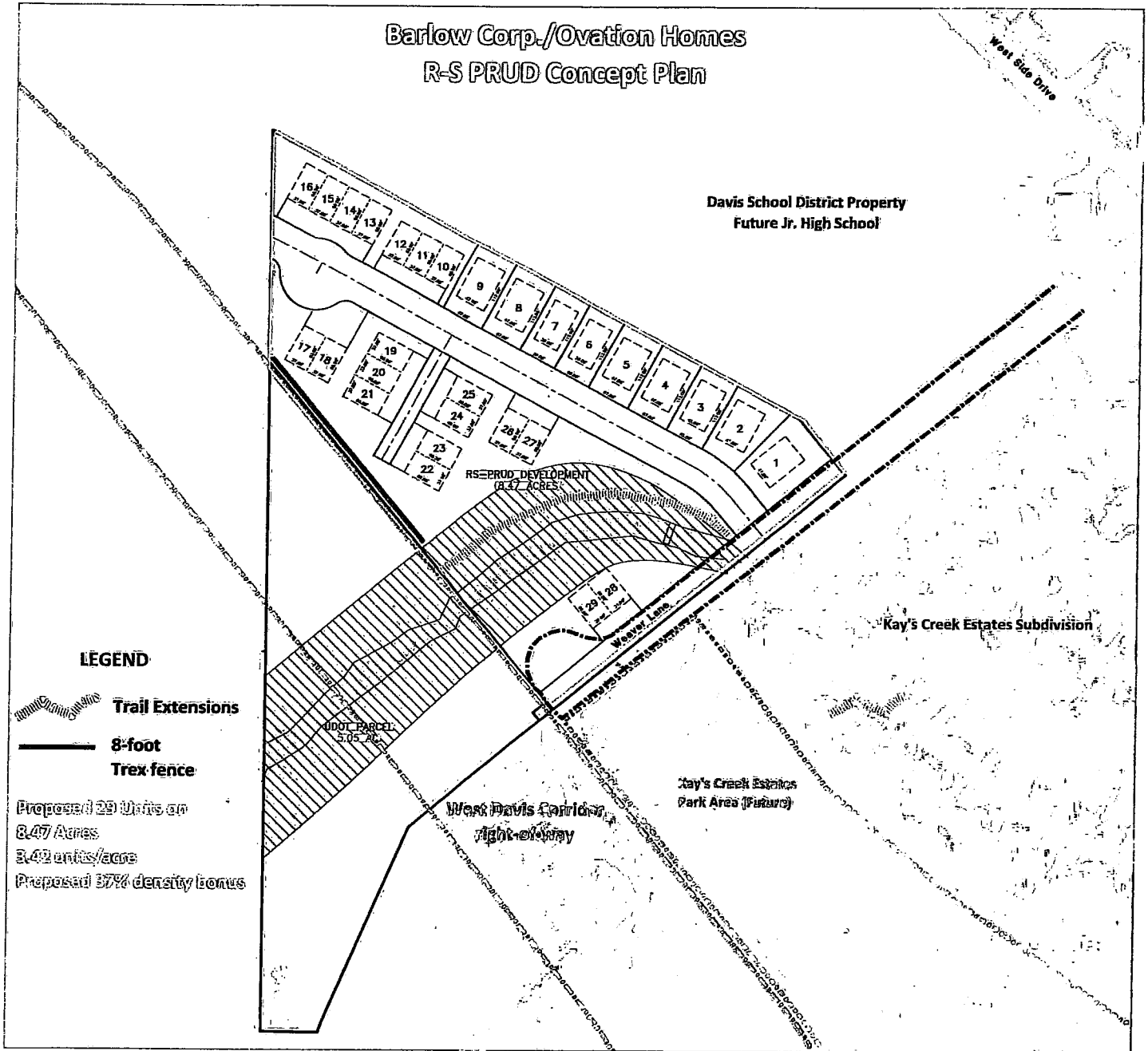
-  Layton City Boundary
-  Property
-  Lakes
-  Streams



Conceptual PRUD Plan

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BK 6547 PG 404

Barlow Corp./Ovation Homes R-S PRUD Concept Plan



LEGEND

- Trail Extensions
- 8-foot Trex fence

Proposed 29 Units on
8.47 Acres
3.42 units/acre
Proposed 37% density bonus

EXHIBIT "C"
Annexation Area, School District Property
and Weaver Lane Improvement Area

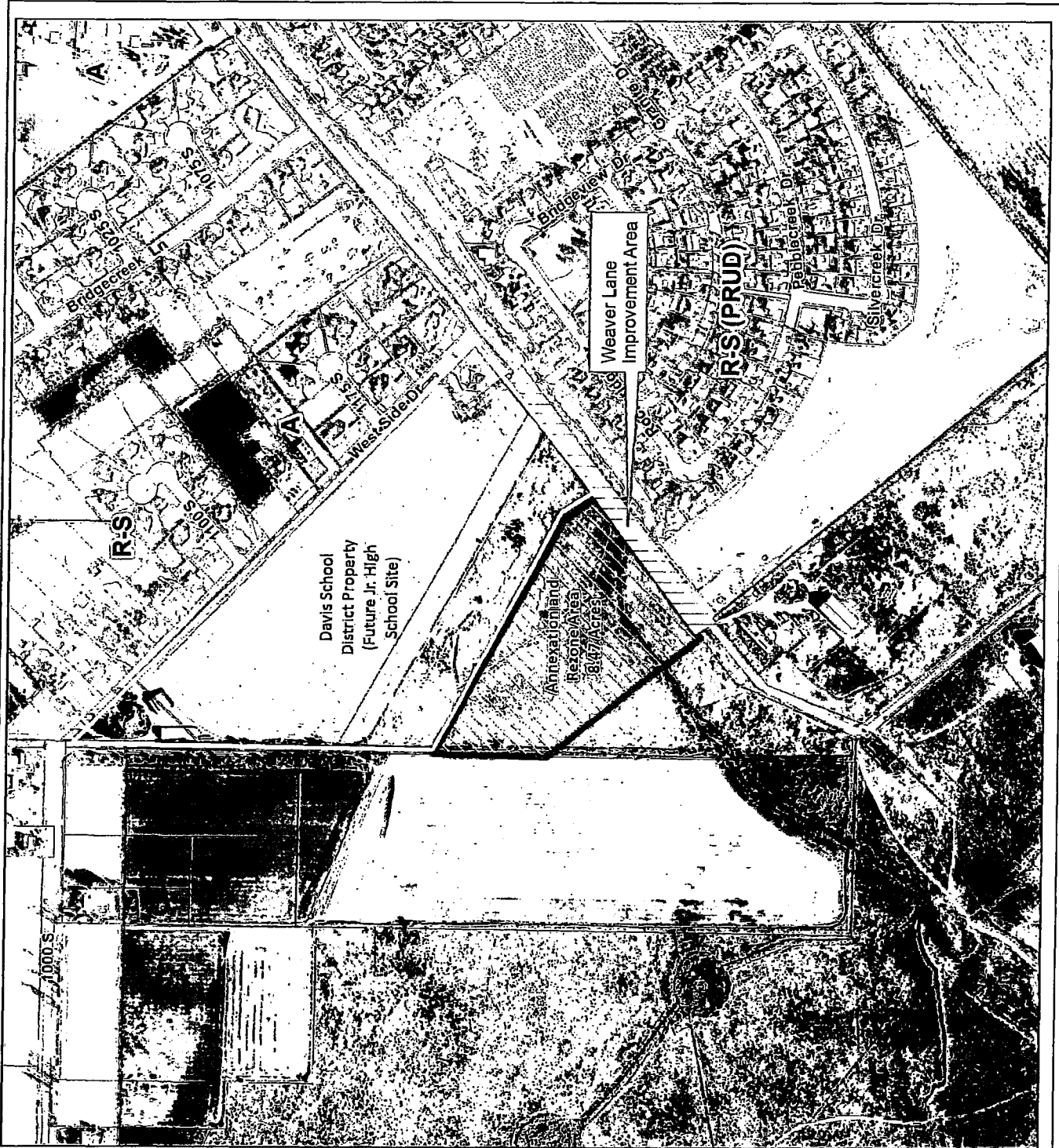


EXHIBIT C

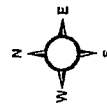
**Barlow
Corporation
Annexation
and Rezone**

A to R-S PRUD

**Approx.
1700 West
Weaver Lane**

8.47 Acres

- Layton City Boundary
- Property
- Lakes
- Streams
- Annexation/
Rezoning Area



1 inch = 416.67 feet

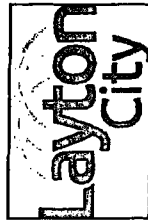
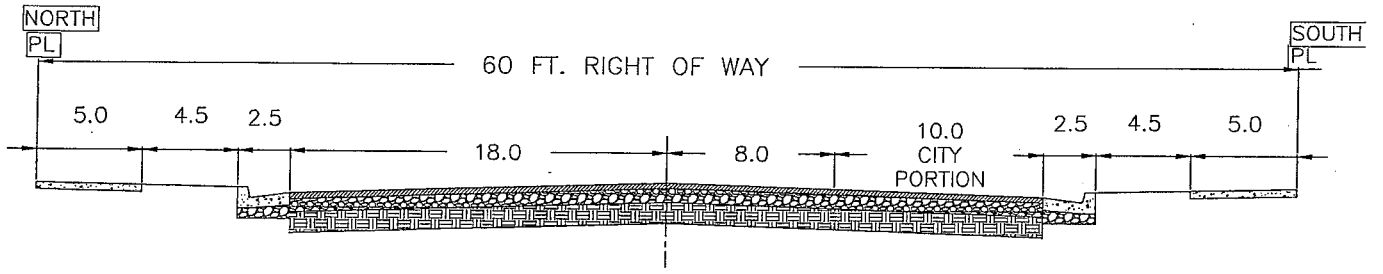


EXHIBIT "D"
Weaver Lane Cross Section

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BK 6547 PG 406

WEAVER LANE CROSS SECTION



A PART OF THE NORTH HALF OF SECTION 31, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT N89°57'40"E 1901.69' AND S0°02'20"E 1240.52' FROM THE NORTHWEST CORNER OF SECTION 31, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE S61°30'02"E 907.78'; THENCE S39°34'30"E 116.46'; THENCE S50°25'30"W 592.14'; THENCE N39°21'17"W 15.80'; THENCE N50°38'43"E 25.00'; THENCE N39°21'17"W 670.00'; THENCE N00°00'05"W 354.02' TO THE POINT OF BEGINNING.

CONTAINS 8.468 ACRES.