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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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DEP RTT REC'D FOR LAYTON CITY CORP.
ORATION

11-087-0032, 0017, 0068, 0085, 0018

AGREEMENT FOR THE ANNEXATION AND
DEVELOPMENT OF LAND BETWEEN LAYTON CITY
AND DONALD NEVILLE

**AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND DONALD NEVILLE.**

THIS AGREEMENT for the annexation and development of land (hereinafter referred to as this "Agreement") is made and entered into this 27th day of Aug, 2016, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and DONALD NEVILLE (hereinafter individually 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 1900 West 1000 South in Layton City (hereinafter the "Annexation Area");

WHEREAS, the total area proposed for annexation consists of approximately 12.23 acres, which is described and depicted on Exhibit A attached hereto (hereinafter Exhibit A);

WHEREAS, the total area proposed for development consists of approximately 13.66 acres (hereinafter the "Subject Area"), which is described and depicted on Exhibit B attached hereto (hereinafter Exhibit B);

WHEREAS, Parties desire to enter into this Agreement to provide for the annexation and development of the Annexation Area and 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 12.23 acres (hereinafter "Annexation Area") and zone the Subject Area subject to Owner 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 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, 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 "Owner" shall mean DONALD NEVILLE. The principal mailing addresses for Owner are listed in paragraph 7.2.

1.4 "Owner's 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.

1.7 "Subject Area" shall have the meaning set forth in the Recitals hereto. The Subject Area is depicted on Exhibit "B" attached 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, (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 Owner agrees to construct only detached single-family and attached two and three 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 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 7.7, Owner agrees 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. Development of the Subject Area shall comply with the standards and requirements of the R-S/PRUD. Owner agrees to construct a combination of single-family residential detached and attached homes in a layout substantially similar to the concept plan as depicted on Exhibit "B" with the total number of single-family attached and detached units/lots not to exceed 43.

4.1.2. Required open space percentages shall be coordinated with development of the Barlow PRUD located directly southwest of the Subject Area. Preliminary PRUD plan approval of the Subject Area is subject to a minimum combined open space percentage on the Subject Area and the Barlow PRUD of no less than 40%.

4.1.3. 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. Three-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 four foot (4') change in building façade alignment or a four foot (4') change in roofline height, or a combined change in façade and roofline totaling four feet (4'). Vinyl siding shall not be allowed. The maximum height for the buildings is 30 feet.

4.1.4. 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.

4.1.5. 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.

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

4.1.5.2 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 8-inch water line in Westside Drive. Said 8-inch line is required to be installed through the Subject Area and extend to the south and connect to the proposed 8-inch water line in the Barlow PRUD property to the southeast of the Subject Area to provide culinary water service to the Annexation Area. Said 8-inch water line extension through the Subject Area and connection to the 8-inch line in the Barlow PRUD shall occur with the first phase of development of the Subject 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.** Sanitary sewer service for the Subject area requires the installation of an 8-inch sewer line through the Subject Area. This sewer line will connect to the 8-inch sanitary sewer line proposed in the Barlow PRUD. The 8-inch sewer line in the Barlow PRUD 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 Subject area is \$1,428 per acre to be collected upon development of the Subject Area.

4.3.1. 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 Subject Area will need to discharge into the proposed storm drain line in the Barlow PRUD.

4.4.1. A storm water detention basin, for a minimum of a 10-year storm, will be required to be completed in the Barlow PRUD prior to connection and discharge of storm water from the Subject Area into Kay's Creek.

4.4.2. Owner shall design, construct and install the storm drain lines in the right-of-way of the public roads through the Subject Area that extends south from 1000 South to the storm drain line proposed in the Barlow PRUD. Said storm drain lines shall be sized to handle storm water projected to be generated from development of the properties 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 throughout the Subject Area.

4.5.1. A public street connection is required from 1000 South on the north to the public street proposed in the Barlow PRUD to the south as depicted on Exhibit "B". Said public street connection through the Subject Area shall occur with the first phase of development of the Subject Area.

4.5.2. The public street connection to 1000 South shall be located a minimum of 260 feet from the proposed realignment of the intersection of 1700 West and Westside Drive.

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.

4.7 **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 southwest 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".

4.8.2. Owner shall coordinate with UDOT and the U.S. Army Corp of Engineers the delineation of any officially designated wetlands on the Subject Area. The preliminary PRUD plan shall indicate designated wetland areas and the design of said preliminary plan shall reflect any applicable Federal wetland standards and approvals.

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.** 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 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 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 Owner: Donald Neville
316 South 200 West
Kaysville, Utah 84037

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 **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 and Subject Areas
- Exhibit "B" - Conceptual PRUD 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.



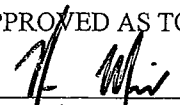
LAYTON CITY CORPORATION:

By: 
ROBERT J STEVENSON, Mayor

ATTEST:

By: 
THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:


For GARY CRANE, City Attorney

Signed by Donald Neville
Donald Neville

Subscribed and sworn to me this 2nd day of September, 2014

Notary Christy Wix

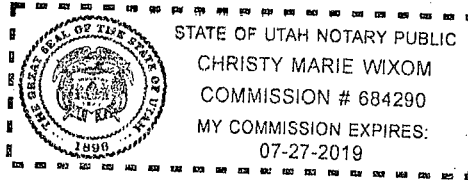


EXHIBIT "A"
Annexation Area

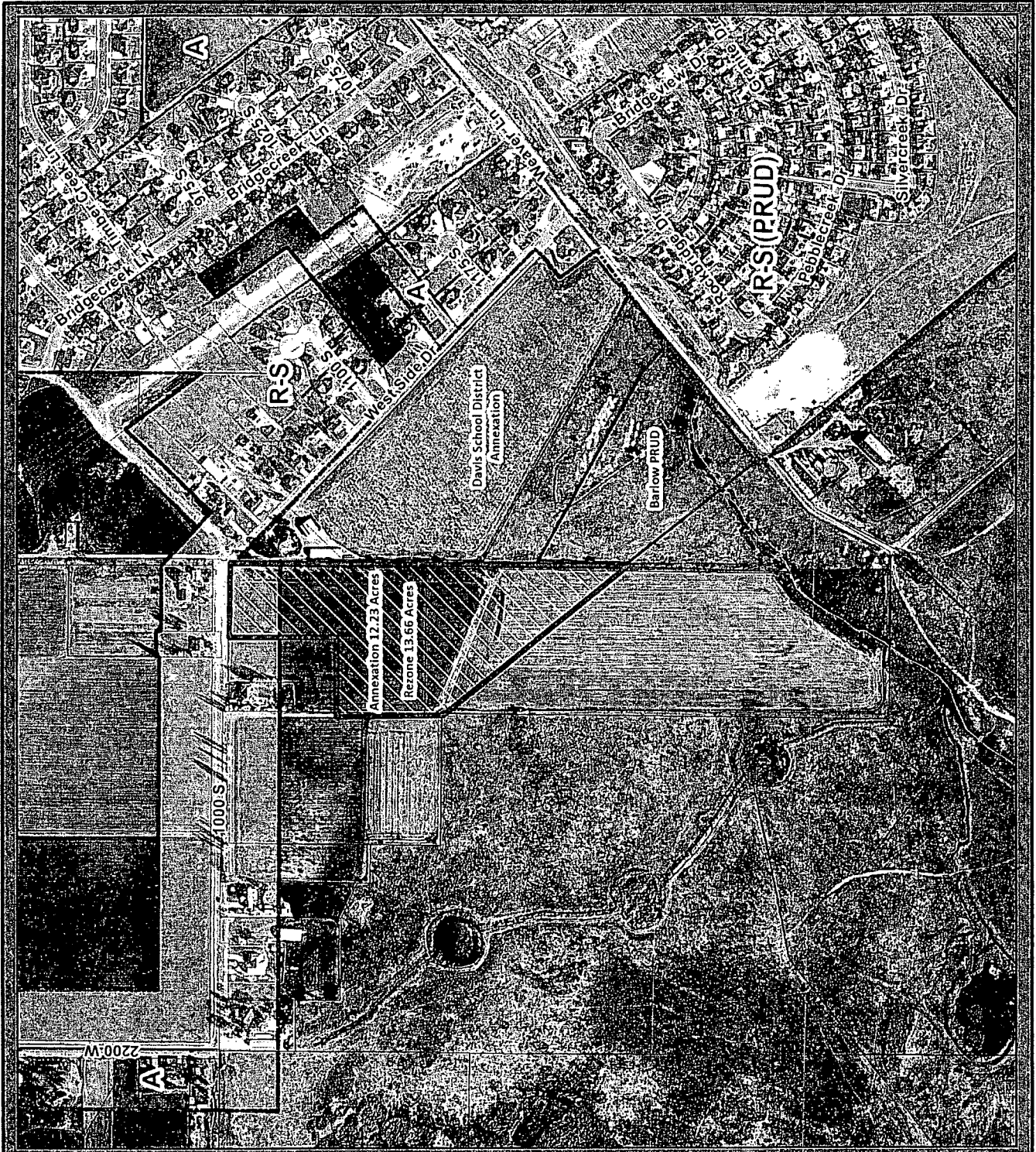







EXHIBIT "A"

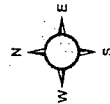
**Donald Neville
Annexation
Agreement**

Approximately
1900 West
1000 South

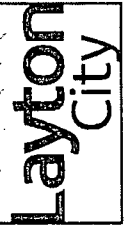
Annex 12.23 Acres
Rezone 13.66 Acres

LEGEND

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



1 inch = 500 feet



BOUNDARY DESCRIPTION

PART OF THE NORTH HALF OF SECTION 31, TOWNSHIP 4 NORTH,
RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY. DESCRIBED
AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF
1000 SOUTH STREET, SAID POINT BEING N89°57'40"E 1597.53 FEET
AND S00°02'20"E 32.30 FEET FROM THE NORTHWEST CORNER OF SAID
SECTION 31; THENCE N89°57'20"E ALONG THE SOUTHERLY RIGHT OF
WAY LINE OF 1000 SOUTH STREET, 310.46 FEET; THENCE S00°01'18"W
993.12 FEET; THENCE N61°30'02"W 5.69 FEET; THENCE S00°00'10"W
217.90 FEET TO THE NORTHERLY LINE OF THE VILLAS AT KAY CREEK;
THENCE N61°30'02"W ALONG SAID NORTHERLY LINE, 0.27 FEET TO THE
WESTERLY LINE OF VILLAS AT KAY CREEK; THENCE S00°00'05"E ALONG
SAID WESTERLY LINE, 354.03 FEET; THENCE N39°20'40"W 927.12 FEET;
THENCE N00°04'32"E 429.23 FEET; THENCE N89°58'20"E 282.67 FEET;
THENCE N00°02'30"W 415.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 595,045 SQUARE FEET OR 13.660 ACRES