

**DEVELOPMENT AGREEMENT
FOR
Provo Airpark Industrial
(3410 West Center Street)**

ENT 32971-2025 PG 1 of 15
ANDREA ALLEN
UTAH COUNTY RECORDER
2025 May 6 11:34 AM FEE 40.00 BY LM
RECORDED FOR CITY OF PROVO

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the April 23rd of 2025 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and Provo Airpark Industrial 2, LLC, a Utah limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer will be or is the owner of approximately 13 acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On April 8th, 2025, the City Council approved Ordinance 2015-21, vesting zoning (the "Vesting Ordinance"), based on the Concept Plan set forth on EXHIBIT B ("Concept Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the Airport Industrial (AI) Zone, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the City's Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

a. Developer agrees that final plat may not be recorded until development has all services needed for the development. In the event that the entire development cannot be serviced and only a portion is able to be serviced, Developer may phase the development as long as it has adequate services for each phase prior to commencing development of that phase and meets the City's requirements.

b. Obligations along Provo River

1. Developer must improve open space and trail area to a 10' wide trail with amenities as shown in Exhibit B.
2. Developer must provide a minimum of two (2) trail accesses (southwest corner and northeast corner) that will be located and identified on the final plat(s).
3. Developer agrees that any fencing along the river must be at least 50% open, non-sight-obscuring fencing.
4. Developer must provide access to property to the west (parcel 21:029:0043) through the two interior parking access lanes shown on concept plan.
5. Developer must allow public access to the trails, outlook area, workout area, and picnic areas identified on the site plan in Exhibit B, shown through a public access easement on the final plat. Developer must maintain the public access easement to the extent necessary to prevent unreasonable interference with the enjoyment of the easement.
6. Developer agrees to keep a fifty foot (50') wide open area along the entire river frontage, measured from top bank of river, free of any structures or parking spaces.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

- i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to

City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980),

its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.
2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.
3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

8. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer:

Attn: Eric Yergensen
PO Box 452
Lehi, Utah 84043
Phone: 801-699-0807

To the City:

City of Provo
Attention: City Attorney
445 W Center
Provo, UT 84601
Phone: (801) 852-6140

9. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.

a. Notice. Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.

- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

ATTEST:

By: City Recorder

CITY:

CITY OF PROVO

By: _____

Mayer Michelle Kaufusi

DEVELOPER:

Provo Airpark Industrial 2, LLC

By: _____

Name: Eric Yergensen

Title: Manager & Member

OWNERS:

By: Kirkland Family Investments, LLC
Name: Scott Kirkland, Manager

By: _____

Name: _____

STATE OF UTAH

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COUNTY OF UTAH

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On the 11 day of April, 2025, personally appeared before me Eric Yergensen, who being by me duly sworn, did acknowledge that he/she executed the foregoing instrument in his/her official capacity as Manager of Provo City, a municipal corporation of the State of Utah.

Notary Public

STATE OF UTAH

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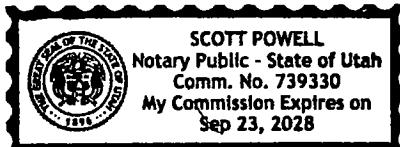
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COUNTY OF UTAH

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On the 11 day of April, 2025, personally appeared before me Eric Yergensen who being by me duly sworn, did say that he is the Manager of Provo Airpark Industrial 2, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

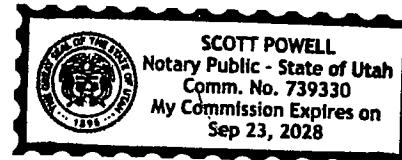
Notary Public



STATE OF UTAH)
:ss
COUNTY OF UTAH)

On the 11 day of April, 2025, personally appeared before me Scott Kirkland, who being by me duly sworn, did say that he is the Manager of Kirkland Family Investments, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

SCOTT KIRKLAND
Notary Public



STATE OF UTAH)
:ss
COUNTY OF UTAH)

On the day of , 2025, personally appeared before me , who being by me duly sworn, did say that he is the of , a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

ATTEST:
By: Heidi Allman
City Recorder



CITY:
CITY OF PROVO

By: Michelle Kaufusi
Mayor Michelle Kaufusi

DEVELOPER:
Provo Airpark Industrial 2, LLC

By: Eric Yergensen
Name: Eric Yergensen
Title: Manager & Member

OWNERS:

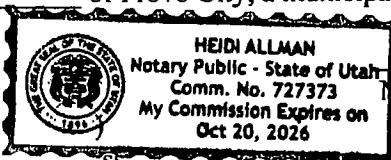
By: Kirkland Family Investments
Name: Scott Kirkland, Manager

By: HALLADAY APARTMENTS LLC
Name: Kris A Halladay, Manager

Kris a Halladay

STATE OF UTAH)
)
COUNTY OF UTAH)
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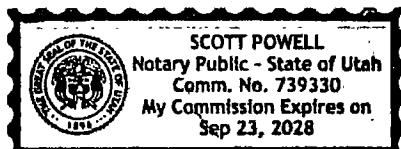
On the 23 day of April, 2025, personally appeared before me Michelle Kaufusi who being by me duly sworn, did acknowledge that he/she executed the foregoing instrument in his/her official capacity as Mayor of Provo City, a municipal corporation of the State of Utah.



STATE OF UTAH)
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COUNTY OF UTAH)
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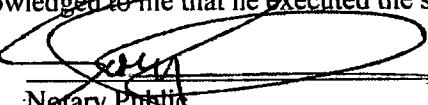
On the 11 day of April, 2025, personally appeared before me Eric Yergensen who being by me duly sworn, did say that he is the Manager of Provo Airpark Industrial 2, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

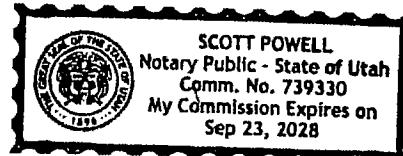
Scott Powell
Notary Public



STATE OF UTAH)
:ss
COUNTY OF UTAH)

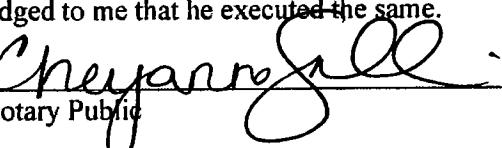
On the 11 day of April, 2025, personally appeared before me Scott Kirkland, who being by me duly sworn, did say that he is the Manager of Kirkland Family Investments, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.


Notary Public



STATE OF UTAH)
:ss
COUNTY OF UTAH)

On the 14 day of April, 2025, personally appeared before me Kris A. Halladay, who being by me duly sworn, did say that he is the Manager of HALLADAY APARTMENTS, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.


Notary Public

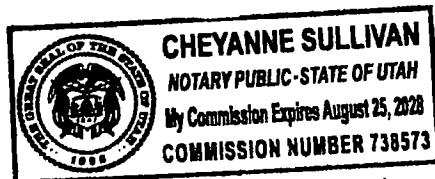


EXHIBIT A**Legal Description of the Property****Legal Description****PARCEL 1 – 21:029:0015**

Commencing 14.84 chains North and 19.504 chains West from the Southeast corner of Lot 4, Section 4, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 01°00'00" East 120.0 feet; thence South 88°00'00" East 100.0 feet; thence South 01°00'00" West 120.0 feet; thence North 88°00'00" West 100.0 feet to the place of beginning.

LESS AND EXCEPTING therefrom any portion lying within the bounds of a public street and/or right of way.

Parcel 7 – 21:029:0100

Beginning at a point which is N 00°13'18"W along the section line 1193.65 feet and West 665.29 feet from the

Southeast Corner of Section 4, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence N 88°20'01" W 116.19 feet to a point on a fence line; thence S 00°34'59"W along said fence 217.80 feet; thence N 88°13'13"W 383.78 feet; thence N 01°10'25" E along a fence line 116.72 feet to a corner of the fence line; thence N 88°29'10"W along the fence line 104.82 feet; thence N 01°00'00" E 763.18 feet; thence S 71°59'00" E 116.82 feet; thence S 63°26'00" E 49.50 feet; thence N 71°59'00" E 44.88 feet; thence N 27°15'00" E 96.36 feet; thence S 58°00'00" E 171.60 feet; thence S 90°00'00" E 172.94 feet; thence S 04°14'00" E 24.61 feet to a point of curvature; thence along an arc 42.25 feet to the left, having a radius of 40.00 feet, the chord bears S 34°29'3T E 40.31 feet; thence S 90°00'00" E 10.94 feet to a fence; thence S 00°31'07"W along said fence 572.64 feet to the **POINT OF BEGINNING**.

LESS AND EXCEPTING THEREFROM all those portions lying within the bed and banks of the Provo River, and any portions lying Northerly and Northwesterly of said Provo River.

LESS AND EXCEPTING therefrom any portion lying within the bounds of a public street and/or right of way.

PARCEL 5 – 29:029:0077

A Portion of Section 4, Township 7 South, Range 2 East, Salt Lake Base and Meridian, located in Provo, Utah, more particularly described as follows:

Beginning at a point located South 00°13'53" East along the Section line 989.30 feet and West 468.91 feet from the East Quarter Corner of Section 4, Township 7 South, Range 2 East, Salt Lake Base and Meridian, thence North 74°10'29" West 17.13 feet; thence North 12°45'28" West 38.90 feet; thence North 16°32'59" West 58.30 feet; thence North 28°51'50" West 44.32 feet; thence North 43°31'55" West 44.11 feet; thence North 55°46'55" West 44.93 feet; thence North 76°44'43" West 59.86 feet; thence North 00°00'44" West 11.63 feet; thence North 88°41'48" West 210.69 feet; thence North

80°32'17" West 57.83 feet; thence North 53°16'50" West 53.02 feet; thence North 38°56'48" East 267.13 feet; thence Northeasterly along the arc of a 225.00 foot radius curve to the right 211.31 feet (chord bears North 65°51'05" East 203.63 feet); thence South 87°14'37" East 103.91 feet; thence South 03°44'26" East 34.66 feet; thence South 86°15'34" West 20.00 feet; thence South 03°44'26" East 16.54 feet; thence Southerly along the arc of a 6009.00 foot radius curve to the right 261.90 feet (chord bears South 00°29'31" East 261.88 feet; thence South 88°45'24" West 10.00 feet; thence Southerly along the arc of a 5999.00 foot radius Non-Tangent curve to the right 59.74 feet (chord bears South 00°57'29" East 59.74 feet); thence South 48°23'53" East 4.41 feet; thence South 28°10'21" East 84.85 feet; thence South 11°13'18" East 63.00 feet; thence South 00°13'18" East 38.48 feet to the point of beginning.

LESS AND EXCEPTING therefrom any portion lying within the bounds of a public street and/or right of way.

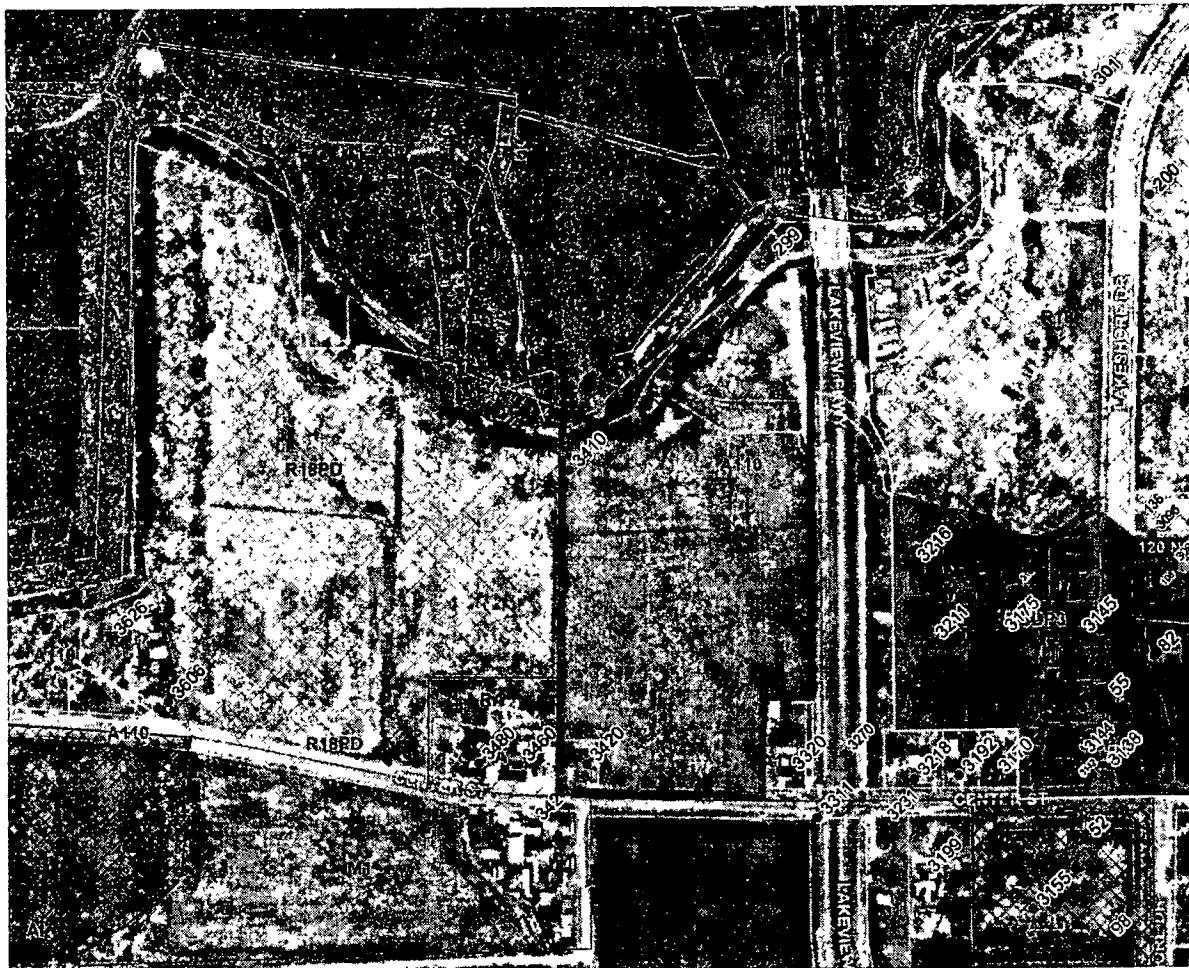


Exhibit B

Concept Plan

