18

W3300338

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LEANN H KILTS, WEBER CTY. RECORDER
02-OCT-23 242 PM FEE $.00 SED
REC FOR: WEBER COUNTY PLANNING

This document supersedes the development agreement recorded 7/27/2023, that recorded without the exhibits.

DEVELOPMENT AGREEMENT

Between

WEBER COUNTY, UTAH

and

Soderby LLC

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DEVELOPMENT AGREEMENT
Soderby, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between Weber County, Utah ("County") and Soderby, LLC ("Developer"), known together herein as the "Parties."

RECITALS

15-057-0006

WHEREAS, The Developer desires and intends to develop a residential subdivision (the "Project") in the unincorporated area of Weber County;

WHEREAS, The Developer's objective is to develop a subdivision with single family lots that complies with the Connectivity Incentivized Subdivision regulations of Weber County;

WHEREAS, The County's objective is to approve only development that supports and advances the health, safety, and welfare of the community, as generally described in the general plan and as otherwise determined appropriate by the Board of County Commissioners;

WHEREAS, The Project is currently zoned A-1 and Developer desires to rezone the Project to the R1-15 zone consistent with the terms and provisions contained herein; and

WHEREAS, The Project will be located on land referred to herein as the "Project Site". The Project Site is as more specifically described in **Exhibit A**: Project Area Legal Description and Graphic Depiction. A preliminary plan showing the general location and layout of the Project is contained in **Exhibit B** Concept Development Plan

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date, Expiration, Termination.

1.1. Effective Date. The Effective Date of this Agreement is the latter of:

1.1.1. The last date upon which it is signed by any of the Parties hereto;

1.1.2. The recordation of this Agreement; or

1.1.3. The recordation of the rezone ordinance to which this Agreement is associated and inextricably linked.

1.2. Expiration. This Agreement shall be in full force and effect until (10) years from the Effective Date of this Agreement, at which point this Agreement shall expire.

1.3. Termination. This Agreement may be terminated by mutual written agreement of the Parties. This Agreement automatically terminates, without notice, in the following circumstances:

1.3.1. The term of this Agreement expires;

1.3.2. The Project is abandoned or the use is discontinued, as provided for by Weber County Code Chapter 108-12; or

1.3.3. The Developer defaults on any provision of this Agreement and the default is not resolved as specified in Section 13 of this Agreement.

2. **Definitions and Interpretation.** For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have the same meaning as provided by the Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision

2.1. Agreement. "Agreement" means this Development Agreement between County and Developer, approved by the Board of County Commissioners, and executed by the undersigned.

2.2. Code. "Code" means the Weber County Code.

2.3. County. "County" means Weber County, Utah.

2.4. Developer. "Developer" means Soderby, LLC, or its Assignees as provided in Section 11 of this Agreement.

2.5. Effective Date. "Effective Date" has the meaning set forth in Section 1 of this Agreement.

2.6. Force Majeure Event. "Force Majeure Event" means any event beyond the reasonable control of the affected Party that directly prevents or delays the performance by such Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; pandemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third Parties; riot or similar civil disturbance or commotion; material or supply delay; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental or judicial authority.

2.7. Parties. "Parties" means the Developer and the County.

2.8. Project. "Project" means a development on the Project Site.

2.9. Project Site. "Project Site" means the land area on which the Project will actually be sited, as more specifically described in Attachment A: Project Area Legal Description and Graphic Depiction.

2.10. Routine and Uncontested. "Routine and Uncontested" means simple and germane to the Project or Project Site, having very little chance of effect on the character of the area, and not anticipated to generate concern from the public.

2.11. Substantial Completion. "Substantial Completion" means the Project is constructed, installed, and a valid business license has been obtained from the county.

2.12. Transferee. A party to which the Project is transferred or assigned in part or in whole. "Assignee" shall also mean the same.

3. **Omitted**

4. Project Description.

The Project is as described herein, and illustrated in Attachment B.

5. Project Location and Illustration.

The Project is as described herein, and illustrated in Attachment B.

6. Vesting.

6.1. To the maximum extent permitted under the laws of the County, the State of Utah, and the United States, the Parties hereto intend that this Agreement grants to Developer the right to develop and use the Project, as outlined in and subject to the requirements set forth in this Agreement, without modification or interference by the County (collectively, the "Vested Rights"). 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.

6.2. Neither the County nor any department or agency of the County shall impose upon the Project (whether by initiative, or other means) any ordinance, resolution, regulation, condition, or other measure (each a "New Law") that reduces or impacts the development rights provided by this Agreement or the Vested Rights. Without limiting the generality of the foregoing, any New Law shall be deemed to conflict with this Agreement and / or the Vested Rights if it would accomplish any of the following results in a manner inconsistent with or more restrictive than applicable law, either by specific reference to the Project or as part of a general enactment that applies to or affects the Project: (i) change any land uses or permitted uses of the Project; (ii) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner so long as all applicable requirements of this Agreement, and the applicable zoning ordinances are satisfied; or (iii) apply to the Project any New Law otherwise allowed by this Agreement that is not uniformly applied on a County-wide basis to all substantially similar types of development projects and project sites with similar zoning designations. Notwithstanding the foregoing, if Developer considers any New Law to be beneficial to the Project, this section does not require Developer to comply with the superseded ordinance, but rather in such cases, Developer may with County approval, which approval may not be unreasonably withheld, conditioned, or delayed, elect to request that the New Law apply to the Project.

6.3. The Developer acknowledges that the County 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 County all of its police power that cannot be so limited. Notwithstanding the retained power of the County 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 17-27a-509.5 of the County Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. County of Logan*, 617 P.2d 388 (Utah 1980), it's progeny, or any other exception to the doctrine of vested rights recognized under State or Federal laws.

6.4. The parties mutually acknowledge that any use lawfully established under vested laws and this Agreement replaces and supersedes any previously approved development agreements pertaining to or recorded against the Property and Project.

7. Development Standards

7.1. Lot Development Standards. The Parties hereby agree that Developer will develop the Project in accordance with the street connectivity subdivision standards in the Weber County Land Use Code. Further, the Parties agree that the street and pathways layout depicted on the Concept Development Plan of Exhibit B is a satisfactory layout for the Connectivity Incentivized

Subdivision. Any conflict between the Concept Development Plan and this agreement shall be interpreted in favor of the greater public improvement.

7.2. Public Improvements Required

7.2.1. Street Right-of-way dedication is required.

7.2.1.1. Street 'A' shall be an 80-foot wide north/south right-of-way which shall connect from 2200 South Street to the northern boundary of the project.

7.2.1.2. 1700 South Street (66 feet wide) shall continue from the western project boundary and stub to the eastern project boundary as depicted on the concept plan (Attachment B).

7.2.1.3. Streets B, D, E, and G shall be considered 'interior' streets and shall be 60 wide, as depicted on the concept plan (Attachment B).

7.2.1.4. Street C shall connect 1800 South Street to the northern Project boundary and shall be 66 feet wide as depicted on the concept plan (Attachment B).

7.2.1.5. A road stub shall connect Street G to the northern Project boundary, between Street A and Street C and shall be 60 feet wide depicted on the concept plan (Attachment B).

7.2.2. Street Improvements. Streets in the Project shall be designed and installed by the Developer in accordance with the street cross sections depicted in Exhibit C.

7.2.2.1. Street 'A' shall be improved from 1800 South Street to the northernmost extent of the project. Street 'A' shall follow the 80-foot standard.

7.2.2.2. 1700 South Street (Street F) shall follow the 66-foot standard. At a minimum, this shall include a 10-foot wide paved pathway along the north side from the western extent of the Project to the eastern extent of the Project.

7.2.2.3. Streets B, D, E, and G shall be improved to the specifications of the County Engineer. At a minimum, this shall include a 10-foot wide paved pathway, and sufficient asphalt width to allow for 6-foot wide bike lane along the shoulder of 2200 South Street. 8-foot wide park strips are required with a minimum 6-inch angular rock mulch.

7.2.2.4. Street C shall follow the 66-foot standard. At a minimum, this shall include a 10-foot wide paved pathway along the east side from 1800 South Street to the northern extent of the Project.

7.2.2.5. Developer shall install high water table street trees along all streets in the subdivision, at an interval so that the specific tree species' canopies touch at their maturity.

7.2.3. Pathway right-of-way dedication. A public pathway right-of-way shall be provided. The public pathway right-of-way shall be dedicated and installed according to the concept plan shown as Exhibit B. The width of each public pathway right-of-way shall be 15 feet and the Developer shall installs a permanent fence that is either no taller than 4 feet at any point or a six-foot fence that is no less than 30 percent open with openings distributed evenly. A covenant shall run with the land, recorded with the subdivision plat, which stipulates that this fence requirement is applicable to the

lot(s) in perpetuity.

7.2.4. Pathway Improvements.

7.2.4.1. Pathway improvements within the public pathway right-of-way specified in 7.2.3 shall be installed as displayed in Attachment D. At least six-inch angular rock mulch ground cover on both sides of the ten-foot pathway is required for the entire remaining right-of-way width.

7.2.4.2. A pathway shall be installed within the public right-of-way on the east side of Street 'A' from 1800 South Street to the northernmost extent of the project as depicted in Attachment C.

7.2.4.3. A pathway shall be installed within the public right-of-way on the north side of 1700 South Street as provided in Section 7.2.2.3.

7.2.4.4. A pathway shall be installed from Street 'D', between lots 408 and 409 and 223 and 410 to Street 'B', as provided in Section 7.2.2.3.

7.2.4.5. A pathway shall be installed from Street 'A', between lots 102 and 103 and 113 and 114 to Street 'E', and continuing northward to the south side of Street 'G'. as provided in Section 7.2.2.3.

7.2.4.6. All pathways shall be constructed of three inches of asphalt on eight inches of base-course.

7.2.5. Sewer and Water Improvements. The parties agree that sanitary sewer, culinary water, and secondary water infrastructure shall be extended to the project by Developer. County agrees to cooperate in good faith with Developer and these utility service providers to enable the Project.

7.2.6. Stormwater Improvements. Developer agrees to provide adequate stormwater facilities, as may be required by the County Engineer.

7.2.7. Park Donation. In consideration of the rezone, Developer hereby volunteers to donate $2,000.00 per resulting lot to the Taylor West Weber Park District. Developer is not entitled to have any subdivision plat for the Property recorded until County receives written verification from Taylor West Weber Park District that this has been satisfied; nor any other approval or permit authorized by the Weber County Land Use Code.

8. Amendments and Revisions.

This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing and approved and signed by Developer and County (an "Amendment"). The following sections specify what Project changes can be undertaken without the need for amendment of the Development Agreement, and what changes require Amendment to this Agreement.

8.1. Project Facility Repair, Maintenance and Replacement. Developer shall be permitted to repair, maintain and replace the Project and its components consistent with the terms of this Agreement without amending the Agreement.

8.2. Authorized Changes, Enlargements, or Alterations. As set forth below, County staff may review and approve certain minor changes, enlargements or adjustments ("Changes") to the Project in their respective administrative capacities. The following types of Changes are considered minor, provided that no such Changes shall directly or indirectly result in significantly greater impacts than those contemplated in the approval of this Agreement.

8.2.1. Changes Necessary to Comply with Other Laws. Any resulting changes as a consequence of obtaining or complying with a federal, state, or local permit or approval; provided that the changes are routine and uncontested and the application thereof does not materially affect the County's original intent, findings, or conditions on the Project in a manner that would have likely resulted in a different decision on this Agreement, as determined by the Planning Director.

8.2.2. De Minimis Changes. Other de Minimis changes requested by the Developer, which are reasonably consistent with the intent of this agreement and the R1-15 rezone, and are routine and uncontested.

9. OMITTED

10. OMITTED

11. General Provisions.

11.1. Assignability. The Developer, as the landowner of the Project Site at the time of the execution of this Agreement, may sell, convey, reassign, or transfer the entire Project Site or entire Project to another entity at any time, provided any division of land, if applicable, and complies with County Laws.

11.2. Binding Effect. This Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring all or any portion of the Project, any lot, parcel or any portion thereof within the Project Site, or any interest therein, whether by sale, operation of law, devise, or in any manner whatsoever.

11.3. Utah Law. This Agreement is entered into under the laws of the State of Utah, and the Parties hereto intend that Utah law shall apply to the interpretation hereof.

11.4. Authority. Each Party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to execute, deliver and perform its obligations under this Agreement.

11.5. Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each Party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. The Parties agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the Parties to develop the Project in conformity with the terms and conditions specified in this Agreement.

11.6. Communication and Coordination. The Parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the Parties. The Parties agree to use best efforts to communicate regarding issues, changes, or problems that arise in the performance of the rights, duties and obligations hereunder as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues.

11.7. Force Majeure Event. A Force Majeure Event shall be promptly addressed by Developer. County agrees to offer a reasonable period for Developer to cure the effect of the event given the extent of the effect on the Project and the Developer's ability to redress the effect.

12. Notices.

12.1. Written Notice. Any notice, demand, or other communication ("Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). A courtesy copy of the Notice may be sent by facsimile transmission or email.

12.2. **Addresses.** Notices shall be given to the Parties at their addresses set forth as follows:

If to the County:

Weber County Commission
2380 Washington Blvd, Ste #360
Ogden, UT 84401

With copies to:

Weber County Attorney
2380 Washington BLVD, Ste. #230
Ogden, UT 84401

Weber County Planning Director
2380 Washington BLVD, Ste. #240
Ogden, UT 84401

If to Developer:

Soderby, LLC
2951 N Fairfield Rd, Layton, UT 84041

12.3. Notice Effect. Notice by hand delivery shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any Party at any time by Notice to the other Party may designate a different address or person to which such notice or communication shall be given.

13. Default and Remedies.

13.1. Failure to Perform Period. No Party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure of the alleged default.

13.2. Remedies. The Developer's failure to comply with this agreement constitutes a violation of the Land Use Code of Weber County, and is subject to the enforcement provisions and remedies thereof. In addition, the County may withhold any permits from the Project.

13.3. Dispute Resolution Process.

13.3.1. Conference. In the event of any dispute relating to this Agreement, the Parties, upon the request of either Party, shall meet within seven (7) calendar days to confer and seek to resolve the dispute ("Conference"). The Conference shall be attended by the following parties: (a) the County shall send department director(s) and County

employees and contractors with information relating to the dispute, and (b) Developer shall send Developer's representative and any consultant(s) with technical information or expertise related to the dispute. The Parties shall, in good faith, endeavor to resolve their disputes through the Conference.

13.3.2. Mediation. If this Conference process does not resolve the dispute within the 7-day Conference period, the Parties shall in good faith submit the matter to mediation. The Parties shall send the same types of representatives to mediation as specified for the "Conference" process. Additionally, the Parties shall have representatives present at the mediation with full authority to make a settlement within the range of terms being discussed, should settlement be deemed prudent. The mediation shall take place within forty-five (45) days of the Parties submitting the dispute to mediation. If the dispute is not able to be resolved through the mediation process in the 45-day period, the Parties may pursue their legal remedies in accordance with Utah and local law.

14. Entire Agreement.

This Agreement, together with all Attachments hereto, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This agreement is specifically intended by the Parties to supersede all prior agreements between them or recorded to the property, whether written or oral.

15. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS HEREOF, the Parties hereto, having been duly authorized, have executed this Agreement.

(Signatures on following pages)

SIGNATORIES

"County"
Weber County, a body corporate and politic of the State of Utah

By: _____

Gage Froerer
Chair, Weber County Commission

DATE: 5/30/2023

ATTEST: _____

Ricky D. Hatch, CPA
Weber County Clerk/Auditor



"Developer"
Soderby, LLC

By: Duane D Johnson Gen Manager
Print Name: DUANE D JOHNSON
Title: Gen Manager

DATE: July 6-23

Developer Acknowledgment

State of Utah)
)ss.
County of ~~Davis~~ Morgan)

On the 6th day of July, 2023, personally appeared before me Duane D Johnson, who being by me duly sworn, did say that he is the General Manager of Soderby LLC, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authority of its members or its articles of organization; and said person acknowledged to me that said limited liability company executed the same.

4-27-26
My Commission Expires:

5015 W Old Hwy Rd, Morgan Ut 84050
Notary Public, residing in

Debbie Lynn Hinds
STATE OF UTAH NOTARY PUBLIC
DEBBIE LYNN HINDS
COMMISSION #724420
MY COMMISSION EXPIRES:
04-27-2026

Exhibit A

Project Area Legal Description and Graphic Depiction

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21,TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, U.S.SURVEY, WEBER COUNTY, UTAH. CONTAINING 40 ACRES, M/L.



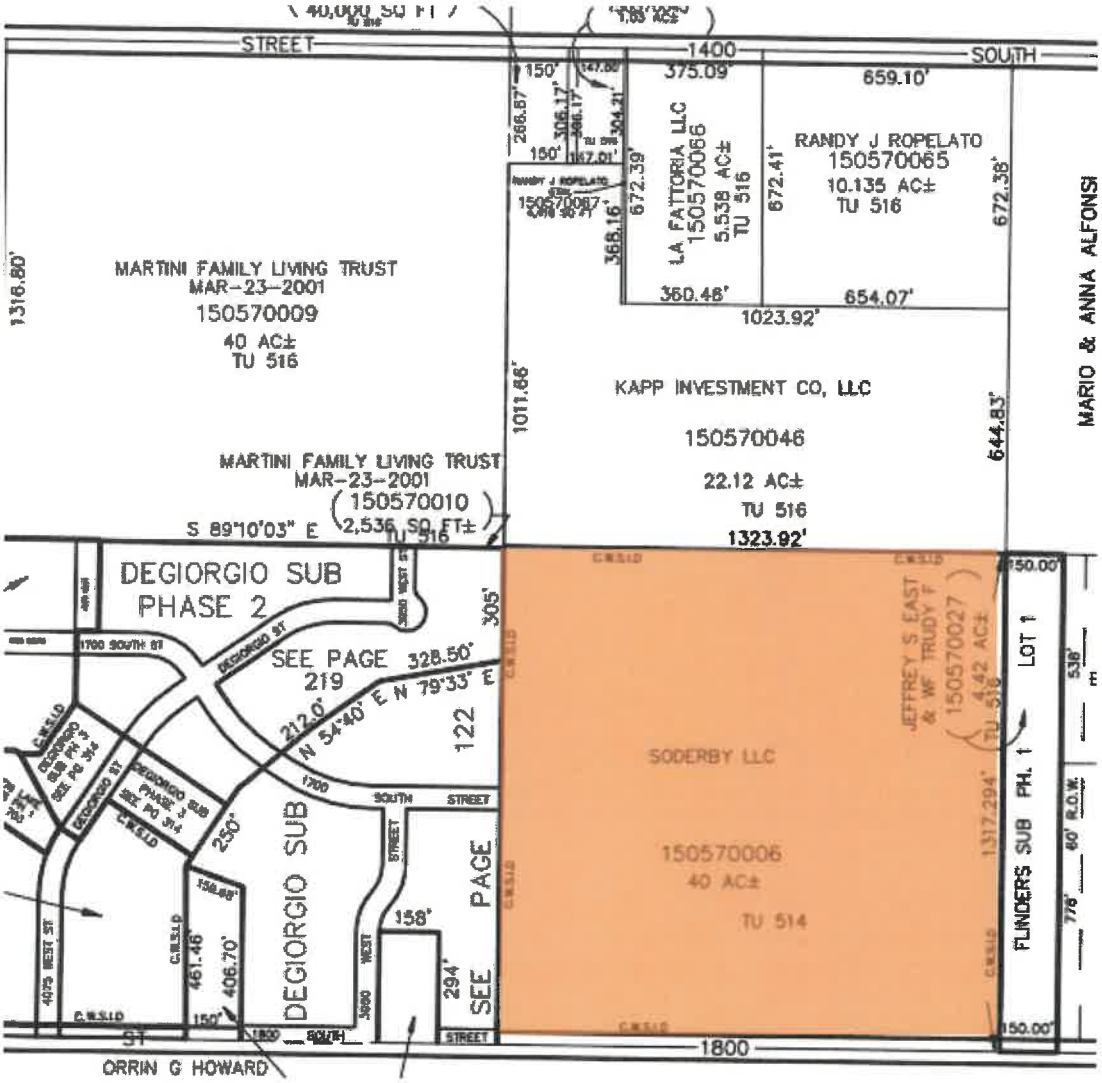

STREET
1400
SOUTH
MARTINI FAMILY LIVING TRUST
MAR-23-2001
150570009
40 AC±
TU 516
LA FATTORIA LLC
150570066
5.538 AC±
TU 516
RANDY J ROPELATO
150570065
10.135 AC±
TU 516
KAPP INVESTMENT CO, LLC
150570046
22.12 AC±
TU 516
MARIO & ANNA ALFONSI
MARTINI FAMILY LIVING TRUST
MAR-23-2001
150570010
2,536 SQ FT±
TU 516
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659.10'
375.09'
1316.80'
1011.86'
644.83'
672.39'
672.41'
672.38'
368.16'
360.46'
654.07'
DEGIORGIO SUB
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N 54°40' E
212.0'
N 79°33' E
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122
SODERBY LLC
150570006
40 AC±
TU 514
JEFFREY S EAST
& WF TRUDY F
150570027
4.42 AC±
TU 516
LOT 1
FLINDERS SUB PH. 1
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538'
776'
1317.294'
150.00'
1700 SOUTH ST
DEGIORGIO ST
1700 SOUTH STREET
DEGIORGIO SUB
PHASE 3
SEE PG 314
DEGIORGIO SUB PH. 3
SEE PG 314
C.W.S.I.D.
250'
461.46'
406.70'
150'
158'
294'
SEE PAGE
4075 WEST ST
3600 WEST ST
1800 SOUTH ST
ORRIN G HOWARD
1800

Exhibit B

Concept Plan Details

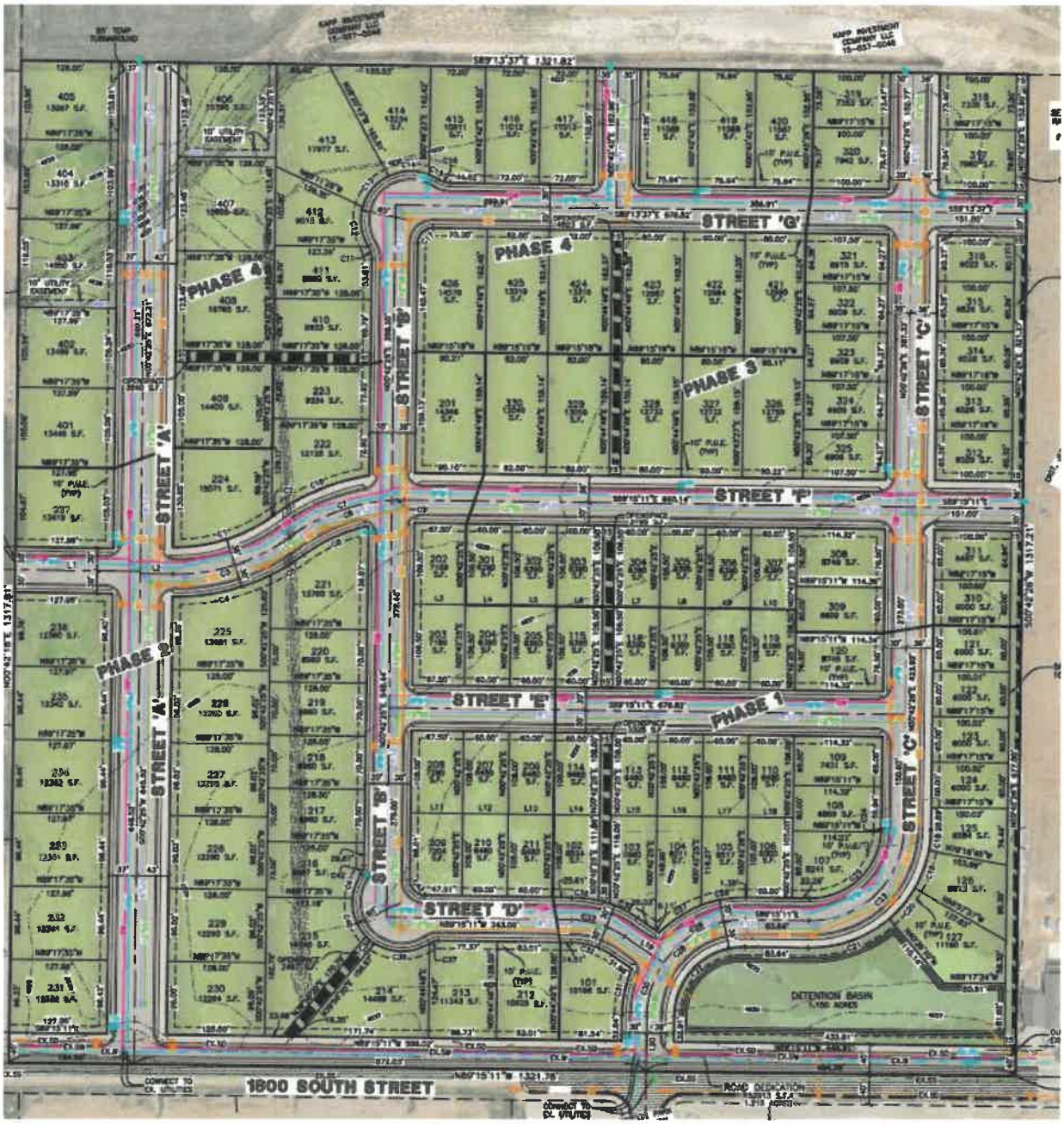
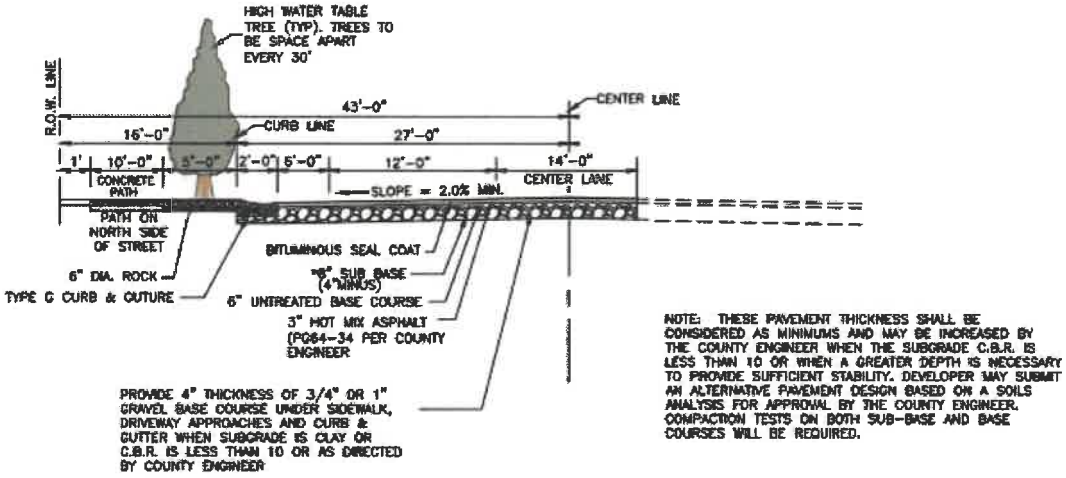


Exhibit C

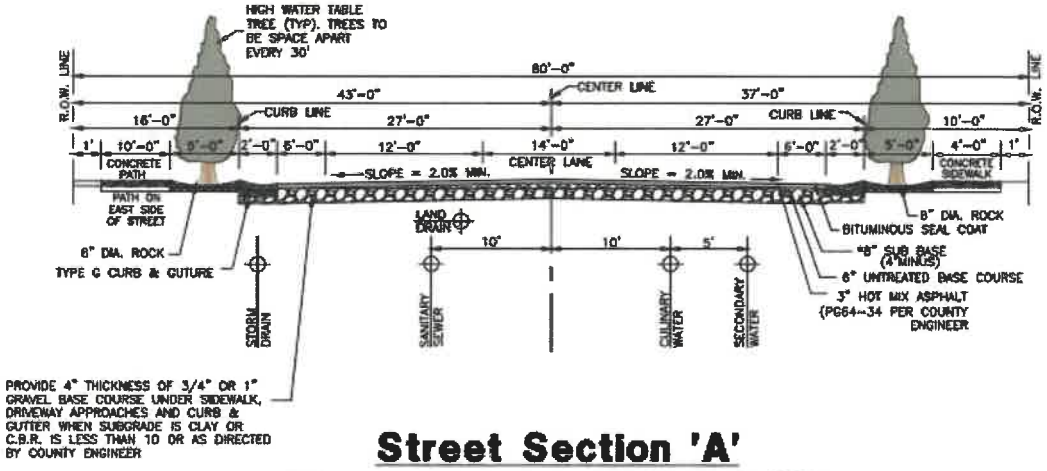
Right-of-Way Cross Sections



1800 South Street

Street Section (80' R.O.W.)

SCALE: NONE

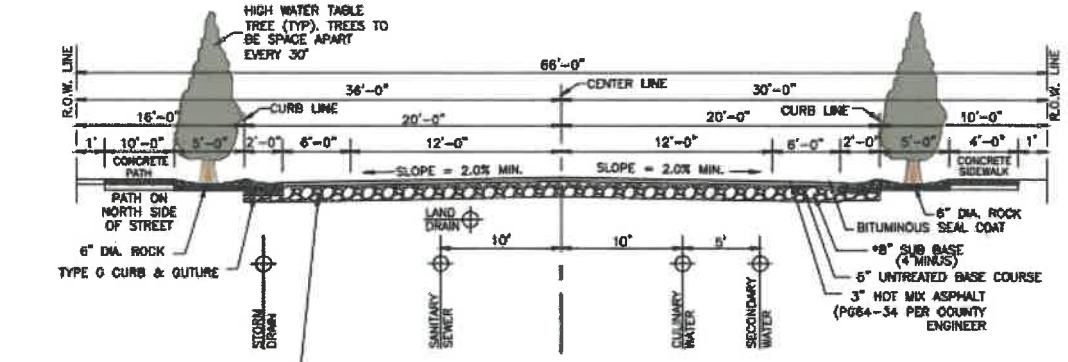


Street Section 'A'

Street Section (80' R.O.W.)

SCALE: NONE

*VERIFY LOCATION WITH PHONE, GAS AND POWER COMPANIES.

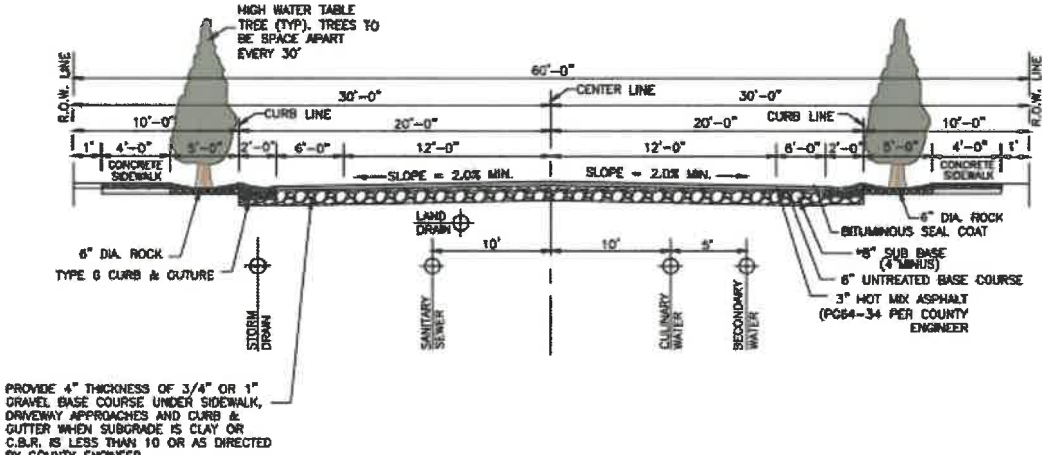


Street Section Street 'C' & 'F'

Street Section (66' R.O.W.)

SCALE: NONE

*VERIFY LOCATION WITH PHONE, GAS AND POWER COMPANIES.



Street Section (60' R.O.W.)

SCALE: NONE

*VERIFY LOCATION WITH PHONE, GAS AND POWER COMPANIES.