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

AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND
TUSCANY VILLAGES LLC

11-003-0120 ✓
11-003-0116 ✓

RETURNED
AUG 27 2020

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY AND
TUSCANY VILLAGES LLC**

3287024
BK 7584 PG 640

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 25 day of AUGUST, 2020, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and property owner Tuscany Villages LLC (hereinafter referred to as "Owners"), with City and Owners collectively referred to as the "Parties" and separately as "Party".

RECITALS

WHEREAS, in furtherance of the objectives of the Layton City General Plan, City has considered an application for a zone change from R-M1 (PRUD) (Low/Medium Density Residential, Planned Residential Unit Development) to MU (Mixed-Use), of a certain property located at approximately 1225 East Gentile Street in Layton City (hereinafter the "Subject Area"); and

WHEREAS, the total area proposed for rezone consists of approximately 2.18 acres (the "Subject Area") and is depicted on Exhibit A attached hereto (hereinafter Exhibit "A"); and

WHEREAS, Parties desire to enter into this Agreement to provide for residential mixed-use development of the Subject Area with a total land area of 2.18 acres (hereinafter the "Development Area" as depicted on Exhibit B), in a manner consistent with the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to grant MU (Mixed-Use) zoning approval on the Subject Area, subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will lead towards consistency with the General Plan future land use recommendation and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City finds 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, covenant and agree 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's Undertakings" shall mean the obligations of the City set forth in Article III.
- 1.2 "Owners' Undertakings" shall have the meaning set forth in Article IV.
- 1.3 "MU" zoning shall mean the Mixed-Use zoning district, the uses of which shall be those set forth in Table 6-2, and shall include the minimum lot area, principal and accessory structure setbacks, building heights, and lot coverage requirements of Table 5-2 and Chapter 19.25 of Layton Municipal Code.

**ARTICLE II
CONDITIONS PRECEDENT**

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2.1 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the Layton City Council.

2.2 MU (Mixed-Use) zoning consistent with Exhibit "A" is a condition precedent to Owners' Undertakings in Article IV.

**ARTICLE III
CITY'S UNDERTAKINGS**

3.1 Subject to the satisfaction of the conditions set forth in Article IV, City shall approve the rezone of the Subject Area from its present zoning of R-M1 (PRUD) to MU, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any zoning amendment shall occur upon a finding by the City Council that it is in the best interest of the health, safety and welfare of the citizens of Layton City to make such a change at this time. All permits and site plan reviews and approvals shall be made pursuant to City ordinances. Nothing herein shall be construed as a waiver of the required reviews and approvals required by City ordinance.

3.2 The proposed zoning changes are as reflected on Exhibit "A" for the overall area.

**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 7.8, Owners agree to the following:

4.1 Zoning. Zoning and development of the Development Area shall comply with Article II. Once the Subject Property is zoned in accordance with Article II, development of the Development Area shall comply with all applicable City rules, regulations and codes.

4.1.1 The development shall be consistent with the concept plan shown in Exhibit B, including the open space with designed and programmed amenity areas as shown for the construction of a front courtyard area, pedestrian circulation pathways, bowery and child play area, bike rack, dog park area and recreational use in the storm water detention area such as grass volleyball court, pickle ball court, basketball half court or equivalent. The Zoning Administrator may designate the area and location of the open space and programmed amenity areas, except that the front courtyard area shall be constructed in the area and location shown in the concept plan. Preliminary plans shall be reviewed by the City's Design Review Committee to provide support and recommendations to the Staff regarding the successful application of applicable standards and requirements.

4.1.2 The fence color shall not be white or other bright color with a light-reflecting glare.

4.2 Public Utilities. Owner acknowledges and agrees that any development shall comply with

any and all development standards, guidelines, ordinances, regulations, and statutes as exist at time of development.

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

4.4 Precedence of this Agreement. This agreement shall take precedence over any contrary provisions of any City Staff memorandums or representations.

4.5 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.

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

4.7 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 and Economic Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Owner's Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

5.2 Completion Date. The Owner shall build the proposed amenities in conjunction with the construction of the development and shall complete the amenities prior to the final certificate of occupancy for any residential units above the total count of 32 units, or two buildings.

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 attorney's 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 negligence or omissions of City, or its agents or employees, in connection with City's exercise of its rights granted herein.

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.
- 6.1.2 Owner agrees not to contest the reversion of the zoning by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from MU (Mixed use) to RM-1 PRUD.

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 Extensions. Either 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 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 thirty (30) days.

6.5 Appeals. If the Owner desires to appeal a determination made hereunder by Staff, said appeal shall be to the Planning Commission, whose decision shall be final. If the appeal is regarding the interpretation of this Agreement the appeal shall be to the City Council with a recommendation from the Planning Commission and Staff.

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 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: TUSCANY VILLAGES LLC
576 North Artists Way
Layton, Utah 84040
801-390-9439

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 Parties.

7.6 Exhibits Incorporated. Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

7.7 Attorney's 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 attorney's fees.

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

- 7.8.1 With regard to Owner's Undertakings, performance of Owner's Undertakings as set forth herein.
- 7.8.2 With regard to City's Undertakings, performance of City's Undertakings as set forth herein.

Upon either Party's request (or the request of Owner's assignee), the other Party agrees to enter into a written acknowledgment of the termination of this Agreement, or part thereof, so long as such termination (or partial termination) has occurred.

7.9 Recordation. This Agreement shall be recorded in reference to the property, and shall run with the land and be binding upon all successors in interest of the property.

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: Joy Petro
JOY PETRO, Mayor

ATTEST:

By: Tori Campbell
KIMBERLY S. READ, City Recorder
Deputy

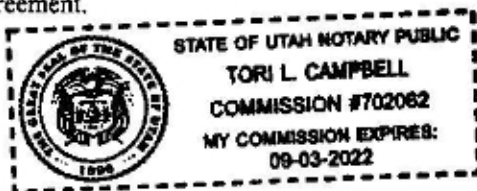
APPROVED AS TO FORM:

By: Gary Crane
GARY CRANE, City Attorney

CITY ACKNOWLEDGEMENT

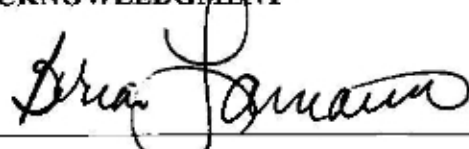
STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this 25 day of August, 2020, personally appeared before me Joy Petro, who being duly sworn, did say that he/she is the Mayor of LAYTON CITY, a municipal corporation of the State of Utah, and that the foregoing Agreement was signed in his/her capacity as Mayor on behalf of the City for approval of the Agreement.



Tori A. Campbell
Notary Public

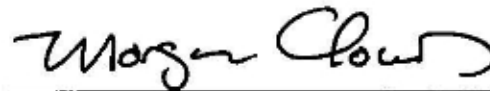
OWNER SIGNATURE AND ACKNOWLEDGMENT



BRIAN LAMANO

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 25th day of AUG., 2020, personally appeared before me Brian Lamano, who being duly sworn, did say that he/she is Manager of the Tuscany Villages LLC, who is the legal property owner of record of the property subject to this Agreement and that he/she has executed this Agreement with full authority to do so.



Notary Public

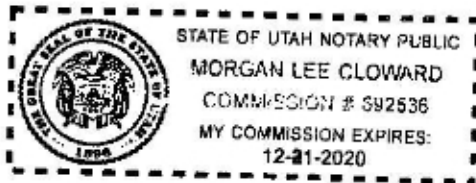


EXHIBIT A

PARCEL # 11-003-0120 ✓

A PART OF THE SW 1/4 OF SEC 22-T4N-R1W, SLM; BEG AT A PT ON THE N LINE OF GENTILE STR BEING 758.63 FT N 89°30'20" W ALG THE SEC LINE & 724.09 FT N FR THE SE COR OF SD SW 1/4 OF SEC 22; & RUN TH ALG SD N'LY LINE OF GENTILE STR THE FOLLOWING 2 COURSES: S 68°58' W 117.03 FT TO A PT OF CURVATURE; & SW'LY ALG THE ARC OF A 921.94 FT RADIUS CURVE TO THE RIGHT A DISTANCE OF 5.04 FT (CENTRAL ANGLE EQUALS 0°18'47" & LONG CHORD BEARS S 69°07'24" W 5.04 FT); TH N 20°32'17" W 99.98 FT; TH S 69°27'43" W 159.89 FT; TH N 38°32'21" W 129.23 FT TO A PT ON AN EXISTING OLD BNDRY LINE FENCE; TH N 64°47'03" E 244.15 FT ALG SD OLD BNDRY LINE FENCE; TH S 38°32'21" E 254.19 FT TO THE POB. CONT. 1.00 ACRE.

PARCEL # 11-003-0116 ✓

A PART OF THE SW 1/4 OF SEC 22-T4N-R1W, SLM; BEG AT A PT ON THE N'LY LINE OF GENTILE STR BEING 758.63 FT N 89°30'20" W ALG THE SEC LINE & 724.09 FT N FR THE SE COR OF SD SW 1/4 OF SEC 22; & RUN TH N 38°32'21" W 254.19 FT TO A PT ON AN EXIST OLD BNDRY LINE FENCE; TH N 64°47'03" E 200.79 FT ALG SD OLD BNDRY LINE FENCE TO A REBAR MONUMENTING THE MOST W'LY COR OF THE ADJACENT CHURCH PARCEL; TH S 38°32'21" E 270.21 FT ALG THE SW'LY LINE OF SD ADJACENT CHURCH PARCEL AS IT EXISTS ON THE GROUND TO THE N'LY LINE OF GENTILE STR; TH ALG SD N'LY LINE OF GENTILE STR THE FOLLOWING 2 COURSES; S 69°10'22" W 176.19 FT; & S 68°58' W 28.89 FT TO THE POB. CONT. 1.17 ACRES.