



ENT 23278:2019 PG 1 of 11
JEFFERY SMITH
UTAH COUNTY RECORDER
2019 Mar 21 4:53 pm FEE 38.00 BY MG
RECORDED FOR SARATOGA SPRINGS CITY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on JUNE 19, 2018, by and between the City of Saratoga Springs, Utah, a Utah municipal corporation, hereinafter referred to as "City," and Concord Holdings, L.C., a Utah limited liability company, as property owner and developer, hereinafter referred to as "Concord."

RECITALS:

WHEREAS, Concord owns approximately forty-four (44) acres of property located in the City of Saratoga Springs, Utah, which is more fully described in the materials attached as Exhibit A ("Property"). Concord intends to develop the Property into a residential project to be known as "Lexington Green" (the "Project");

WHEREAS, since 2009, the Property has been the subject of that certain vested Real Estate Purchase and Sale Agreement executed by the parties on October 2, 2009 (the "2009 Agreement"), which provides and guarantees certain density and use/development rights and entitlements for the Property including approximately 252 apartments to be built on approximately 12 acres and zoning for R-6 (or its equivalent) for the remainder of the Property;

WHEREAS, recently, for transportation corridor preservation, the Utah Department of Transportation ("UDOT") has determined a need to acquire the eastern portion of the Property comprising approximately 14 acres for future expansion of Foothill Drive. UDOT has completed its acquisition of said acreage, leaving the Project with approximately 31 acres for development, which requires a redesign of the development plan for the Project;

WHEREAS, the City and Concord desire to enter into this Agreement to guide the orderly development of the Property and fulfill and honor the binding 2009 Agreement in light of the development modifications required to accommodate UDOT's acquisition of the eastern portion of the Project for transportation corridor preservation, which also furthers the City's objectives and policies regarding future transportation improvements and the health, welfare, safety and economic prosperity of the City's approved use and development of the property in accordance with this Agreement and the 2009 Agreement;

WHEREAS, the Development Plan, attached as Exhibit B, identifies mutually agreed land uses, roads, landscaping, trails, storm drain, sewer, and water improvements;

WHEREAS, to facilitate the development of the Property in accordance with Concord's mutually agreed and vested entitlements, to ensure that the development of the Property will conform to applicable City policies and ordinances, Concord and City are each willing to abide by the terms and conditions set forth herein and the 2009 Agreement; and

WHEREAS, after all required public notice and hearings in accordance with this Agreement by Concord, the 2009 Agreement and the Concord's property rights and entitlements, the City Council, in exercising its discretion, has determined that entering into this Agreement

further the purposes of the Utah Municipal Land Use, Development, and Management Act, the City's General Plan, Title 19 of the City code, and the spirit and intent of the 2009 Agreement (collectively, the "Public Purposes"). As a result of such determination, City has elected to move forward with the approvals necessary to expedite, approve and commence the development of the Project in accordance with the terms and provisions of this Agreement, the 2009 Agreement and the Development Plan set forth in Exhibit "B" hereto.

AGREEMENT:

Now, therefore, in consideration of the recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Concord hereby agree as follows:

1. Effective Date. This Agreement shall become effective on the date it is executed by Concord and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.
2. Affected Property. The legal description for the Property is attached as Exhibit A. No other property may be added to or removed from this Agreement except by written amendment to this Agreement executed and approved by Concord and City.
3. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the future development of the Project shall be subject to the provisions of the R3-6 and MF-18 zoning ordinances in effect at the time a complete preliminary plat application is filed for development of the Property, except that (i) the existing zoning ordinances shall be reconciled so that Concord's vested rights for the equivalent of 6 units per acre on the single-family acreage may be fully utilized; and (ii) the ordinances in effect at the time of the 2009 Agreement shall apply for the apartments (252 units on approximately 12 acres) with respect to the standards for open space, parking, and parking facilities. The uses and densities as depicted in the Development Plan shown in Exhibit "B" hereto are approved and are deemed to be in compliance with the 2009 Agreement; however, the locations of the residential units may be modified to comply with City regulations as part of the platting process.
4. Reserved Legislative Powers. Nothing in this Agreement shall limit the valid and proper exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact legislation under its police power, such legislation shall not modify or violate Concord's vested rights and entitlements unless the alleged grounds meet and satisfy the compelling, countervailing public interest exception to the vested rights legal and equitable requirements set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1988) and other supporting case law or statute any such proposed change affecting Concord's rights shall be of general applicability to all development activity in City by property owners with similar vested entitlements. Unless City declares an

emergency, Concord shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project.

5. Final Project/Plat or Development Plan Approval. Concord shall cause final plat and final project plans and specifications (including site and building design plans) (the “Plans”) to be prepared for the Project meeting applicable City regulations and this Agreement.
6. Standards for Approval. The City shall approve the Plans as and when such Plans meet the standards and requirements enumerated herein. Concord shall be required to proceed through the Preliminary Plat, Final Plat, and Site Plan approval process as specified in Title 19 of the City Code, and Concord shall be required to record a Final Plat with the Utah County Recorder and pay all recording fees. City agrees, at all times, to expedite and in good faith, fully process and consider all such plans and submittals in a timely and effective manner consistent with Utah law and this Agreement.
7. Commencement of Site Preparation. Concord shall not commence site preparation or construction of any Project improvement on the Property until such time as the Plans have been approved by City in accordance with the terms and conditions of this Agreement. Upon approval of the Plans, subject to the provisions of this Agreement and conditions of approval, Concord may proceed by constructing the Project all at one time or in phases as specified in City regulations.
8. Settlement and Release of Claims. When the City approves the Plans and grants final plat approval for the Project with development conditions and requirements that are reasonably acceptable to Concord, the City and Concord shall then upon recordation of final plat and receipt of all benefits and performances assured and required under this Agreement and the 2009 Agreement, the City and Concord shall then waive, release and discharge each other from and against any and all claims and causes of action arising prior to the date of recordation of the final plat of the Project, including, any and all claims for alleged prior breaches of the 2009 Agreement. If the Project is recorded in phases, this paragraph shall apply to the corresponding portion of the Project included in a final plat.
9. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and time is of the essence.
10. Term. The term of this Agreement shall commence on the Effective Date (defined in Section 1 above) and shall continue thereafter for a period of ten (10) years thereafter. However, this Agreement may terminate earlier when certificates of occupancy have been issued for all buildings and/or dwelling units in the Project; provided, however, that any covenant included in this Agreement which is intended to run with the land, as set forth in any Special Condition, shall survive this Agreement as provided by such Special Condition. Unless otherwise agreed to by the City and Concord, Concord’s vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement approved by City and Concord in writing. However, this Agreement shall continue for perpetuity for any portions of the property contained in a final plat approved by

the City Council and recorded on the property in the county recorder's office by Concord, unless City and Concord mutually agree otherwise in writing.

11. Successors and Assigns.

- a. Change in Ownership. This Agreement shall be binding on the successors and assigns of Concord. If the Property is transferred ("Transfer") to a third party ("Transferee"), Concord and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer Concord provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as Concord under this Agreement and the persons and/or entities executing this Agreement as Concord shall be released from any further obligations under this Agreement as to the transferred Property.
- b. Individual Lot or Unit Sales. Notwithstanding the provisions of Subparagraph 12.a., a transfer by Concord (or its affiliates or approved builders) of a lot or unit located on the Property within a recorded plat shall not be deemed a Transfer as set forth above so long as Concord's obligations with respect to such lot or dwelling unit have been completed. In such event, Concord shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

12. Default.

- a. Events of Default. Upon the happening of one or more of the following events or conditions Concord or City, as applicable, shall be in default ("Default") under this Agreement:
 - i. a determination made upon the basis of substantial evidence that either the Concord or the City has not complied in good faith with one or more of the material terms or conditions of this Agreement; or
 - ii. any other event, condition, act, or omission, by City or Concord that violates the terms of, or materially interferes with the objectives of this Agreement.
- b. Procedure Upon Default.
 - i. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes significant action to begin curing such Default with such thirty-day period

and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph 13.c. herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

- ii. Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed, or stopped any required performance or effort to cure a Default.

- c. Breach of Agreement. In the event of a dispute between the parties wherein the City alleges a Default as set forth above, the City may, subject to appropriate bonding and financial assurances provided by Concord, claim entitlement to withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued. City or Concord may pursue whatever additional remedies it may have at law or in equity, including damages and injunctive and other equitable relief.

13. Entire Agreement. This Agreement and the 2009 Agreement, together, shall supersede all other agreements with respect to the subject matter hereof, not incorporated herein. Except as expressly modified by the provisions of this Agreement, the 2009 Agreement shall continually remain in full force and effect until a final plat is recorded in accordance with this Agreement. The following exhibits are attached to this Agreement and incorporated herein:

- Exhibit A:** Property Description.
- Exhibit B:** Site Plan/Concept Plan.

14. General Terms and Conditions.

- a. Incorporation of Recitals. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- b. Recording of Agreement. This Agreement shall be recorded at Concord's expense to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.
- c. Severability. Each and every provision of this Agreement shall be separate, several,

and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

- d. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties, each party shall commence and perform its duties in an urgent and diligent manner.
- e. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City. It is the intent of the parties to uphold and enforce the property rights and benefits and vested entitlements upon which Concord has reasonably relied in granting prior benefits as sought and requested by the City.
- f. Mutual Enforcement. The parties to this Agreement recognize that each party has the right to enforce the terms of this Agreement by seeking an injunction to compel compliance. In the event either party violates the rules, policies, regulations, or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty days written notice to correct the violation (or such longer period as may be established by a court of competent jurisdiction and if the party has used its reasonable best efforts to cure such violation within such thirty days and is continuing to use its reasonable best efforts to cure such an alleged violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by the defaulting party. The parties shall be free from any liability arising out of the proper exercise of its rights under this paragraph.
- g. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.
- h. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement unless this Agreement is amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.
- i. Attorney Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all

remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah.

- o. Title and Authority. Concord expressly warrants and represents to City that (i) Concord owns all right, title and interest in and to the Property, and (ii) prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Concord (except for the acreage sold to UDOT). Concord further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Concord warrants that the undersigned individuals have full power and authority to enter into this Agreement on behalf of Concord. Concord understands that City is relying on these representations and warranties in executing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Concord as of the date first written above.

Attest:

Cindy R. Leach
City Recorder



CITY:

City of Saratoga Springs, a political subdivision of the State of Utah

By: _____

Mayor *JIM MILLER*

CONCORD:

Concord Holdings, L.C., a Utah limited liability company

By: _____

LaVar Christensen
LaVar Christensen, Manager

State of Utah

County of Utah

The foregoing instrument was acknowledged before me this 2 day of August 2018 by LaVar Christensen, as Manager of Concord Holdings, L.C., a Utah limited liability company.

Lucinda Jean Lopiccolo
Notary Public

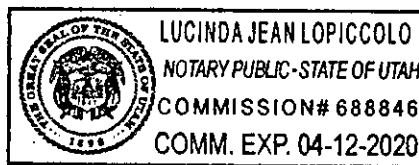


Exhibit "A"
Legal Description of Property

Beginning at a point on the Northerly Right-of Way Line of Pony Express Parkway, said point being South 89°33'20" West 290.40 feet along the section line and North 00°26'40" West 90.00 feet from the South Quarter Corner of Section 22, Township 5 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 89°33'20" West 1,042.60 feet along the Northerly Right-of-Way Line of Pony Express Parkway;
thence North 00°18'08" East 1,029.96 feet to the Southerly Right-of-Way Line of Lehi-Fairfield Road;
thence North 56°28'20" East 1,163.83 feet along the Southerly Right-of-Way Line of Lehi-Fairfield Road;
thence Southeasterly 782.15 feet along the arc of a 4,907.50 foot radius curve to the left (center bears South 87°24'59" East and the chord bears South 01°58'56" East 781.33 feet with a central angle of 09°07'54");
thence South 06°32'53" East 280.91 feet;
thence Southwesterly 212.77 feet along the arc of a 2,041.60 foot radius curve to the left (center bears South 82°50'58" East and the chord bears South 04°09'54" West 212.68 feet with a central angle of 05°58'17");
thence Southeasterly 394.00 feet along the arc of a 1,950.86 foot radius curve to the left (center bears South 87°36'52" East and the chord bears South 03°24'01" East 393.33 feet with a central angle of 11°34'17") to the point of beginning.

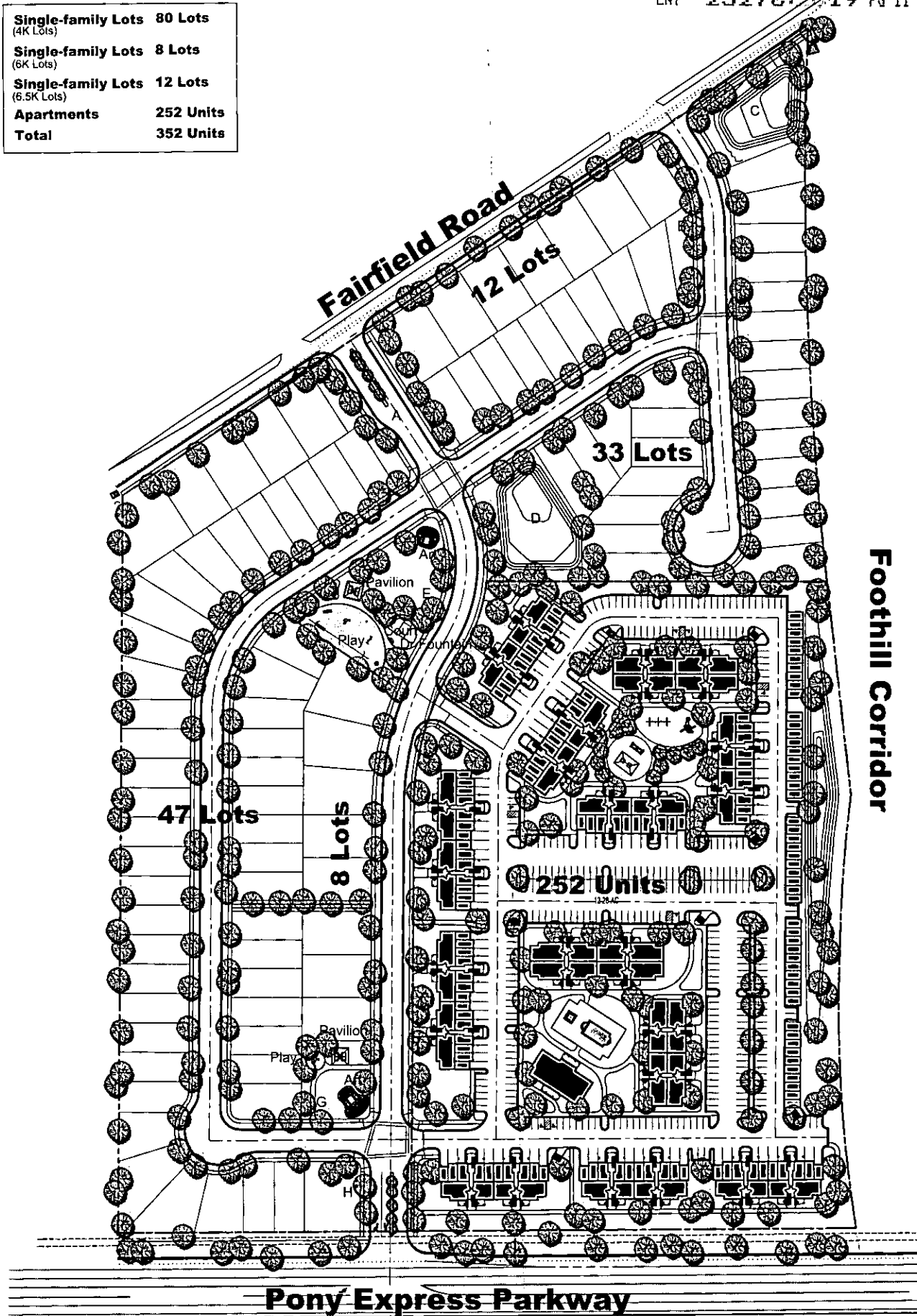
Contains 1,354,244 Square Feet or 31.089 Acres

Exhibit "B"

Development Plan of the Project (Approx. 31 acres)

Site Summary

Single-family Lots	80 Lots
(4K Lots)	
Single-family Lots	8 Lots
(6K Lots)	
Single-family Lots	12 Lots
(6.5K Lots)	
Apartments	252 Units
Total	352 Units



Lexington Green Development Plan