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BK 8195 PG 174

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
2/16/2023 10:29:00 AM  
FEE \$40.00 Pgs: 8  
DEP eCASH REC'D FOR COTTONWOOD TITLE INS AG

WHEN RECORDED MAIL TO:

Layton City  
437 N. Wasatch Drive  
Layton, UT 84041

File No.: 165235-KAP

## **RIGHT OF OCCUPANCY AGREEMENT**

In Reference to Tax ID Number(s):

12-109-0329 and 12-109-0330

## RIGHT OF OCCUPANCY AGREEMENT

IN CONSIDERATION of the mutual covenants herein, the Owners and the City of Layton ("Layton") enter into this Right of Entry and Occupancy Agreement ("Agreement") and agree as follows:

- 1. SUBJECT PROPERTY.** The Subject Property referred to in this Agreement is identified as a portion of parcel number(s) 12-109-0329 and 12-109-0330, more particularly described in Exhibit A, which is attached hereto and incorporated herein. The project which Layton is undertaking is the 2700 West, North of Gentile Street project ("Project"). The Subject Property expressly excludes the area outside of the area designated for the construction of 2700 W. as shown in Exhibit A except that Owners will allow Layton to, where necessary, temporarily during the construction of the Project, encroach up to 5 feet into Owner's property for construction purposes. There is an approximate 10 foot strip owned by Owners between the back of sidewalk and the abutting property owned by the LDS Church that is not included in the Subject Property except as it crosses or enters into 2700 W.
- 2. IMMEDIATE OCCUPANCY.** Owners hereby grant to Layton, its employees and contractors, including but not limited to utility service providers and their contractors working under the direction and control of Layton, the right to immediately occupy the Subject Property and to do whatever construction, relocation of utilities, and other work as required in furtherance of the above-referenced project. Owners represent and warrant that they have the right to grant occupancy of the Subject Property to Layton. Notwithstanding the foregoing, Layton shall at all times maintain water and irrigation for the Subject Property to the same degree and frequency that such water and irrigation existed prior to this Agreement. In addition, Layton shall indemnify, defend, and hold Owners from all claims, damages, costs, etc. arising out of Layton's occupancy of the Subject Property. Layton shall name Owners as additional insureds on Layton's policy of general liability insurance and shall provide to Owners proof of such insurance before Layton occupies the Subject Property.
- 3. ADVANCE PAYMENT.** Layton agrees to pay Owners at any time after the execution of this Agreement the sum of \$363,000.00 (the "Advance Payment") as consideration for entering into this Agreement and as an advance payment on the just compensation to be awarded in a court proceeding or through arbitration or settlement. The parties acknowledge and agree that the Advance Payment represents Layton's opinion as to the appraised value of the Subject Property and that Owners do not necessarily agree with the amount of the Advance Payment. The Advance Payment, if Owners elect to receive it, shall be applied as a credit towards amounts owed by Layton at a closing for sale of the Subject Property to Layton, or if Owner and Layton fail to agree on a purchase price for the Subject Property, the Advance Payment shall be considered a payment pursuant to Utah Code § 78B-6-510(3) in any lawsuit to condemn the Subject Property. Such Advance Payment shall have all of the rights and restrictions provided for in Utah Code § 78B-6-510.
- 4. THIRD PARTIES.** The parties to this Agreement understand that a title report may indicate that other third parties may have a claim to part of the proceeds, when paid by City to the Owners under this Agreement. It is not the intent of the Agreement to properly assess potential third-party claims. In the event it is later determined by the Court or otherwise, that

Right of Occupancy Agreement - Terraventure

part of the Advance Payment should properly be paid to other third parties, then Layton, or if a action in eminent domain is filed, the Court, may require the Owners pay such third parties in order to provide a clear title, free of liens and encumbrances, to the City for the Subject Property. In the event that City desires to obtain title insurance on the Subject Property, in connection with the purchase of the Subject Property, the City shall pay the premiums for the title coverage.

5. **PURPOSE OF AGREEMENT.** Layton requires immediate occupancy of the Subject Property so that construction of the above-referenced project can begin. This Agreement alleviates the need to immediately file an eminent domain lawsuit to obtain occupancy and allows Owner and Layton to continue negotiations for the sale of the Subject Property and interests therein. Upon receipt and acceptance of the Advance Payment, Owners abandon all defenses to a condemnation lawsuit except a claim for greater compensation, as provided in Utah Code § 78B-6-510 for the area of the Subject Property.
6. **IF NEGOTIATIONS ARE SUCCESSFUL.** Layton and Owners agree that negotiations under this Agreement will be deemed to be successful only if the terms of sale to Layton of all interests in the Subject Property have been set forth in fully signed written contract(s).
7. **IF NEGOTIATIONS ARE UNSUCCESSFUL.** If Layton and Owners have not entered into a written contract or contracts for the sale to Layton of all interests of Owners in the Subject Property within 150 days following the last signature to this Agreement, Layton shall then file a lawsuit to condemn the Subject Property. Upon written request by Owners, LAYTON will commence a condemnation lawsuit within 30 days following such request. Such notice may be given by Owner at any time. The occupancy granted to Layton under this Agreement shall continue throughout any lawsuit to condemn the Subject Property, but Layton shall have the right to move for and obtain a court order of occupancy, which Owners agree not to contest so long as it is not materially inconsistent with this Agreement.

The date on which the right to compensation and damages, if any, shall be deemed to have accrued for purposes of a condemnation lawsuit or other valuation proceeding, shall be the date of the first signature to this Agreement, or other date as ordered by the court.

8. **NOTICES AND REQUESTS.** All notices or requests required or contemplated under this Agreement shall be (a) in writing; (b) signed by the Owner or Layton; and (c) sent by certified U.S. mail to the Owners at the address set forth below, or to Layton at: 437 North Wasatch Drive, Layton, UT 84041.
9. **LAYTON'S RIGHT TO CANCEL.** If the Subject Property becomes unnecessary for a public use or is no longer required for the construction of the project referenced above, Layton may cancel this Agreement by written notice to Owners and will have no obligation to purchase or condemn the Subject Property. However, Layton will jointly pay Owners, in accordance with their interest, the reasonable rental value (as determined by an independent third party appraisal) of the Subject Property for the period of occupancy and will restore the Subject Property due to any disturbance or construction caused by Layton during occupancy, or in the alternative, Owner may elect to have Layton pay Owner the cost of such restoration. The Advance Payment shall be

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repaid to Layton in accordance with Utah law. In addition, if Layton cancels this Agreement, it shall be considered an abandonment pursuant to Utah Code § 78B-6- 517 and all provisions of that Section shall apply.

\*\*\* SIGNATURES TO FOLLOW ON NEXT PAGE \*\*\*

Right of Occupancy Agreement - Terraventure

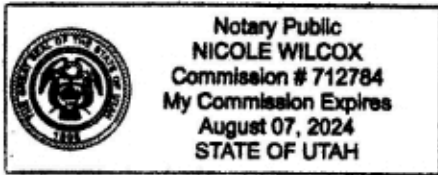
DATED this 05 day of January, 2023

**TERRAVENTURE HOLDINGS LTD.**

By: [Signature]  
Title: General Partner

STATE OF UTAH            )  
  : SS  
COUNTY OF DAVIS        )

On this 5<sup>th</sup> day of January, 2023, personally appeared before me J. Stuart Adams who being by me duly sworn did say that he is the General Partner of Terraventure Holdings, Ltd., a Limited corporation/partnership, and that the foregoing Right of Occupancy Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he acknowledged to me that said corporation/partnership executed the same.



Nicole Wilcox  
NOTARY PUBLIC

Right of Occupancy Agreement - Terraventure

DATED this 5<sup>th</sup> day of January, 2023

LAYTON CITY, a Municipal Corporation



Joy Petro  
JOY PETRO, Mayor

ATTEST:

Kimberly S Read  
KIMBERLY S READ, City Recorder

STATE OF UTAH            )  
  : ss.  
COUNTY OF DAVIS        )

On this 5<sup>th</sup> day of January, 2023 personally appeared before me JOY PETRO, who duly acknowledged to me that she is the MAYOR of LAYTON CITY, and that the document was signed by her in behalf of said corporation, and JOY PETRO acknowledged to me that said corporation executed the same.



Tori A. Campbell  
NOTARY PUBLIC

Right of Occupancy Agreement - Terraventure

**EXHIBIT A**

**12-109-0329 – TERRAVENTURE HOLDINGS LTD – RIGHT-OF-ENTRY**

A PARCEL OF GROUND LOCATED IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED NORTH 89°28'53" WEST 33.00 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION, NORTH 89°28'52" WEST 20.48 FEET & NORTH 0°31'55" EAST 9.95 FEET FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION AND RUNNING, THENCE NORTH 89°28'52" WEST 166.75 FEET, THENCE NORTH 0°31'55" EAST 20.09 FEET, THENCE SOUTH 82°51'38" EAST 72.78 FEET, THENCE SOUTH 0°20'45" WEST 2.50 FEET, THENCE SOUTH 89°28'52" EAST 94.45 FEET, THENCE SOUTH 0°31'55" WEST 9.20 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,017.80 SQ. FT. 0.046 ACRES

**12-109-0330 – TERRAVENTURE HOLDINGS LTD – RIGHT-OF-ENTRY**

A PARCEL OF GROUND LOCATED IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED NORTH 89°28'53" WEST 220.23 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION AND NORTH 0°31'54" WEST 9.96 FEET FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION AND RUNNING, THENCE NORTH 89°28'53" WEST 1107.47 FEET, THENCE NORTH 0°32'00" EAST 12.00 FEET; THENCE NORTH 85°40'01" WEST 571.27 FEET TO A POINT ON THE SOUTH LINE OF PROPERTY CONVEYED IN QUIT-CLAIM DEED RECORDED ON 7/28/2009 AS ENTRY #2333242 BOOK 4446 PAGE 132; THENCE SOUTH 89°28'52" EAST ALONG SAID SOUTH LINE 1422.59 FEET TO A POINT ON THE SOUTH LINE OF PROPERTY CONVEYED IN QUIT-CLAIM DEED RECORDED ON 7/28/2009 AS ENTRY #2473936 BOOK 4835 PAGE 468; THENCE SOUTH 82°51'39" EAST ALONG SAID SOUTH LINE 256.60 FEET TO THE WEST PROPERTY LINE OF PARCEL 12-109-0329; THENCE SOUTH 0°31'54" WEST ALONG SAID WEST LINE 20.42 FEET TO THE POINT OF BEGINNING.

CONTAINS 62,433.50 SQ. FT. 1.433 ACRES

# EXHIBIT A

TEMPERATURE HOLDINGS LTD - 12-109-0339  
A PARCEL OF LANDS LOCATED IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 4 NORTH RANGE 20 WEST SALT LAKE BASIN AND MERIDIAN, UTMZ, PARTICULARLY DESCRIBED AS FOLLOWS:

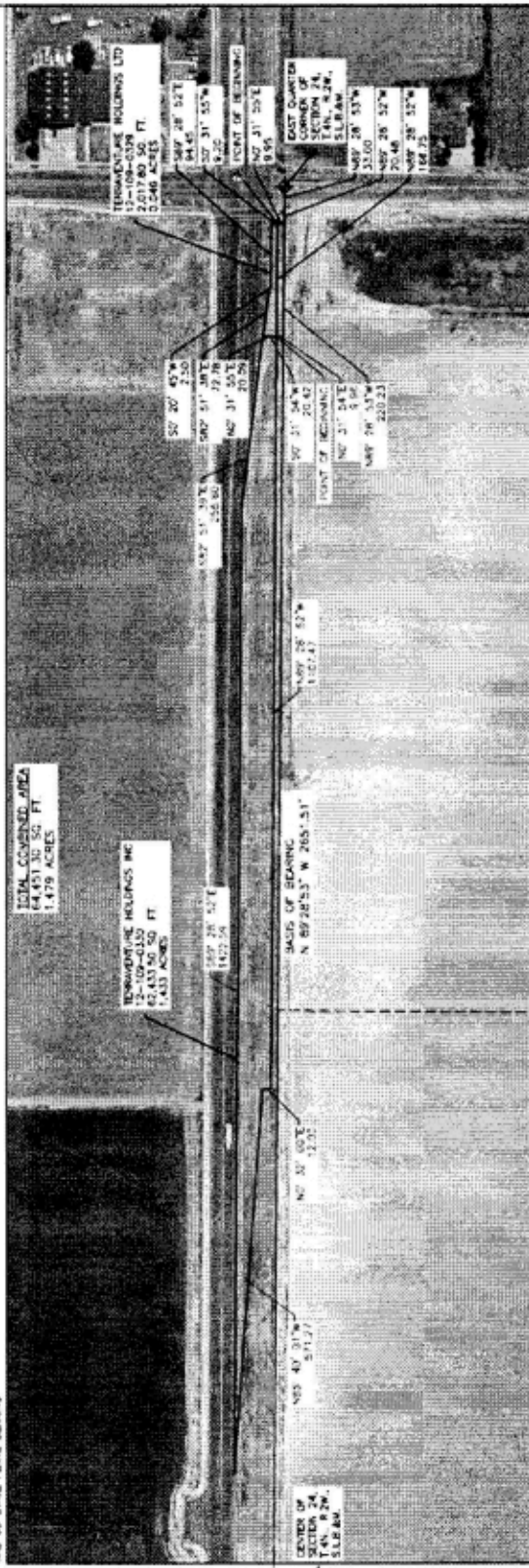
BEGINNING AT A POINT LOCATED NORTH 89°28'53" WEST 11.00 FEET ALONG THE SOUTH LINE OF SAID SECTION, TO THE POINT OF BEGINNING, THENCE SOUTH 87°51'30" EAST 72.78 FEET, THENCE SOUTH 87°28'52" EAST 14.45 FEET, THENCE SOUTH 03°17'05" WEST 8.22 FEET TO THE POINT OF BEGINNING.  
CONTAINS 2.67180 AC. FT. 0.346 ACRES

TEMPERATURE HOLDINGS LTD - 12-109-0338  
A PARCEL OF LANDS LOCATED IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 4 NORTH RANGE 20 WEST SALT LAKE BASIN AND MERIDIAN, UTMZ, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED NORTH 89°28'53" WEST 220.33 FEET ALONG THE SOUTH LINE OF SAID SECTION, TO THE POINT OF BEGINNING, THENCE SOUTH 87°51'30" EAST 72.78 FEET, THENCE SOUTH 87°28'52" EAST 14.45 FEET, THENCE SOUTH 03°17'05" WEST 8.22 FEET TO THE POINT OF BEGINNING.  
CONTAINS 82,433.50 SQ. FT. 1.433 ACRES



MAO 83 STRIKE PLANE BEARING



Layton City City of Merit City of Choice	PROJECT #22-59		2700 WEST CENTRE ST TO W HILL FIELD RD		EXHIBIT A - SUBJECT PROPERTY		Sheet 1 of 1	
	APPROVED BY	DATE	APPROVED BY	DATE	APPROVED BY	DATE	APPROVED BY	DATE
	B. SCRAFF	1/2023	B. SCRAFF	1/2023	B. SCRAFF	1/2023	B. SCRAFF	1/2023
	B. JACOBSON	1/2023	B. JACOBSON	1/2023	B. JACOBSON	1/2023	B. JACOBSON	1/2023