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AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND PEACEFIELD, XLC, A UTAH CORPORATION

KSV

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 10th day of February, 1999, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and Peacefield, XLC., a Utah Corporation, (hereinafter referred to as "Developer"), with City and Developer 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 the present zoning of A (Agriculture) to R-1-10 (single family residential), with a PXUD overlay, (Planned Residential Unit Development) of certain property located at approximately 1600 East Gentile in Layton City (hereinafter the "Subject Area"); and

WHEREAS, the Subject Area consists of approximately 50.30 acres and is depicted on Exhibit "A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, Developer is the owner of the above described property and has presented a proposal for development of the Subject Area to the City, which provides for development in a manner consistent with Layton City's General Plan; and

WHEREAS, Parties desire to enter into this Agreement to provide for the rezoning of the Subject Area, in a manner consistent with the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to grant R-1-10 PXUD zoning approval on the Subject Area, subject to Developer agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to surrounding property values and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City believes that entering into the Agreement with Developer is in the vital and best interest of the City and 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**

E 1530976 B 2531 P 96

The following terms have the meaning and content set forth in this Article I, wherever used in this Agreement:

1. "Developer's Property" shall mean that property owned or under bona fide option to purchase, by Developer.
- 1.2 "City" shall mean Layton City, a body corporate and politic of the State of Utah. The principal office of City is located at 437 North Wasatch Drive, Layton, Utah 84041.
- 1.3 "Developer" shall mean Peacefield, ~~LLC~~^{LLC}, a Utah Corporation. The principal office for Developer is 999 North Hill Field Road, Layton, Utah 84041.
- 1.4 "Developer's Undertakings" shall have the meaning set forth in Article IV.
- 1.5 "Subject Area" shall have the meaning set forth in the Recitals hereto.
- 1.6 "Exhibit A" shall have the meaning set forth in the Recitals hereto.

**ARTICLE II
CONDITIONS PRECEDENT**

- 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 City shall not be obligated to permit the rezone of the Subject Area to R-1-10 ~~PKUD~~^{KU}, to become effective until Developer, or its assignee, has acquired fee ownership of the Subject Area.
- 2.3 Developer agrees to restrict the uses permitted under a R-1-10 ~~PKUD~~^{KU} zoning designation, to those listed herein.

**ARTICLE III
CITY'S UNDERTAKINGS**

- 3.1 Subject to the satisfaction of the conditions set forth in Section 2.2, City shall approve the rezone of the Subject Area from its present zoning of A to R-1-10 ~~PKUD~~^{KU}, with an effective date of no sooner than the date Developer proves ownership of the area to be rezoned and the execution hereof. This approval 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.

3.2 The City will pay the costs of, or install, the necessary improvements (curb, gutter, sidewalk) along the City's frontage on Gentile.

ARTICLE IV DEVELOPER'S UNDERTAKINGS

Conditioned upon City's performance of its undertakings set forth in Article III with regard to zoning of the Subject Property and provided Developer has not terminated this Agreement pursuant to Section 7.8, Developer agrees to the following:

4.1. Development on the property shall be limited to the following uses, which shall be properly approved as required under Layton City's Ordinance:

- a. Permitted uses allowed under the R-1-10 ^{RW}~~PXUD~~ zoning designation; and
- b. Permitted uses allowed under the PB zoning designation, restricted to the two (2) structures designated as office space. Conditional use applications may be submitted. However, due to the proximity to residential properties, and the nature of this development, Developer understands and agrees that a stricter standard of review will apply thereto. The City has classified a therapeutic health spa, which clients may access by appointment only, as a conditional use in the PB zone.
- c. Incidental Book Sales. The reception area of the publishing office will display products thereof. These publications may be offered for sale as an incidental use to the publishing activity. Developer agrees to not use outside advertising to invite the public on to the property for the purpose of purchasing these publications. Limitations on display areas and sales volume, imposed by ordinance, shall be applicable.
- d. Open House; Incidental Sales. In conjunction with the studio proposed in Section 4.14, works created therein may be displayed. An open house wherein these works are displayed and offered for sale may occur no more than two (2) times annually and each open house shall not exceed any ten (10) day period. Limitations on display areas and volume of display, imposed by ordinance, shall be applicable.

Specifically, there shall be no other commercial, retail, or restaurant type uses within the project. Developer agrees to limit development to the above uses and if other uses are desired, agrees to seek amendment of this Agreement before pursuing the development of those uses.

4.2. Developer agrees to provide forty-five percent (45%) landscaping within the Subject Area. In addition, the Developer shall not place any use upon the property which requires any outdoor storage. Outdoor storage shall be defined as storage of any item or material outside of the four (4) walls of a covered building, including but not limited to gravel, wood chips, automobiles (other than daily parking), machinery, appliances, and other similar items.

4.3. In exchange for the City allowing the Developer to include the City owned property in Developer's calculation for open space, Developer agrees to:

- a. Supply clean fill, and grade the area around the water tanks, as negotiated, to eliminate ledges or other abrupt topographic features on the City's property;
- b. Install decorative fencing along the entire Gentile frontage of the City's property, with a secure fence on the interior thereof adjacent to the City's water facilities. This interior fence shall be 8' chain link, with 3 strains of barbed wire on the top thereof at 6" intervals, around the perimeter of the City's facilities. An access gate with the clearance width of 24' shall be provided in both the decorative and the secured fencing and located so as to facilitate access directly from Gentile. These access gates shall be the only access gates into this area. Trees shall be installed between the two fencings to obscure the visibility of the interior chain link fencing from the exterior. These trees shall be a minimum of fifty feet (50') from the nearest edge of the water tanks, and the type thereof must first be approved by the City;
- c. Install and maintain the landscaping upon the City's property, exclusive of secured tank area. Access for maintenance purposes shall be only through the gates referred to in subparagraph 4.3.b. above. The landscaping and improvements installed hereon are to be consistent with the remainder of the development.

4.4. To lessen the traffic affect caused by having a commercial use within this project, Developer will instruct all commercial delivery services, delivering to the PB zoned area, of the exclusive truck route. The route shall be from SR 109 to Gentile, to Publisher's Way, to the nearest access road to the commercial facility. Developer shall erect signs prohibiting said truck traffic beyond those points, specifically a sign immediately north of the intersection of Publisher's Lane and the access road to the commercial facility, and an additional sign at the east end of the access road and parking area, prior to its intersection with Ridge Road. Additionally, deliveries shall be during business hours only, and there shall be no overnight parking of commercial delivery vehicles.

4.5. Along the northern end of the western boundary the project abuts an agricultural use. Additional buffering is required in this area between the agricultural property and the paved vehicular turn around /cul de sac. In addition to the solid fence, which must be of either block, vinyl, or wood material, there shall be two rows of trees at alternating 20' intervals (giving the appearance of a tree

each 10') for a distance of 60' in the area of the paved vehicular turnaround. To the north therefrom, trees shall be placed on 25' centers continuing to the northern edge of the project. These trees shall be of 2.5" caliper.

4.6. The developer shall submit a generalized overall landscape plan to the City. This plan is to include the entire project, both the open common areas as well as the single family lots. This plan must receive approval from the City prior to the issuance of any permits. Prior to the occupancy of any structure within a phase or upon any lot, the open space landscaping for that phase as well as for a subject lot, shall be installed as per the plan, or an acceptable substitution thereof approved by the Homeowners Association and City Staff, or a landscape bond of 110% of the value thereof must be posted with the City.

4.7. The architectural plans for each residential structure shall be reviewed by the Homeowners Association. No building permit will be issued until said plans have been approved by the Homeowners Association. The architectural plans for each commercial, and non-private structure shall be reviewed by the Homeowners Association and City Staff, and no building permit will be issued until said plans have been approved by those entities.

4.8. 525 North Street, just east of 1625 East, is the stubbed street that was planned for access into this subject parcel. With the subject proposal, 525 North will not be extended, therefore 525 North, east of 1625 East, will either be vacated to the abutting property owners, or shall have a curb and gutter placed along the eastern edge of the end of said roadway. Said curb and gutter will tie into the existing curb and gutter which borders the north and south side of said roadway. The Developers shall install a solid fence at the east end of said roadway or shall install slats within an existing chain link fencing for the entire width of said roadway. Said fencing or slatting material must be of a very light color, otherwise the Developer shall install warning reflectors upon said fencing, as is approved by the engineering department.

4.9. Any alteration of any of the terrain, plant material, amount of water introduced to or drained from the designated wetlands area may only be done upon prior approval therefor granted by the Army Corps of Engineers. The Developer will provide the City with any communications with the Army Corps of Engineers regarding this project.

4.10. The Developer shall provide irrigation to the agricultural properties to the west of this project, as currently owned and operated by Sherm Facer. Prior to the construction or extension of said system, the Developer and Landowner (Sherm Facer) shall agree to the type of system, a location therefor, and volume to be supplied to that property. The facilities shall be engineered to reasonably supply said system accordingly.

4.11. The current open ditch, along Gentile Street, which is owned and operated by Holmes Creek Irrigation shall be facilitated pursuant to the specifications of Holmes Creek Irrigation. Further, any other alteration of any irrigation water or system shall be done pursuant to the requirements of Holmes Creek Irrigation or the pertinent irrigation company.

4.12. All storm drain systems shall be installed as per the City Engineer requirements. Particularly, the Developer is required to provide a storm drain at a depth sufficient to drain the culinary tanks, as the developer will be removing current draining method.

4.13. The Developer will be required to realign existing street, curb, gutter and sidewalk along the northern edge of Gentile Street as it continues west beyond the Developer's property line approximately 250'. Said realignment must be constructed and installed pursuant to the engineering requirements of Layton City. Any replacement or repairs to landscaping shall be completed by the Developer. The Developer will further be required to install the wider roadway, curb, gutter and sidewalk for Developer's entire frontage along Gentile. The City will construct the improvements on the south side of the roadway in the same vicinity.

4.14. The proposed studio within the development will remain open to the public as a community type center. This facility is to be an amenity for the residents of Peacefield. This studio may be housed either in the existing structure or within one of two new structures contemplated within the project, and the timing of its development and availability is within the discretion of Developer. However, the studio will be completed no later than the completion of the new structures.

4.15. The installation of the improvements shall be conducted in such a manner so that each phase would be able to independently satisfy the requirements of the City's ordinances. Thus the landscaped-open areas must be completed with the attendant phasing of the project. Additionally, the proposed in-ground pool and dressing/shower facility shall be built and/or bonded for in conjunction with phase 3.

4.16. The Developer has indicated a desire to colorize the cement within the project. The City is in agreement with that proposal. The colorization must be for the entire depth and mix of the cement. The Developer is on notice that if any future construction or maintenance requires the replacement of colorized cement, said cement will only be colorized if that additional expense is covered by the Homeowners Association.

4.17. The Developer desires to install street lamps that will be unique within this development. The City is in agreement, however, the City must approve the location and design thereof.

4.18. The roadway named "Publisher's Lane" shall be completed in conjunction with phase 3.

4.19. The Developer shall provide a pressurized secondary water system throughout the project.

4.20. All proposed trails, their location, and route must be approved by the City staff. Their review will be to ensure appropriate circulations and connections for pedestrian traffic and to ensure that destinations within the project have adequate trail access.

4.21. The Developer desires to install landscaped islands within the roadways of this project. The Developer agrees that if said islands are to be installed, the locations and length thereof must be reviewed by City Staff and receive approval prior to any installation. Further, there must be a minimum width of unobstructed driveable roadway width on each side thereof, which shall be determined prior to final approval.

4.22. It is contemplated that the Developer will construct an additional facility near the proposed pool. Any such plans and building elevations shall be submitted to Staff for review for compliance with the ordinances, congruency with the development, and may not create a nonconforming condition within this project. At Developer's option, this building may house the studio referred to in Paragraph 4.14.

ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF CITY

5.1 Issuance of Permits - Developer. Developer, or its assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Developer's Undertakings and shall make application for such permits directly to the Layton City Community Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Developer's Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

5.2 Completion Date The Developer shall, in good faith, diligently pursue completion of the development.

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 Developer 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 Developer's Undertakings. City shall indemnify, defend and hold Developer harmless from and against all liability, loss, damage, costs or expenses (including attorneys' 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

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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; or

6.1.2 Developer 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 R-1-10 ~~PRUD~~ to A.
R²

6.2 Enforced Delay Beyond Parties' Control. For the purpose of any other provisions of this Agreement, neither City nor Developer, 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 operate to eliminate any of 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 Developer. In the event of a default by Developer's assignee, Developer may elect, in its discretion, to cure the default of such assignee; provided, Developer's cure period shall be extended by thirty (30) days.

6.5 Appeals. If the Developer 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 Developer. This Agreement shall be binding upon Developer and its successors and assigns, and where the term "Developer" is used in this Agreement it shall mean and include the successors and assigns of Developer, except that City shall have no obligation under this Agreement to any successor or assign of Developer 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 Developer) of the Subject Area. Upon approval of any assignment by City, or in the event Developer assigns all or part of this Agreement to an assignee, Developer 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 Developer: PEACEFIELD, ^{LLC} LLC
999 North Hill Field Road
Layton, Utah 84041
Attn:

To City: LAYTON CITY CORPORATION
437 North Wasatch Drive
Layton, Utah 84041
Attn: Alex R. Jensen, City Manager
801/546-8500
801/546-8577 (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 Developer.

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 Attorneys' 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 attorneys' 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 Developer's Undertakings, performance of Developer of Developer's Undertakings as set forth herein.

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

Upon either Party's request (or the request of Developer'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 not be recorded without the prior written consent of both Parties.

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,
a municipal corporation of the State of Utah

By: *Jerry Stevenson*
JERRY STEVENSON, Mayor



ATTEST:

By: *Steven M. Ashby*
STEVEN M. ASHBY, City Recorder

APPROVED AS TO FORM:

Gary R. Crane
GARY R. CRANE, City Attorney
Steven L. Garside
STEVEN L. GARSIDE, Assistant City Attorney

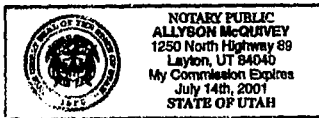
DEVELOPER

^{kel}
PEACEFIELD, XLC
By: *[Signature]*
Its: *Manager*

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

BEFORE ME, the undersigned authority, on this 10 day of February, 1999, personally appeared R. Scott Priest, manager to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Allyson McQuivey
NOTARY PUBLIC

Beginning at a point on an existing fence line, said point being North 22° 55' 00" West 2.74 feet from the East Quarter Corner of Section 22, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running:

thence South 67° 05' 00" West 1001.44 feet along the said fence line to the north line of Gentile Street as established by existing street improvements;

thence South 3° 42' 02" East 30.00 feet to the center line of said Gentile Street;

thence westerly 250.33 feet along the arc of a 1000.00 foot radius curve to the left, (center bears South 3° 42' 02" East and long chord bears South 79° 07' 41" West 249.68 feet, with a central angle of 14° 20' 34") along the center line of said Gentile Street;

thence South 71° 57' 24" West 269.51 feet along the center line of said Gentile Street;

thence westerly 87.30 feet along the arc of a 970.00 foot radius curve to the left, (center bears South 18° 02' 36" East and long chord bears South 69° 22' 42" West 87.27 feet, with a central angle of 5° 09' 24") along the center line of said Gentile Street;

thence North 47° 18' 56" West 619.65 feet;

thence North 64° 24' 47" West 218.14 feet;

thence North 28° 13' 41" West 487.20 feet to the Southwest Corner of Lot 101, Forest Hills Subdivision No. 4;

thence North 82° 10' 22" East 326.35 feet along the south line of said Forest Hills Subdivision No. 6;

thence North 82° 07' 00" East 1147.90 feet along the south line to the Southeast Corner of Forest Hills Subdivision Phase 6;

thence North 20° 27' 48" West 208.71 feet along the east line of said Forest Hills Subdivision Phase 6 to the intersection of the east line of said subdivision and an existing chain link fence;

thence North 18° 58' 22" West 243.90 feet along the said chain link fence line;

thence North 20° 51' 20" East 49.55 feet along the said chain link fence line to the Northeast Corner of said chain link fence;

thence South 85° 55' 52" East 85.38 feet along an existing fence line;

thence South 78° 30' 14" East 68.02 feet along an existing fence line;

thence South 68° 54' 10" East 28.97 feet along an existing fence line;

thence South 59° 34' 40" East 82.49 feet along an existing fence line;

thence South 63° 34' 15" East 552.71 feet along an existing fence line;

thence South 66° 15' 00" East 233.95 feet along an existing fence line;

thence South 76° 34' 39" East 173.24 feet along an existing fence line;

thence South 73° 34' 18" East 120.36 feet along an existing fence line to the Northwest Corner of Lot 10, Wheat Ridge Subdivision;

thence South 10° 30' 00" East 446.39 feet along the west line to an angle point in the west line, (within Lot 13) of said Wheat Ridge Subdivision to a fence line;

thence South 67° 05' 00" West 286.43 feet along the said fence line to the point of beginning.

Or as amended from time to time through the City's Subdivision process.

Contains 50.30