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RICHARD T. MAUGHAN
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DEP RTT REC'D FOR LAYTON CITY

Office of the Davis County Recorder



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Recorder
Richard T. Maughan

Chief Deputy
Laile H. Lomax

DOCUMENT FRONT PAGE

The accompanying document contains insufficient blank space in the appropriate place for the official recording information. This front page is added for that purpose only, and becomes the first recorded page of the document.

**AGREEMENT FOR THE ANNEXATION AND DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND TERRAVENTURE DEVELOPMENT, LTD.**

(Approximately 651 South 2200 West, east side)

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 10th day of April, 2006 between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and TERRAVENTURE DEVELOPMENT, LTD (hereinafter referred to as "Owner"). City and Owner 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 an annexation of property into the City and zone change therefore from the present zoning of A (Agriculture) to R-S (Residential-Suburban), of said property, located at approximately 651 South on the east side of 2200 West in Layton City (hereinafter the "Subject Area"); and

WHEREAS, the total area proposed for annexation consists of approximately 72 71 acres, which is depicted on Exhibit "A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, Owner 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 the overall objectives of Layton City's General Plan, and

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

WHEREAS, City is willing to annex, and to grant R-S zoning approval for the Subject Area (as shown on Exhibit "A"), subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to the Subject Area and 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 Owner 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 "Owner's Property" shall mean that property owned by Owner, as depicted on Exhibit "A".
- 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 "City's Undertakings" shall mean the obligations of the City set forth in Article III.
- 1.4 "Owner" shall mean TERRAVENTURE DEVELOPMENT, LTD The principal mailing addresses for Owner is listed in paragraph 7.2
- 1.5 "Owner's Undertakings" shall have the meaning set forth in Article IV

- 1.6 "Subject Area" shall have the meaning set forth in the Recitals hereto.
- 1.7 "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 Owner agrees to restrict the uses permitted under a R-S zoning designation, as set forth herein

ARTICLE III CITY'S UNDERTAKINGS

- 3.1 Subject to the satisfaction of the conditions set forth in Section 2.2 and Article II, City shall approve the annexation of the Subject Area, and the rezone of the Subject Area from its present zoning of A to R-S, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any annexation or 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
- 3.2 The proposed zoning change is as reflected on Exhibit "A "
- 3.3 City agrees to enter into payback agreements for improvements or facilities intended to extend, expand or improve the City's utility system beyond the improvements required to service or benefit the development of the Subject Property. The amount of the payback to the Owner/developer shall be determined by the City Engineer after considering the improvements of facilities required or benefiting the development of the Subject Property, and those improvements that are specifically oversized to provide for future development.

ARTICLE IV OWNER'S UNDERTAKINGS

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

1) **Zoning**

Development of the property designated for R-S zoning, once zoned R-S, shall comply with all applicable City rules, regulations and codes.

2) **Culinary Water**

The existing culinary water line in 2200 West is only an 8-inch pipe. To increase fire flow for large-scale development on the subject property, the Owner will provide a loop system with additional waterline feeds throughout the subject property. The waterline pipe that will be placed within the future 750 South right-of-way is required to be a 10-inch pipe based on the Water Master Plan. This proposed pipe in the future 750 South right-of-way, along with at least one other pipe that connects through the subject property to 2200 West, will be upsized to account for the required fire flow and water demands in the area.

3) Sanitary Sewer

In order to provide sanitary sewer service to the subject property, the Owner will extend a sewer line north on 2200 West from an existing North Davis County Sewer District line that is located near 1000 South. This sewer line will be required to be sized for additional property that will develop in this area and eventually utilize this sewer line on 2200 West.

4) Storm Drain

- a. The Layton City Phase III (West Side) Storm Water Master Plan indicates that a storm drain project planned for Summer 2004 will begin the outfall system from 2200 West and 1000 South running south to Kays Creek. Once outfall system is completed, the Owner of the subject property will extend a storm drain line north on 2200 West from the 2200 West/1000 South intersection. This storm drain line must be sized to accommodate additional properties that will develop in this area and utilize this storm drain line.
- b. The Layton City Phase III (West Side) Storm Water Master Plan identifies a large regional detention pond located in the southeast corner of the subject property. Layton City has identified that the location for this regional detention pond will be within the Utah Power corridor, which traverses the subject property proposed for annexation. The Owner will dedicate the property necessary to house this detention pond. The Owner will coordinate the details of this pond location with Layton City and Utah Power.

5) Land Drain

In order to develop the subject property, a land drain system will be required to be installed. The land drain system must be separate from the storm drain system and will begin at the intersection of 2200 West and 1000 South and continue north on 2200 West to the subject property. This land drain line must be sized to accommodate the future development of additional property in this general area.

6) Street Improvements

Upon development of the subject property, the Owner will install all street and utility improvements for the frontage along 2200 West. Based on the number of utilities that are required on 2200 West, it is anticipated that the entire asphalt section on 2200 West from 1000 South to the ¼ Section line will need to be reconstructed to meet final design standards for 2200 West.

7) Irrigation

There is an existing irrigation wastewater ditch located on the east side of 2200 West. The Owner must pipe this ditch along the parcel frontage upon development. This pipe may be relocated behind the sidewalk on the Owner's property along the east side of 2200 West. This location requirement is due to the existing ditch location in relation to the future curb and gutter location for 2200 West.

8) Master Street Plan Implementation

- a. In addition to the typical local streets within the proposed residential subdivision, there are two streets identified in the Master Street Plan that will be constructed upon the development of the subject property. The southern boundary of the subject property has been identified as the centerline location for the future 750 South corridor. This is an 84-foot right-of-way street that

will make a connection between the new South Main Street I-15 interchange and the proposed Legacy Parkway. The Owner agrees to the dedication and construction of this street. Utilities required on 750 South will include one of the up-sized water lines mentioned in Subsection IV (2) of this Agreement. In addition, land drain lines and storm drain lines for the development of the subject property will be required to be installed in the right-of-way of the 750 South corridor. Depending on the layout and number of lots proposed with the development of the subject property, it is agreed that an upsized sanitary sewer line may also be required to be installed with the construction of 750 South.

- b. The eastern boundary of the subject property has been identified in the Master Street Plan as the location for 1700 West. 1700 West is a proposed collector street (66-foot right-of-way) that will run north and south between Gentile Street and 750 South. The subdivision that is proposed to be located to the east of the subject property (Pleasant Place) will include local street connections to 1700 West. Alignment of the local street connections on 1700 West and the determination of the street dedication area between the subject property and the proposed Pleasant Place subdivision is required with the development of the subject property. Utilities that will be required within 1700 West will largely be determined by the timing of the development of the adjacent Pleasant Place subdivision and development of the subject property.
- 9) These enumerations are not to be construed as approvals thereof, as any required approval process must be pursued independent hereof.
- 10) Owner agrees to limit development to the uses allowed in the R-S zone all properties within the Subject Area, and if other uses are desired, Owner agrees to seek amendment of this Agreement before pursuing the development of those uses.
- 11) Any conflict between the provisions of this Agreement and the City's codified requirements shall be resolved in favor of the more strict 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 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, in good faith, reasonably pursue completion of the development. Each phase or completed portion of the project must independently meet the requirements of this Agreement and the City's ordinances and regulations, such that it will stand alone, if no further work takes place on the project.

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 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 in this paragraph.

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; and

6.1.2 If the remedy of reversion is pursued, the defaulting Owner agrees not to contest the reversion of the zoning on undeveloped portions of the Subject Area, 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-S to A.

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 Extension. Any 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 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

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 assign 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: TERRAVENTURE DEVELOPMENT, LTD
475 North 300 West
Kaysville, UT 84037
801/546-6000
801/544-1300 (FAX)

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 City and the Owner.

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 Owner's Undertakings, performance of Owner of Owner'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 an Owner'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 will be recorded in the Davis County Recorder's Office

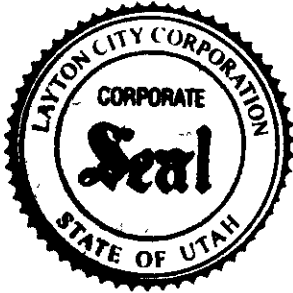
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written

LAYTON CITY CORPORATION,

By: [Signature]
J STEPHEN CURTUS, Mayor

ATTEST:

By: [Signature]
THIEDA WELLMAN, City Recorder

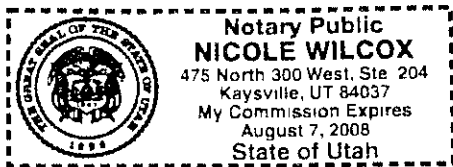


Signed by

STUART ADAMS, Terraventure Development Ltd

[Signature]

Subscribed and sworn to me this 16th day of March, 2008^{b.m.}



[Signature]
Notary

Exhibit "A"

ANNEXATION DESCRIPTION

PART OF THE SOUTHWEST QUARTER OF SECTION 30, T. 4 N., R. 1 W., S. L. B. & M.
BEGINNING AT A POINT ON THE EXISTING CORPORATE LIMITS LINE OF LAYTON
CITY WHICH IS LOCATED N 89° 57' 38" E 233.00 FEET FROM THE WEST
QUARTER CORNER OF SECTION 30, T. 4 N., R. 1 W., S. L. B. & M., RUNNING THENCE
N 89° 57' 38" E 2399.65 FEET ALONG THE QUARTER SECTION LINE TO A DAVIS
COUNTY BRASS CAP MONUMENT MARKING THE CENTER OF SAID SECTION 30,
(D.C.S. N 89° 58' 00" E), THENCE S 00° 12' 50" W 1320.04 FEET ALONG THE
QUARTER SECTION LINE, THENCE S 89° 57' 21" W 2399.00 FEET TO SAID
CORPORATE LIMITS LINE, THENCE N 00° 11' 08" E 1320.24 FEET ALONG SAID
CORPORATE LIMITS LINE TO THE POINT OF BEGINNING.

CONTAINS 72.71 ACRES.