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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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DEP RTT REC'D FOR SYRACUSE CITY

**DEVELOPMENT AGREEMENT FOR SHORELINE APPROXIMATELY LOCATED AT 2400 WEST 2900 SOUTH SYRACUSE CITY, DAVIS COUNTY, UTAH**

This Development Agreement ("Agreement") is made and entered into as of this 6 day of January, 2020, by and between **CW LAND CO., LLC**, a Utah limited liability company (the "Developer"), and **SYRACUSE CITY**, a municipality and political subdivision of the State of Utah (the "City").

**RECITALS:**

A. The Developer has acquired or may in the future acquire the approximately one hundred twelve and 55/100 (112.55) acres of land located at approximately 2600 West Gentile Street, Syracuse, Davis County, Utah (the "**Parcel**"), which Parcel comprises the following identification numbers: 12-103-0053; 12-103-0055; 12-103-0058; 12-103-0075; 12-280-0040; 12-280-0041; and 12-103-0103. A map identifying the parcels is attached hereto as "**Exhibit A**" and incorporated by this reference.

B. The Parcel is currently included within and subject to the City in the "R-1 Residential" zone.

C. On January 8, 2019, the City Council approved a General Plan Map future zoning designation for the Development from R-1 Residential to Residential Planned Community ("RPC") zone and provided feedback to the Developer as part of a design concept review.

D. The Developer is seeking rezoning and preliminary plat approval by the City for the Development. Pursuant to the terms of the RPC zone, a development agreement is necessary in order to move forward with development.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City hereby agree to the following:

**ARTICLE I**
**DEFINITIONS**

The following terms are defined as follows:

**1.1** "City" means Syracuse City, a body corporate and politic of the State of Utah, with a principal office located at 1979 West 1900 South, Syracuse, UT 84075.

**1.2** "City Standards and Specifications" means the local minimum standards and specifications required by Syracuse Municipal Code § 8.15.020.

**1.3** "Concept Plan" means the updated concept plan prepared for the Developer and reviewed by the City Council on November 12, 2019, which Concept Plan is attached hereto as "**Exhibit H**".

**1.4** "Developer" means CW Land Co., LLC, a Utah limited liability company, with a principal mailing address of 1222 W. Legacy Crossing Blvd., Suite 6, Centerville, UT 84014, or any successor(s)-in-interest of Developer.

**1.5** "Development" or "Residential Development" means the Parcel, which shall be developed in phases and in coordination with each other in order to form a cohesive neighborhood.

**1.6** "Development Gross Acreage" means the total gross acreage for the Development, which is 112.55 acres.

**1.7** "Preliminary Plat" means the Preliminary Plat prepared for the Developer, a copy of which is attached hereto as "**Exhibit D**", which is ultimately approved by the City Council, concurrent with the approval of this Agreement. It also includes all documents required by the RPC zone, including a subdivision master plan, circulation plan, architectural theme plan, and landscaping theme plans. Once approved by the Council, except as permitted under Section 3.3, the subdivision plat and the submitted plans are building zoning documents that may not be modified without City Council approval.

## ARTICLE II
## CONDITIONS PRECEDENT

**2.1 Council Approval Required.** This Agreement shall not take effect until the Syracuse City Council has approved this Agreement and the zoning and preliminary plat petition.

**2.2 Restrictions of Use.** The Developer and the City agree to: (i) restrict the uses of the Development as provided in this Agreement and the applicable zoning restrictions, including approved submissions from the Developer, and (ii) provide such amenities as are set forth in this Agreement, City code, and submitted documents in connection to land use applications.

## ARTICLE III
## PRELIMINARY PROVISIONS

**3.1 Property Affected by this Agreement.** The legal description of the Parcel, to which this Agreement applies, is attached as "**Exhibit B**," and incorporated by reference.

**3.2 Termination of this Agreement.** Except as set forth in Section 8.4 below, this Agreement may only be terminated by the Parties by mutual, written consent. Such termination shall require the approval of the City Council.

**3.3 Development Rights.** The approval of this Agreement, with the accompanying approval of RPC zoning and Preliminary Plat applications, shall entitle the Developer to develop the Development in conformance with the Preliminary Plat. As provided in the RPC zoning text,

the Preliminary Plat and all documents attached to it shall become zoning documents which govern the land use and development of the Development. The Developer shall ensure all development is in conformance with the Concept Plan which has been reviewed by the Planning Commission and City Council and approved by the City Council. Such development plan shall be in conformance with Chapter 10.80 of the Syracuse Municipal Code. Once approved, the Developer may not substantially deviate from the Development Plan without prior approval from the City Council as land use authority. Any other variations to the Development Plan, such as the phasing plan, exact building locations, exact locations of open space, roads, lots, lot dimensions and parking, and changes to the size, architecture, and/or elevations of the buildings, that do not materially affect the architectural quality of the Development and that are consistent with the provisions below, may be varied by the Developer without official City Council or Planning Commission approval. Such variations, however, shall not change the maximum density, use, and intensity of the Development, and may not vary from applicable City ordinances or the Preliminary Plat.

## ARTICLE IV
## CITY'S UNDERTAKINGS

**4.1 Approval of Preliminary Plat and Zoning Application.** Concurrent with the approval of this Agreement, the City shall consider the RPC zoning and Preliminary Plat approval for the Development. As provided in the Preliminary Plat application, the overall density for this Development shall not exceed 3.56 dwelling units per gross acre (calculated based on the entire Development area), and accordingly, shall not exceed 400 dwelling units (i.e., the Development Gross Acreage equal to 112.55 acres multiplied by 3.56 dwelling units per gross acre). Except for the floor plan and elevation approvals granted in Section 5.1(k) below, Developer and City acknowledge and agree that any additional floor plan and elevation approvals may be reviewed and approved by the City Council by resolution.

**4.2 Findings.** The RPC zoning 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 the City to make such a change at this time.

**4.3 Approval for School Use.** Notwithstanding Section 4.1 above, Developer shall have the right, in its sole discretion, to sell certain property otherwise intended for residential use to a school. In connection therewith, Developer (a) shall be permitted to remove, replace or re-configure land within the Development originally intended for residential, open space, or right of way use to accommodate such sale to a school, provided that Developer shall remain subject to the maximum density and minimum open space requirements referenced in this Agreement applicable to the entire Development, and (b) shall not be required to amend or modify the Preliminary Plat. If a final plat has been recorded for the land sold to the school district, then Developer shall be required to apply for a plat amendment. Any open space provided on the school property that was originally part of the common space calculation required under City code shall be transferred subject to a requirement that allows residents of the Development to utilize the open space when school is not in session.

**4.4 Easement Abandonment.** The City shall abandon and hereby agrees to vacate that certain deed of easement, recorded on November 10, 1955 and January 13, 1956 as entry numbers 151489, 151500, and 153320 in the official records of the Davis County Recorder's Office (the "**Easement**"). In connection with the Development, Developer shall remove (or cause to be removed), at no expense to the City, the abandoned pipe on a phase-by-phase basis in the ordinary course of Developer's construction activities.

**4.5 Vested Rights.** The City shall cause the City's administrative personnel, with reasonable diligence, to take or cause to be taken all actions required or advisable to be taken preparatory to, but not including, final legislative action by the City Council or the Planning Commission, in connection with adoption of the pending zone amendment for the Property and approval of this Agreement. Developer and/or owners (or their respective successor-in-title) of all or any part of the Property shall have the vested right (i) to have final subdivision and construction plats and site plans reviewed and, if found to meet the standards and criteria set forth in this Agreement, the Preliminary Plat documents, and in the City's ordinances, approved; and (ii) to develop and construct the Project in accordance with the densities as vested in under the terms and conditions of this Agreement. The Parties specifically intend that this Agreement grant to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509.

**4.6 In Lieu Fee Related to Common Space.** In connection with Syracuse Municipal Code § 10.82.070(G), as amended, the Developer petitioned the City Council to pay a fee in-lieu of required common space (an "In Lieu Fee") that is associated with the RPC zone. The Developer is under no obligation to make such a petition and would be free to seek zoning approval with the required common space in the zone, or to develop under existing zoning. The RPC zone otherwise requires the development of at least twenty-five percent (25%) of the development gross acreage to be established as common space, or for this Development a total of 28.14 acres (i.e., 25.0% multiplied by 112.55 acres). The In Lieu Fee shall be allocated to Developer and any of its successors-in-interest, as applicable, in a fair and reasonable manner and pursuant to one or more separate agreements between such parties. The following provisions shall apply:

(A) **Approval of In Lieu Fee.** The total fee is based upon the value saved from the non-development of common space, which would have included amenities for resident recreation, that the Developer would otherwise be required to construct. The In Lieu Fee shall also take into account the cost to develop the nearby, planned park of approximately 50 acres located at 2000 West Gentile Road, which will serve as a primary recreational amenity for residents of the Development; provided, however, that Developer shall not be required to pay an In Lieu Fee greater than the amount calculated pursuant to Section 4.3(B) below, regardless of the actual cost of the above-referenced planned park. The Developer agrees to tender and the City hereby agrees to accept an In Lieu Fee for the Development in an amount equal to $3.00 per square foot, and by executing this Agreement, the City confirms that Developer or the Development, as applicable, satisfies the applicable requirements of Syracuse Municipal Code § 10.82.070(G)(8). The City's execution of this Agreement shall constitute approval of the City Council under Syracuse

Municipal Code § 10.82.070(G)(8)(e). As set forth in the Concept Plan, the Development currently contemplates established common space equal to 27.60 acres (98.07% of the Development Gross Acreage), which results in a common space deficit equal to 0.5421 acres or 23,614 square feet (1.93% of the Development Gross Acreage) (the "**Common Space Deficit**").

(B) **Calculation of In Lieu Fee.** The In Lieu Fee applicable to the entire Development is equal to $70,842.00, which is calculated as follows: (a) the product of the Common Space Deficit (0.5421 acres) and 43,560 square feet an acre (or in other words 23,614 square feet), multiplied by (b) $3.00 per square foot.

## ARTICLE V
## DEVELOPER'S UNDERTAKINGS

**5.1 Developer Obligations.** Conditioned upon City's performance of its undertakings set forth in Article IV, and provided Developer has not terminated this Agreement pursuant to Section 7.1, Developer agrees to complete the following in general accordance with Developer's phasing plan attached hereto as "**Exhibit I**" and incorporated by this reference (the "Phasing Plan"). Notwithstanding the foregoing, Developer may modify the Phasing Plan, subject to the provisions of the International Fire Code and City requirements related to water infrastructure. Whenever the City has an obligation to reimburse Developer for certain costs set forth in this Section 5.1, such reimbursements shall be made in cash.

(A) Maximum dwelling units. The Developer agrees to a maximum of four hundred (400) dwelling units in the Development, with an overall density of no more than 3.56 units per gross acre (calculated based on the entire Development area).

(B) Dedication of Water Shares. The Developer shall dedicate water rights to the City in compliance with Syracuse Municipal Code § 8.10.090, at the time of final plat recordation.

(C) Areas Open to General Public. Areas open to the general public shall be identified on a map attached to this Agreement as Exhibit J, which is incorporated into this Agreement by this reference.

(D) Fencing, Amenities, Signs, Trees. The Landscaping Plan includes amenities, trees, fencing, signs and monuments, vegetation, and other aesthetic features. The Developer shall install all such items in conformance with the "Landscaping Plan", which is attached as "**Exhibit C**" to this Agreement and incorporated by this reference. The fencing shall be installed in accordance with the fencing depicted in the Landscaping Plan. The maintenance of all of the items discussed in this subparagraph shall be provided by the Developer or the homeowner's association for the Development (the "Homeowner's Association"), unless those items are located within the City's right-of-way and not excepted in this Agreement.

(E) Offsite Provisions. Developer agrees to the following offsite requirements:

(1) 2400 West Street Improvements. The Developer shall improve 2400 West to the City's collector road standard with a sixty-six feet (66') right-of-way. This shall extend through the two existing properties (2418 West 2700 South and 2383 West 2700 South) to 2700 South Street. No private driveways shall directly access 2400 West Street unless shown on the final subdivision plans. The existing culinary and secondary mains in 2400 West Street are not of adequate capacity to serve this development and need to be increased to 10-inch mains from 2700 South Street to the south boundary of the subdivision. Developer shall be responsible to construct the full width of 2400 West that abuts the Development to applicable City Standards and Specifications. The City shall promptly reimburse Developer for any costs incurred due to the upsizing of 2400 West and utilities beyond what would be sufficient to service the Development. The reimbursement shall be calculated as follows: (x) the total cost to complete 2400 West and utilities, less (y) the total cost Developer would have incurred to complete 2400 West and utilities absent the upsizing. The City shall be obligated to procure any rights of way or easements that are or may be required from adjacent property owners to permit Developer to complete the upsizing required under this subsection. Reimbursement shall be provided within 30 days of the invoice being received by the City. The City shall be given the expected costs of all upsizing work prior to beginning construction. The City agrees to facilitate any permits required with the U.S. Army Corps of Engineers related to the road widening.

(2) 2700 South Road Improvements. The Developer shall fully improve the southerly thirty-three feet (33') half width of 2700 South to the City's collector road standard between the existing improvements at 2831 West 2700 South to the existing improvements for the church at 2887 West 2700 South. The Developer shall also install improvements required by the traffic study at the Developer's expense.

(3) 3000 West Street Improvements. The Developer shall fully improve the easterly thirty-three feet (33') width of 3000 West abutting the subdivision boundary to the city's collector road standard. Provided the City can acquire the necessary right-of-way, the City reserves the right to have the Developer install the thirty-three feet (33') half-width improvements through 2997 South 3000 West and 2933 South 3000 West at the City's expense. If the City exercises its option, the Developer shall provide the cost of improvements to the City prior to starting work and the City shall reimburse the Developer within 30 days after satisfactory completion of the work. The City agrees to facilitate any permits required with the U.S. Army Corps of Engineers related to the road widening.

(4) Syracuse City Public Works Facility. A notice to purchasers shall be added to the subdivision plat for all lots in the vicinity of Syracuse City Public Works facility stating: "The City operates a Public Works facility to the East of this subdivision, which operates at all hours of the day and night, and may cause noise, light, odors or other conditions associated with its operation. Purchasers affirmatively accept that such conditions are likely to occur."

(F) Culinary Waterline Looping. At no point during development may more than 35 culinary services be served off a single culinary water feed.

(G) Existing Utilities Running Through Property. The City currently owns a 36-inch reinforced concrete storm drain pipe through the property. Given the location of the pipe, it could prove difficult to efficiently develop the property. If the developer chooses to abandon the existing line with the development of the property, the existing main shall be removed and disposed of properly in accordance with applicable laws and regulations. The existing main east of the development shall be reconnected into the new storm drain for the development. The City also owns a 12-inch sewer main which outfalls west of 2850 South Street to 3000 West Street. This sewer main shall be tied into the new sewer within the development. The City owns an 8-inch sewer main along the south side of the development. This sewer main shall be located in a roadway or relocated into a roadway. North Davis Sewer District may have additional requirements for their mains.

(H) High Water Table. Under no circumstances may a basement be constructed below the water table as defined in the geotechnical report (the "Water Table"). Basement shall be defined as having the lowest floor elevation below the top back of curb, provided basements shall not include any slab on grade or other similarly constructed homes. The City Engineer shall approve any land drain outfall connections to the storm drain if applicable.

(I) Wetlands. The Development is located in a sensitive overlay zone, indicating that there may be wetlands on the Parcel. The determination of wetland delineation, mitigation and remediation is the responsibility of the United States Army Corps of Engineers. The Developer shall be solely responsible to work through wetland issues with the Army Corps. The City shall not take ownership or assume maintenance responsibility for any land delineated as wetlands.

(J) Trail System. This Development shall incorporate trails in accordance with the trails master plan, including shared use paths and equestrian trails. Trails shall make connections to existing trails, sidewalks and the Syracuse Equestrian Park. Trails shall be constructed to city standards and shall have safe road crossings with signs, lights, and pavement markings. The trail map is attached as Exhibit E, and is incorporated into this Agreement by reference. Trails that do not appear on the master plan shall be owned and maintained by the Homeowner's Association. Developer agrees to restore, and as necessary, rebuild the equestrian trail existing as of the Effective Date, and its associated fencing, and to continue to allow for open access to the trail by the general public, all in a manner consistent with Exhibit E.

(K) Architectural Theme Plan. Developer shall construct homes in the Development that are generally consistent with the "Architectural Theme Plan" attached to this Agreement as "**Exhibit F**" and incorporated by this reference, and building elevations generally consistent with the approved plans. The City staff may approve new or modified plans to be built within the Development without further City Council consent so long as such plans will not be materially inconsistent with the Architectural Theme Plan. If staff does

not agree that the plans are materially consistent with the Architectrual Theme Plan, then City Council consent shall be required before those plans are approved.

(L) Sewer, Culinary Water and Secondary Water Laterals. The Developer intends to install sewer, culinary and secondary lines underneath privately-owned driveways in order to service homes on small lots. These laterals shall be the responsibility of the Homeowner's Association or the property owners being served by those lines. The City's responsibility for maintenance or blockage removal of lines shall be limited to the main lines, and shall not extend beyond the point that the lateral connects to the mains, in the case of culinary and secondary water laterals (which shall be connected using a gate-valve on the T-Connection to the main), and at the manhole, in the case of the sewer line, but under no circumstances beyond the right of way. Every home must have its own culinary meter and secondary service.

(M) Storm Drain System. The Developer shall design and install a system of positive drainage sufficient to keep rainwater from flooding neighboring properties, whether within or without the Development. The Developer or Homeowner's Association shall be responsible to install and maintain all drainage facilities within the Development that are outside the City right-of-way, as well as those that are not constructed to City standards for storm drain infrastructure. The City's responsibility for maintenance shall end where any private drain connects to a manhole in the public right-of-way. The City's storm drain masterplan shows a need to install a 36" and 42" storm drain main in 2400 West Street and a 48" storm drain main from 2400 West Street to 3000 West Street. These mains shall be installed throughout the Development and the City shall reimburse the Developer for any costs incurred due to upsizing beyond what would be sufficient to service the Development. The reimbursement shall be calculated as follows: (x) the total cost to complete the upsized storm drains, less (y) the total cost Developer would have incurred to complete the water lines absent the upsizing.

(N) Maintenance of Items Outside of Public Right-of-Way. The City shall not be responsible for the maintenance of parking lots, landscaping, walkways, light fixtures, entry monuments or any other improvement or amenity located outside of the City's right-of-way. Public streets and city-maintained asphalt paved trails shall be snow-plowed by the City in accordance with City policy, but the City has no responsibility for clearing snow from sidewalks, equestrian trails, private driveways, parking lots, or walkways outside of the City's right-of-way. Additionally, the Developer has agreed, directly or indirectly via the Homeowner's Association, to build two (2) pickleball courts within the Development that will be available for public use. Upon their completion, the Homeowner's Association will oversee and be responsible for the maintenance of such courts.

(O) Covenants, Conditions & Restrictions. The Developer shall record Covenants, Conditions and Restrictions for all homes located within the Residential Development (the "CC&Rs"). The CC&Rs shall generally conform to those attached to this Agreement as "**Exhibit G**."

(P) Compliance with Current City Ordinances. Unless specifically addressed in this Agreement, the Developer agrees that any development of the Property shall be in compliance with city ordinances in existence on the date of execution of this Agreement. If an ordinance is amended in a manner that the Developer considers to be beneficial to the project, this section does not require Developer to comply with the superseded ordinance. In such cases, Developer may request that the amended ordinance or regulation apply to the project.

(Q) No Pre-Approval. The enumerations in this Agreement are not to be construed as approvals thereof except as specifically provided herein, as any required land use approval process must be pursued independent hereof.

(R) Conflicts. Any conflict between the provisions of this Agreement and the City's codified requirements shall be resolved in favor of this Agreement.

(S) Bonding. City and Developer acknowledge and agree that Developer's bonding for the Residential Development shall be in phases consistent with Developer's Phasing Plan and shall be in the form of a series of surety bonds, escrow bonds, or other forms of assurances provided in City code.

(T) In order to provide adequate off-street parking for each unit, and in the absence of guest parking areas, the Developer agrees that all units shall include driveways that are at least eighteen feet (18') long, measured from the back of the sidewalk.

5.2 **In Lieu Fees.** The Developer, having petitioned the City to allow payment of in lieu fees with an accompany reduction in the amount of required common space in the Development, agrees to the following:

(A) Consistent with Syracuse Municipal Code § 10.82.070(G)(8)(i), the In Lieu Fee shall be paid incrementally at the time each final plat for the Development is recorded. The portion of the In Lieu Fee payable with any given final plat shall be calculated as follows: (a) the quotient of the In Lieu Fee and the Development Gross Acreage, multiplied by (b) the total gross acreage subject to the applicable final plat. For illustrational purposes only, assume the Developer intends to record a final plat with 10 total gross acres. The Developer would be required to pay concurrent with recordation of such final plat a portion of the In Lieu Fee equal to $6,294.27 (the quotient of $70,842.00 and 112.55 (which equals $629.43), multiplied by 10 acres).

(B) The City may withhold final plat recordation until the In Lieu Fee has been paid for that phase of development.

(C) The Developer or its successors in interests affirmatively waives the right to challenge the City's withholding of plat recordation for non-payment of the in-lieu fee. It, and its successors in interest, also waives and disclaims any argument or position that the In Lieu

Fee is an impact fee. The fee is voluntarily paid in exchange for the mutual benefit of developed, nearby parks for the benefit of the Development's future residents. The In Lieu Fee is considered a fee for a project improvement.

(D) True Up Final Payment. At the time of plat recordation for the final plat, the Developer shall provide payment of whatever remains of the balance of the total In Lieu Fee for the Development, taking into consideration the payments already tendered in prior phases.

(E) This Section shall survive termination or expiration under Section 8.4 of this Agreement.

## ARTICLE VI
## GENERAL REQUIREMENTS AND RIGHTS OF THE CITY

**6.1 Zoning Contingent upon Agreement Compliance.** As provided in section 10.82.080 of the RPC zone, continued zoning entitlement is contingent upon the Developer's material compliance with the provisions of this Agreement and the Preliminary Plat. Failure to materially comply with this Agreement, upon appropriate notice from the City and an opportunity to cure the defect, authorizes the City to revert zoning on the Development to R-1 but only as to any portions of the Development for which final plat approval has not yet been granted, at the time of such material non-compliance by Developer. Procedures for notice and curing of defaults are addressed in Section 7.1 of this Agreement.

**6.2 Issuance of Permits.** 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 Syracuse City Community and Economic Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Developer's undertakings. City, including its departments and agencies, shall not unreasonably withhold or delay the issuance of its permits.

**6.3 Completion.** The Developer 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.

**6.4 Access to the Development.** For purposes 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 Development without charges or fees during the period of performance of Developer's undertakings under this Agreement. 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 Development arising from the negligence or omissions of the City, or its agents or employees, in connection with City's exercise of its right granted in this paragraph.

## ARTICLE VII

## REMEDIES

7.1 **Remedies for Breach.** Unless otherwise provided in this Agreement, 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 sixty (60) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said sixty (60) day period, the party receiving such notice shall, within such sixty (60) 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:

(1) Cure or remedy such default or breach, such as proceedings for injunctive relief, to compel specific performance by the party in default or breach of its obligations, or declaring a material breach by the party. However, such relief shall exclude the award or recovery of any damages by either party.

(2) In the case of a material uncured breach by Developer, the City may change zoning and general plan map designation for the Development to R-1 zoning but only as to any portions of the Development for which final plat approval has not been granted, at the time of such material uncured breach by Developer. If the remedy of reversion is pursued, the defaulting Developer agrees not to contest the reversion of the zoning on undeveloped portions of the Development, by the City Council to R-1 zoning, and hereby holds the City harmless for such reversion.

7.2 **Attorney Fees.** Each party agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys fee which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing a lawsuit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

## ARTICLE VIII
## GENERAL PROVISIONS

8.1 **Reserved Legislative Powers.** The Developer acknowledges that the City is restricted in its authority to limit its police powers by contract and the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Developer under the terms of this Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah as set forth in Utah Code Ann. § 10-9a-509. Any such proposed change affecting the vested rights of the Developer or the Development shall be of general application to all development activity within the City; and unless in good faith the City declares an emergency, the Developer

shall be entitled to prior written notice and an opportunity to be heard with respect to any such proposed change and its applicability to the Developer or the Development under the compelling, countervailing public interest exception to the vested rights doctrine.

**8.2 No Joint Venture, Partnership, Third-Party Rights or Agency.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, and does not create any rights or benefits to third parties. No agent, employee or servant of the Developer or the City is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by any party or by the Developer to its employees, including but not limited to worker's compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, contractors or servants of the other party. The parties shall each be solely and entirely responsible for their respective acts and for the acts of their respective employees, agents, contractors and servants throughout the term of this Agreement.

**8.3 Agreement to Run with the Land.** This Agreement shall be recorded against the Development, shall run with the land and shall be binding on all successors and assigns of the Developer in the ownership and development of any portion of the Development.

**8.4 Term.** This Agreement shall expire upon the earliest of the following:
(a) The start of the warranty period for the final item of infrastructure identified in this Agreement;
(b) Expiration of the preliminary plat for the Development due to lack of work or subsequent action, as provided in Syracuse Municipal Code § 8.25.020, unless no changes to the City's applicable ordinances and specifications have occurred; or
(b) Upon mutual written agreement of both the Developer and City.

**8.5 Assignment.** Neither this Agreement nor any of the provisions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the other party, which review is intended to assure the financial capability of any assignee. Such consent shall not be unreasonably withheld.

**8.6 Integration.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

**8.7 Severability.** If any part or provision of this Agreement shall be adjudged unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific part or provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**8.8 Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer:

CW LAND CO., LLC
1222 West Legacy Crossing Blvd., Suite 6
Centerville, UT 84014
Attn: Colin H. Wright

To the City:

SYRACUSE CITY
1979 West 1900 South
Syracuse, Utah 84075
Attn: City Manager

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

**8.9 Amendment.** The parties or their successors in interest may mutually, by written agreement, choose to amend this Agreement at any time. Any material amendment of this Agreement shall require the prior approval of the City Council; otherwise, minor modifications shall not require prior approval of the City Council but rather shall only require the approval or consent of applicable City staff.

**8.10 General Terms and Conditions.**

(1) Non-liability of Officers, Representatives, Agents, or Employees. No officer, representative, agent, or employee of either party shall be personally liable to the other party or any successor-in-interest or assignee of the other party, in the event of any default or breach by such party or for any amount which may become due such party or its successors or assignee, for any obligation arising out of the terms of this Agreement.

(2) Referendum or Challenge. Both parties understand that any legislative action by the City Council is subject to referral or challenge by individuals or groups of citizens, including approval of development agreements. The Developer agrees that the City shall not be found to be in breach of this Agreement if a referendum or challenge is successful, so long as the referendum or challenge relates to the City Council's approval of this Agreement or the zoning and preliminary plat application, and so long as, in cases of challenge, the City provides a good faith defense. In the case of a successful referendum (as defined under applicable state statute) that invalidates this Agreement or the land use approvals, this Agreement is void at inception.

(3) Ethical Standards. The Developer represents that it has not: (a) provided an illegal gift or payoff to any officer or employee of the City, or former officer or employee of the City, or to any relative or business entity of an officer or employee of the City; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in Utah Code Ann. § 10-3-1301 et seq. and 67-16-3 et seq.; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the City or former officer or employee of the City to breach any of the ethical standards set forth in State of Utah statute or City ordinances.

(4) No Officer or Employee Interest. It is understood and agreed that no officer or employee of the City has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer, manager, employee or member of the Developer, or any member of any such persons' families shall serve on any City board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises the Developer's operations, or authorizes funding or payments to the Developer. This section does not apply to elected offices.

(5) Governing Law & Venue. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah. Any action taken to enforce the provisions of this Agreement shall have exclusive venue in the Second District Court of the State of Utah, Farmington Division.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

(Signatures appear on next page)
- Remainder of page left intentionally blank -

**CW LAND CO., LLC,**
a Utah limited liability company

By: **CW DEVELOPMENT GROUP, LLC,**
a Utah limited liability company

By: Colin H. Wright

Title: Manager

Signature 1-6-20
Date

STATE OF UTAH )
: ss.
COUNTY OF DAVIS )

On this 16 day of January, 2019, personally appeared before me Colin H. Wright, Manager of **CW DEVELOPMENT GROUP, LLC**, a Utah limited liability company, Manager of **CW LAND CO., LLC**, a Utah limited liability company, whose identity is personally known to me, or proven on the basis of satisfactory evidence, to be the person who executed the Development Agreement on behalf of said company and who duly acknowledged to me that he executed the same for the purposes therein stated.

ALICIA GENTRY
Notary Public, State of Utah
Commission #697413
My Commission Expires
Oct. 10, 2021

Notary Public

**SYRACUSE CITY**

By _____
Michael Gailey, Mayor

Attest:

_____
Cassie Z. Brown, MMC
City Recorder

STATE OF UTAH NOTARY PUBLIC
MARISA GRAHAM
COMMISSION #700465
MY COMMISSION EXPIRES:
05-16-2022

STATE OF UTAH )
: ss.
COUNTY OF DAVIS )

On this 16 day of Jan, 2020 ~~2019~~, personally appeared before me Mayor Michael Gailey, the authorized signer of Syracuse City, whose identity is personally known to me, to be the person who executed the Development Agreement on behalf of Syracuse City, and who duly acknowledged to me that he executed the same for the purposes therein stated.

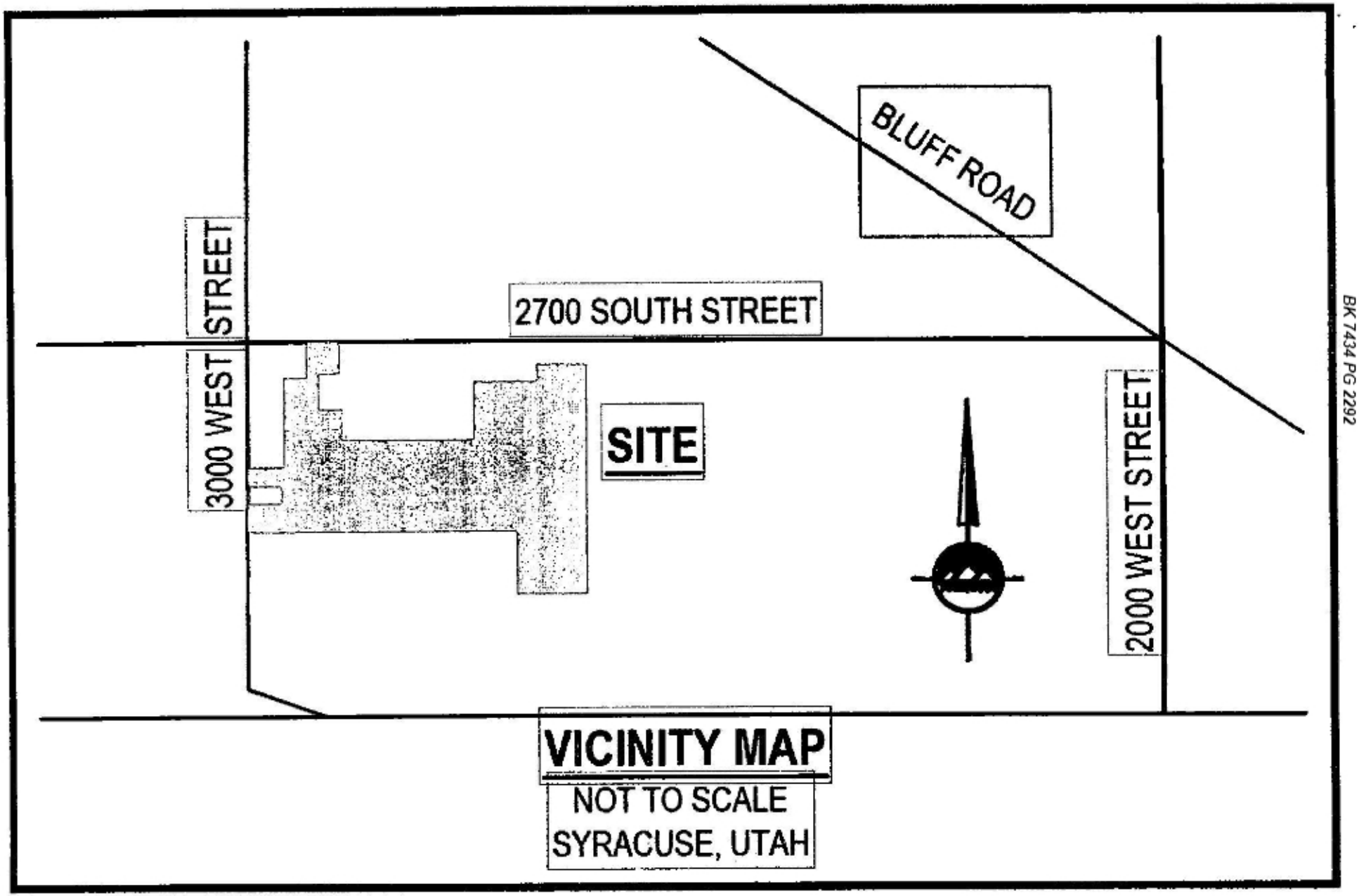
_____
Notary Public

Approved as to Form:

_____
Paul H. Roberts
City Attorney

**EXHIBIT A**

MAP OF DEVELOPMENT, IDENTIFYING PARCEL




**VICINITY MAP**

NOT TO SCALE
SYRACUSE, UTAH

3220502
BK 7434 PG 2292

**EXHIBIT B**

LEGAL DESCRIPTIONS

A portion of the NW1/4 and the NE1/4 of Section 21, Township 4 North, Range 2 West, Salt

Lake Base & Meridian, located in Syracuse City, Utah, more particularly described as follows:

Beginning at a point located S89°40'58"E along the Section line 811.11 feet from the Northwest Corner of Section 21, T4N, R2W, SLB&M;

thence S89°40'58"E along the Section line 197.02 feet to the extension of the Westerly line of SYRACUSE MEADOWS Subdivision, Plat 4, according to the Official Plat thereof on file in the Office of the Davis County Recorder;

thence along said SYRACUSE MEADOWS Subdivision, Plat 4, and the extension thereof the following six (6) courses and distances: S00°11'28"W 396.00 feet;

thence N89°40'58"W 69.25 feet;

thence S00°19'02"W 309.99 feet;

thence S04°02'03"W 60.13 feet;

thence S89°40'58"E 207.14 feet;

thence South 210.39 feet;

thence S89°40'58"E along said SYRACUSE MEADOWS Subdivision, Plat 4, and along the Southerly line of SYRACUSE MEADOWS Subdivision, Plat 3, according to the Official Plat thereof on file in the Office of the Davis County Recorder, 1,108.63 feet;

thence along said SYRACUSE MEADOWS Subdivision, Plat 3, the following four (4) courses and distances: N73°57'58"E 107.76 feet;

thence North 211.39 feet;

thence N42°16'31"W 65.83 feet;

thence N00°19'02"E 290.19 feet to a point on the Southerly line of SYRACUSE MEADOWS Subdivision, Plat A, according to the Official Plat thereof on file in the Office of the Davis County Recorder;

thence along said SYRACUSE MEADOWS Subdivision, Plat A, the following four (4) courses and distances: S89°40'58"E 592.00 feet;

thence N00°19'02"E 115.00 feet;

thence S89°40'58"E 360.00 feet;

thence N00°19'02"E 280.96 feet to the Section line; thence S89°40'44"E along the Section line 4.76 feet;

thence S00°19'02"W 1,319.74 feet to the South line of the NW1/4 of the NE1/4of said Section; thence S89°40'16"E along the 1/16 Section (40 acre) line 53.05 feet to the Northeast Corner of the NW1/4 of the SW1/4 of the NE1/4 of said Section;

thence S00°11'36"W along the 1/64 Section (10 acre) line 1,319.75 feet to the Southeast Corner of the SW1/4 of the SW1/4 of the NE1/4 of said Section;

thence N89°39'48"W along the 1/4 Section line 663.40 feet to the Center 1/4 Corner of said Section; thence N00°11'31"E along the 1/4 Section line 659.83 feet to the Southeast Corner of the NE1/4 of the SE1/4 of the NW1/4 of said Section;

thence N89°40'19"W along the 1/64 Section (10 acre) line 2,653.93 feet to the Southwest Corner of the NW1/4 of the SW1/4 of the NW1/4 of said Section;

thence N00°11'28"E along the Section line 309.66 feet to the Southwest corner of that Real Property as described in Deed Book 2902 Page 207 of Official Records of Davis County;

thence along said deed the following three (3) courses and distances: S89°48'32"E 440.00 feet; thence N00°11'28"E 200.00 feet;

thence N89°48'32"W 440.00 feet to the Section line;

thence N00°11'28"E along the Section line 149.33 feet to the Southwest corner of that Real Property as described in Deed Book 6068 Page 463 of Official Records of Davis County;

thence S89°48'32"E along said deed 440.00 feet;

thence N00°11'28"E along said deed and along the Easterly lines of that Real Property as described in Deed Book 4189 Page 88 of Official Records of Davis County and that Real Property as described in Deed Book 3618 Page 233 of Official Records of Davis County and that Real Property as described in Deed Book 4652 Page 420 of Official Records of Davis County and that Real Property as described in Deed Book 1740 Page 1683 of Official Records of Davis County and that Real Property as described in Deed Book 1105 Page 46 of Official Records of Davis County 875.66 feet to the Southwest corner of that Real Property as described in Deed Book 3888 Page 2453 of Official Records of Davis County;

thence along said deed the following two (2) courses and distances: S89°41'00"E 371.14 feet; thence N00°11'11"E 443.36 feet to the point of beginning.

Contains: 103.04 acres+/-

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A PORTION OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERICIAN, AND RUNNING;

THENCE NORTH 89°40'06" WEST ALONG THE QUARTER SECTION LINE 625.68 FEET;

THENCE NORTH 00°11'13" EAST 160.02 FEET;

THENCE SOUTH 89°48'47" EAST 10.00 FEET;

THENCE NORTH 00°11'13" EAST 100.00 FEET;

THENCE NORTH 89°40'13" WEST 10.10 FEET;

THENCE NORTH 00°19'47" EAST 39.75 FEET;

THENCE NORTH 00°11'13" EAST 230.05 FEET;

THENCE NORTH 89°48'47" WEST 18.24 FEET;

THENCE NORTH 00°13'13" EAST 130.00 FEET TO THE 1/64TH SECTION LINE;

THENCE SOUTH 89°40'19" EAST ALONG THE 1/64TH SECTION LINE 643.90 FEET TO THE QUARTER SECTION LINE;

THENCE SOUTH 00°11'31" WEST ALONG THE QUARTER SECTIOIN LINE 659.83 FEET TO THE POINT OF BEGINNING.

CONTAINS 9.51 ACRES