

*AGREEMENT FOR DEVELOPMENT
OF LAND BETWEEN LAYTON CITY
AND AMERICA FIRST FEDERAL
CREDIT UNION*

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND AMERICA FIRST FEDERAL CREDIT UNION
(Approximately 840 East Highway 193)**

09-646-0054

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 29th day of JAN, 2008, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and AMERICA FIRST FEDERAL CREDIT UNION (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 a zone change from the present zoning of M-1 (Light Manufacturing/Industrial) to CP-1 (Planned Neighborhood Commercial), of certain property located at approximately 840 East Highway 193 in Layton City (hereinafter the "Subject Area"); and

WHEREAS, the Subject Area consists of approximately 1.98 acres belonging to AMERICA FIRST FEDERAL CREDIT UNION and is depicted on Exhibit "A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, Owner is the owner of the above described property and have 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, City is willing to grant CP-1 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 further define and execute the objectives of the General Plan, specifically regarding the land uses and signage 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 1, wherever in this Agreement:

1.1 "Owners 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 AMERICA FIRST FEDERAL CREDIT UNION. The principal mailing address for Owner is listed in paragraph 7.2. Except where expressly indicated in this Agreement, all provisions of the Agreement shall apply jointly and severally to the Owner.

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 CP-1 zoning designation, as set forth herein.

ARTICLE III CITY'S UNDERTAKINGS

Subject to the satisfaction of the conditions set forth in Section 2.2 and Article II, City shall amend the Zoning Ordinance and approve the rezone of the Subject Area from its present zoning of M-1 to CP-1, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any 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.

The proposed zoning changes are as reflected on Exhibit "A", in that the property immediately adjacent to the southwest corner of Fairfield Road and Highway 193 is proposed for CP-1, which constitutes approximately 1.98 acres.

ARTICLE IV OWNER'S UNDERTAKINGS

Conditioned upon City's performance of its undertakings set forth in Article III with regard 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:

With this property being placed within the CP-1 Zoning District, Owner agrees that not all uses allowed in that zone are compatible with this property.

4.1 Therefore, development on the property shall be limited to the land uses allowed in the P-B (Professional Office) zoning district as outlined in Title 19 (Zoning) of the Layton Municipal Code. More specifically, land uses allowed in the CP-1 zoning district but not allowed in the P-B zoning district, as outlined in Section 19.06.020, Table 6-2 of the Layton Municipal Code, shall **not** be permitted, or requested by the Owner:

4.2 Owner agrees to restrict development by relinquishing any right or interest in the land uses allowed in the CP-1 zoning district that are not allowed in the P-B zoning district. If other uses are desired, that are not specifically enumerated by ordinance, Owner agrees to seek amendment of this Agreement before pursuing the development of those uses.

4.3 The development or initiation of any use on this property may only be pursued upon receiving the necessary approvals as set forth in the City's ordinances.

a. Owner shall be responsible for seeing that all development shall comply with the regulations and guidelines of the P-B zoning district, with the exception of the following:

- i. The height, square footage and location of any attached or detached signage approved and constructed on this property shall be governed by the regulations of Title 18 (Sign Regulations) of the Layton Municipal Code for the CP-1 zoning district ; and
- ii. Owner agrees to integrate any detached pole signage into the development with a common theme or architecturally integrated with a new building developed on the site. Said theme or integration may be accomplished through the use of pole covers/cabinets or masonry structures and accents.

4.4 Except as provided in Section 4.2 above, 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 his 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 with reasonable diligence. The project must meet the requirements of this Agreement and the City's ordinances and regulations.

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 his 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(s) agree(s) 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 CP-1 to M-1.

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 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 Owner. In the event of a default by Owner's assignee, Owner may elect, in his 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 his 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: AMERICA FIRST FEDERAL CREDIT UNION
4646 South 1500 East, suite 110
Riverdale, Utah 84405
801-827-8539; 801-827-8309 (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 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 City and the Owner affected by the amendment.

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, this Agreement may only terminate as follows:

7.8.1 If by Owner, said termination must be done prior to the completion of the project and Owner agrees to the reversion of the zoning classification to "M-1".

7.8.2 If by the City, said termination must be done prior to effective date of the ordinance which changes the zoning classification to "CP-1".

7.8.3 By mutual agreement of the parties as long as said agreements are congruent to the General Plan and protective of the health, safety, and welfare of the citizenry.


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 shall be recorded in reference to the property, and shall run with the land and be binding upon all successors in interest of the property.

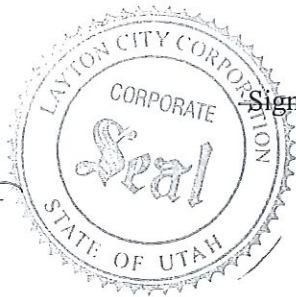
7.10 Applicable Regulations. Owner is vested in the applicable City zoning and development regulations in effect on the 18th day of DEC, 2008.

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,


Signed by Mayor J. Stephen Curtis

Signed by Mayor J. Stephen Curtis



ATTEST:

Thieda Wellman
By: Thieda Wellman, City Recorder

APPROVED AS TO FORM:

GARY CRANE, City Attorney

AMERICA FIRST FEDERAL CREDIT UNION,

Jil Morby
Jil Morby, Senior Vice President of Operations

ACKNOWLEDGEMENT

COUNTY OF DAVIS)
§
STATE OF UTAH)

On this 29 day of January, 2009, personally appeared before me, Jil Morby, Vice President of Operations for America 1st Federal Credit Union, who is personally known by me to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature]
Notary signature and seal

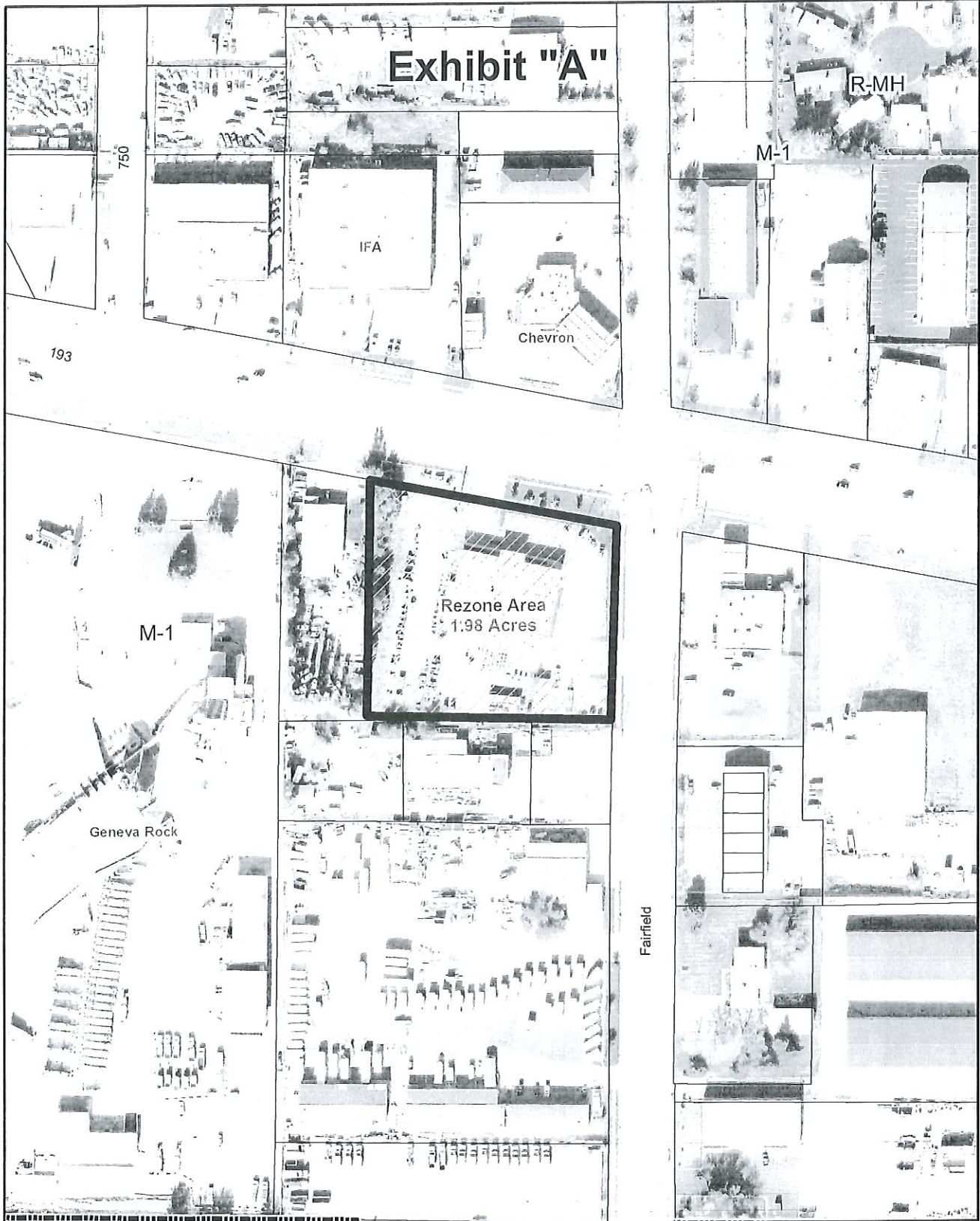


ACKNOWLEDGEMENT

COUNTY OF DAVIS)
§
STATE OF UTAH)

On this _____ day of _____, 2009, personally appeared before me, _____, who is personally known by me to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Exhibit "A"



America 1st Credit Union Rezone M-1 to CP-1

- City Boundary
- Zoning District
- Railroad
- Streams



Parcel Vesting Information

01/31/1997 to Present

Serial Number: 09-046-0054

Mailing Address: 11111 WEST MCDOWELL ROAD
AVONDALE, AZ 85323

Tax District

39

Location

Location: 4 N 1 W 9 NE

NE

Vested Owners

ARIZONA MACHINERY CO

Legal Description

BEG AT A PT 608.6 FT N 89°52'40"W & N 0°07'20" E 616.50 FT (PARALLEL TO THE E LINE OF THE SEC) TO A PT 329.11 FT S OF THE S LINE OF A HWY & S 89°52'40" E 113.24 FT FR THE SE COR OF THE N 1/2 OF THE NE 1/4 OF SEC 9-T4N-R1W, SLM; & RUN TH N 0°07'20" E 308.91 FT, MOL, TO THE S'LY LINE OF SD HWY; TH S 79°58' E 324.73 FT ALG SD HWY TO THE W LINE OF FAIRFIELD RD; TH S 0°24'12" W 252.79 FT, MOL, ALG THE W LINE OF SD ROAD, TO A PT S 89°52'40" E OF THE POB; TH N 89°52'40" W 319.76 FT, MOL, TO THE POB. CONT. 2.05 ACRES