

**REDEVELOPMENT AGENCY MEETING AGENDA  
LAYTON, UTAH**

PUBLIC NOTICE is hereby given that the Redevelopment Agency (RDA) of Layton, Utah, will hold a public meeting in the Council Conference Room of the City Center Building, 437 North Wasatch Drive, Layton, Utah, commencing at **5:30 PM on May 4, 2023**.

**AGENDA ITEMS:**

1. Minutes of the Layton City Redevelopment Agency (RDA) Meeting - January 19, 2023
2. Consent and Acknowledgement for Transfer of Property from North Utah Holdings, LLC, to Winkel Rock, LLC, Including Certain Obligations as Required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and North Utah Holdings, LLC – RDA Resolution 23-01 – 127 South, 137 South, and 143 South Main Street
3. Consent and Acknowledgement for Transfer of Property from F. M. Winkel Family, LLC, to Winkel Rock, LLC, Including Certain Obligations as Required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and F. M. Winkel Family, LLC – RDA Resolution 23-02 – 159 South Main Street

**ADJOURN:**

Notice is hereby given that:

- In the event of an absence of a full quorum, agenda items will be continued to the next regularly scheduled meeting.
- This meeting may involve the use of electronic communications for some of the members of this public body. The anchor location for the meeting shall be the Layton City Council Conference Room, 437 North Wasatch Drive, Layton City. Elected Officials at remote locations may be connected to the meeting electronically.

**Date:** \_\_\_\_\_ **By:** \_\_\_\_\_  
**Kimberly S Read, City Recorder**

LAYTON CITY does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in the employment or the provision of services. If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify Layton City eight or more hours in advance of the meeting. Please contact Jamie Senninger at 437 North Wasatch Drive, Layton, Utah 84041, 801.336.3826 or 801.336.3820.

# **D R A F T**

**MINUTES OF THE MEETING OF  
THE REDEVELOPMENT AGENCY  
OF LAYTON CITY**

**JANUARY 19, 2023 – 5:33 P.M.**

**BOARDMEMBERS AND  
OFFICERS PRESENT:**

**CHAIR JOY PETRO, VICE CHAIR CLINT MORRIS,  
EXECUTIVE DIRECTOR ALEX JENSEN,  
BOARDMEMBERS ZACH BLOXHAM, TYSON  
ROBERTS, BETTINA SMITH EDMONDSON, AND  
DAVE THOMAS**

**STAFF PRESENT:**

**GARY CRANE, CHAD WILKINSON, TERRY  
COBURN, STEPHEN JACKSON, ED FRAZIER, AND  
SECRETARY KIM READ**

**The meeting was held in the Council Conference Room of the Layton City Center.**

Chair Petro opened the meeting.

**MINUTES:**

Boardmember Roberts moved to approve the minutes of September 15, 2022 and October 6, 2022, as written. Boardmember Thomas seconded the motion, which passed unanimously.

**AGENDA:**

**ELECTION OF VICE-CHAIRPERSON**

Chair Petro announced the need to elect the Vice Chair of the RDA. Alex Jensen, Executive Director, indicated Clint Morris was currently serving as the Vice Chair and explained a new Vice Chair could be elected or the Board could re-elect Clint Morris and requested nominations.

**MOTION:** Boardmember Thomas moved to re-elect Boardmember Morris as the Vice-Chair. Boardmember Smith Edmondson seconded the motion, which passed unanimously.

**The meeting adjourned at 5:34 p.m.**

# **D R A F T**

Kimberly S Read, Secretary

**REDEVELOPMENT AGENCY OF LAYTON CITY  
AGENDA ITEM COVER SHEET**

**Item Number:** 2.

**Subject:**

Consent and Acknowledgement for Transfer of Property from North Utah Holdings, LLC, to Winkel Rock, LLC, Including Certain Obligations as Required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and North Utah Holdings, LLC – RDA Resolution 23-01 – 127 South, 137 South, and 143 South Main Street

**Background:**

Resolution 23-01 is a request for the Redevelopment Agency of Layton City (Agency) for consideration to approve a request to transfer property ownership from North Utah Holdings, LLC, (Owner) to Winkel Rock, LLC, (Developer) for the purpose of developing the property.

Winkel Rock LLC, the development arm representing Rockworth Companies and North Utah Holdings, LLC, is ready to develop Phase I of the proposed development. As part of the development process, Winkel Rock LLC requires authority to sign on behalf of and encumber the property title.

The existing Agreement known as Participation Agreement By and Between The Redevelopment Agency of Layton City, And North Utah Holdings, LLC, executed on June 6, 2016, requires Agency approval to transfer ownership in accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement. The Participation Agreement has certain obligations which are the responsibility of the Owner to complete. However, the remaining obligations are all attached to the development of Phase I as proposed. The approval of this request will allow for the implementation of those obligations and the development to be completed. The Agreement is very specific and only applies to the following parcels of property:

Parcel A: 11-061-0157, containing 0.61 acres, or 36,571 square feet  
Parcel B: 11-061-0158, containing 0.46 acres, or 20,037 square feet  
Parcel C: 11-061-0029, containing 0.36 acres, or 15,681 square feet

For this purpose, both the Owner and the Developer are requesting the Agency to consider allowing the property to be transferred from North Utah Holdings, LLC, to Winkel Rock, LLC.

**Alternatives:**

Alternatives are to: 1) Adopt Resolution 23-01 approving the Consent and Acknowledgement for Transfer of Property from North Utah Holdings, LLC, to Winkel Rock, LLC, including certain obligations as required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and North Utah Holdings, LLC; 2) Adopt Resolution 23-01 with any amendments the Agency deems appropriate; or 3) Not adopt Resolution 23-01 and remand to Staff with directions.

**Recommendation:**

Staff recommends the Agency adopt Resolution 23-01 as submitted, approving the Consent and Acknowledgement for Transfer of Property from North Utah Holdings, LLC, to Winkel Rock, LLC, including certain obligations as required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and North Utah Holdings, LLC, and authorize the Chair to sign the resolution on behalf of the Agency.

## RDA RESOLUTION 23-01

### **A RESOLUTION APPROVING THE CONSENT AND ACKNOWLEDGEMENT FOR TRANSFER OF PROPERTY FROM NORTH UTAH HOLDINGS, LLC, TO WINKEL ROCK, LLC, INCLUDING CERTAIN OBLIGATIONS AS REQUIRED IN THE PARTICIPATION AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF LAYTON CITY AND NORTH UTAH HOLDINGS, LLC**

**WHEREAS**, the Redevelopment Agency of Layton City (hereinafter called the "Agency") has prepared and adopted, and Layton City through its Council (hereinafter called "the City") and the adoption of Ordinance 04-44, has approved, the South Main/South Fort Lane Redevelopment Project Area Plan and Budget dated June 17, 2004 (hereinafter called the "Development Plan"), providing for the development of certain lands within the Development Plan boundary (hereinafter called the "RDA Plan Area") and the future uses of such land, which Development Plan has been filed in the office of the City Recorder of the City and the Agency; and

**WHEREAS**, to enable the City and the Agency to achieve the objectives of the Development Plan, and particularly to make the land in the RDA Plan Area viable for development by private enterprise, and influence additional development and investment in accordance with the uses specified in the Development Plan, the Agency desires to approve this Consent and Acknowledgment with North Utah Holdings, LLC (hereinafter called "the Owner"), for the purpose of development of land as it pertains to the Site; and

**WHEREAS**, the Developer owns certain land ("Site") situated in the RDA Plan Area, which land is located at 127 S, 137 S, and 143 S Main Street Layton, Utah 84041 and otherwise known as Parcels 11-061-0157, 11-061-0158, and 11-061-0029 as recorded in the Davis County Utah Recorder's Office, containing approximately 1.43 acres, and the Developer desires to Transfer ownership of the Site for and in accordance with the uses specified in the Development Plan and as more particularly described in this Consent and Acknowledgement; and

**WHEREAS**, the Owner entered into a Participation Agreement with the Agency, known as the Participation Agreement by and between The Redevelopment Agency of Layton City, and North Utah Holdings, LLC, executed on June 6, 2016 (hereinafter called the "Agreement"), which requires the Owner to request Agency's prior consent to "deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency"; and

**WHEREAS**, the Owner is requesting approval of the Agency to Transfer Property, in accordance with Section 1.7.1 and Section 1.7.2 in the Agreement, from the Owner to Winkel Rock, LLC (Developer) for the purpose of developing Phase I on the Site and as more particularly described in this Consent and Acknowledgement; and

**WHEREAS**, this Consent and Acknowledgment will allow the Developer to complete, and obligate the Developer to meet, all of the remaining responsibilities of the Owner as outlined in the Participation Agreement.

**WHEREAS**, the City and the Agency believe that the development of the Site, pursuant to this Consent and Acknowledgment ("Consent") and the Agreement, and Development Plan, and the fulfillment generally of this Consent and the intentions set forth herein, are in the vital and best interests of the City, the Agency and in the best interest of the health, safety, morals, and welfare of City residents; and are in accord with the public purposes and provisions of the applicable State laws and requirements under which said Project has been undertaken.

**NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF LAYTON, UTAH:**

1. That the agreement entitled "CONSENT AND ACKNOWLEDGEMENT BETWEEN THE REDEVELOPMENT AGENCY OF LAYTON CITY AND NORTH UTAH HOLDINGS, LLC" which is attached hereto and incorporated herein by this reference, be adopted and approved.
2. That the Agency Chair be authorized to execute the Agreement.
3. This Resolution shall become effective immediately upon adoption by the Agency.

**PASSED AND ADOPTED** by the City Council of Layton, Utah, this **4th day of May, 2023**.

---

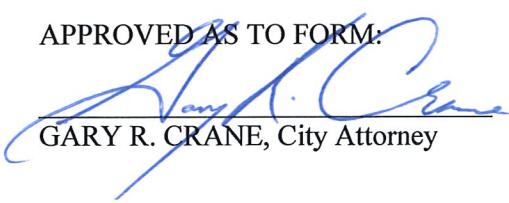
JOY PETRO, Mayor

ATTEST:

---

KIMBERLY S READ, City Recorder

APPROVED AS TO FORM:



GARY R. CRANE, City Attorney

---

  
CHAD WILKINSON, Department Director  
Community and Economic Development

## CONSENT AND ACKNOWLEDGEMENT [Participation Agreement]

This CONSENT AND ACKNOWLEDGEMENT (“**Consent**”), dated effective as of \_\_\_\_\_, 2023 (the “**Effective Date**”), is made by and between NORTH UTAH HOLDINGS, LLC, a Utah limited liability company (“**Participant**”), and the REDEVELOPMENT AGENCY OF LAYTON CITY, a political subdivision of the State of Utah (the “**RDA**”).

### RECITALS

A. Participant and RDA are parties to that certain Participation Agreement, with an effective date of June 6, 2016 (the “**Participation Agreement**”). The Participation Agreement sets forth certain payment obligations by the RDA (the “**RDA Payment**”) to Participant, which RDA Payment has been completed as to the “Tax Increment” portion but not as to reimbursement for certain environmental remediation costs in accordance with Section 2.4.2 of the Participation Agreement. The Participation Agreement also sets forth certain development obligations by Participant (the “**Obligations**”) for the “Site” (as defined in the Participation Agreement) and otherwise referred to as Tax Parcel ID: 11-061-0157, 11-061-0158, and 11-061-0029.

B. Winkel Rock, LLC, a Utah limited liability company (“**Developer**”) contemplates developing the Site and other adjacent real property as a multifamily, retail, commercial, and hospitality development (the “**Mixed-Use Project**”). Developer is currently in the process of obtaining the necessary land use approvals and permits necessary for first phase of the Mixed-Use Project (the “**Phase 1**”).

C. Participant, by and through its member(s) and/or manager(s) or other affiliate(s), has a membership interest in Developer and is contributing, deeding, or otherwise conveying the Site to Developer, and other adjacent real property, for the completion of Phase 1 of the Mixed-Use Project.

D. In accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement, RDA’s prior written consent is required for deeding, selling, conveying, assigning, or otherwise alienating or leasing the Site.

E. RDA is entering into this Consent for the limited purpose of (i) consenting to the conveyance of the Site from Participant to Developer; and (ii) agreeing to the scope of the outstanding Obligations.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participant and RDA agree as follows:

1. **Consent.** In accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement, the RDA hereby provides its express consent to the contribution, deed, and/or conveyance of the Site by Participant to Developer.

2. **Outstanding Obligations.** The RDA and Participant hereby agree and acknowledge that the following table sets forth the Obligations under the Participation Agreement and the status for the same:

Section	Obligation	Status
2.4	Participant agrees to sign a Promissory Note (the Note) for the full amount of the Tax Increment paid to Participant.	Completed by Participant.
2.4.1	Participant shall deed or dedicate by plat to Layton City, at no cost, a public right-of-way access connected to an	Outstanding – this obligation will be completed by Developer in its

	intersection with Main Street.	development of Phase 1.
2.4.1	Participant shall proceed with obtaining subdivision approval (if necessary) and complete the process in good faith and in a reasonable period of time.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.2	Participant agrees that the existing building(s) shall be demolished and all debris removed from the Site.	Completed by Participant.
2.4.2	Participant and RDA agree to remediate additional environmental contaminations, if any, as determined in the conclusions of the Limited Subsurface Investigations dated June 2, 2015 and June 5, 2015 conducted by EarthTouch Inc. for the Site.	Completed by Participant.
2.4.3	Participant agrees that development of the Main Street frontage of the Site shall be compliant with MU-TOD zoning regulations and include, at minimum, office/retail uses on the main floor level of the Main Street frontage.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.4	Participant agrees to not erect, or cause to be erected, any billboards advertising off-site business on the entire development site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.1; 3.3	Participant will at all times be responsible for all development of the Site pursuant to the “Plan” (as defined in the Participation Agreement). Participant agrees to improve and develop the Site according to the terms of the Participation Agreement.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.2	Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.

As set forth in the Participation Agreement, upon completion of the foregoing Obligations through construction of improvements depicted on the attached Exhibit A, the RDA shall issue a “Certificate of Completion” and thereafter terminate and release the promissory note contemplated under the Participation Agreement. The parties agree that upon issuance of the last certificate of occupancy on Phase 1, as depicted on Exhibit A, the RDA shall issue a Certificate of Completion and consider all of the Obligations discharged and terminated as they relate to the owner of the Site and Participant under the Participation Agreement.

### 3. Miscellaneous

a. Governing Law. This Consent shall be governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule.

b. Successors and Assigns. This Consent shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

c. Counterparts. This Consent may be executed in counterparts, each of which will be deemed an original but which together constitute one and the same instrument. Delivery of executed signature pages by facsimile or email transmission shall be effective.

*[Signatures and Acknowledgments Follow]*

IN WITNESS WHEREOF, the Participant and RDA have executed this Consent as of the Effective Date.

**PARTICIPANT:**

**North Utah Holdings, LLC,**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of North Utah Holdings, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

[Signatures and Acknowledgments Continue on Following Page]

*Signature Page to Assignment and Assumption Agreement*

**RDA:**

REDEVELOPMENT AGENCY OF LAYTON CITY,  
a political subdivision of the State of Utah

By \_\_\_\_\_

Name \_\_\_\_\_

Its: Board Chair

**Attest:**

By: \_\_\_\_\_  
Secretary

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as the chair of the governing board of the REDEVELOPMENT AGENCY OF LAYTON CITY, a political subdivision of the State of Utah.

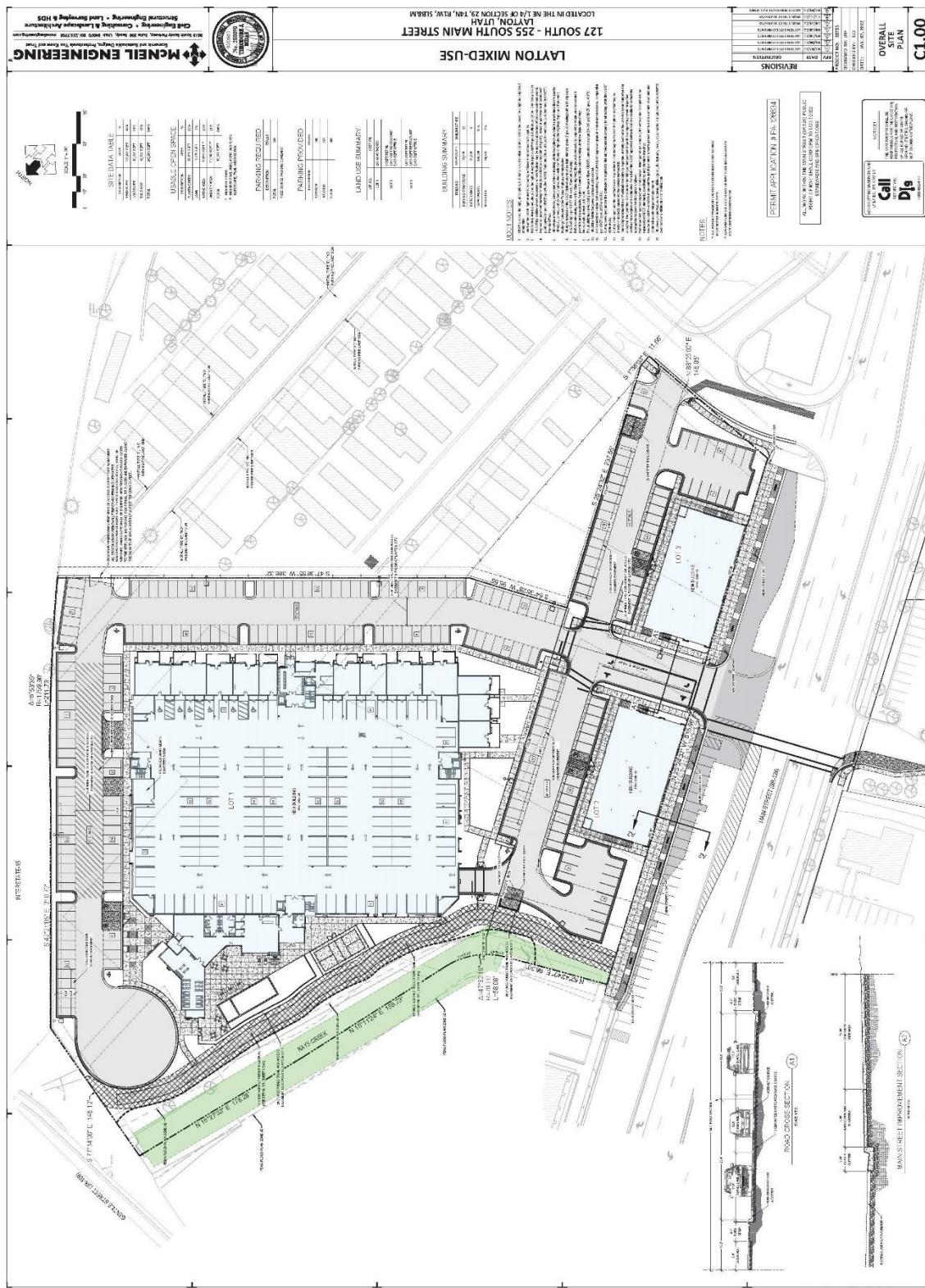
\_\_\_\_\_  
NOTARY PUBLIC

Residing at: \_\_\_\_\_

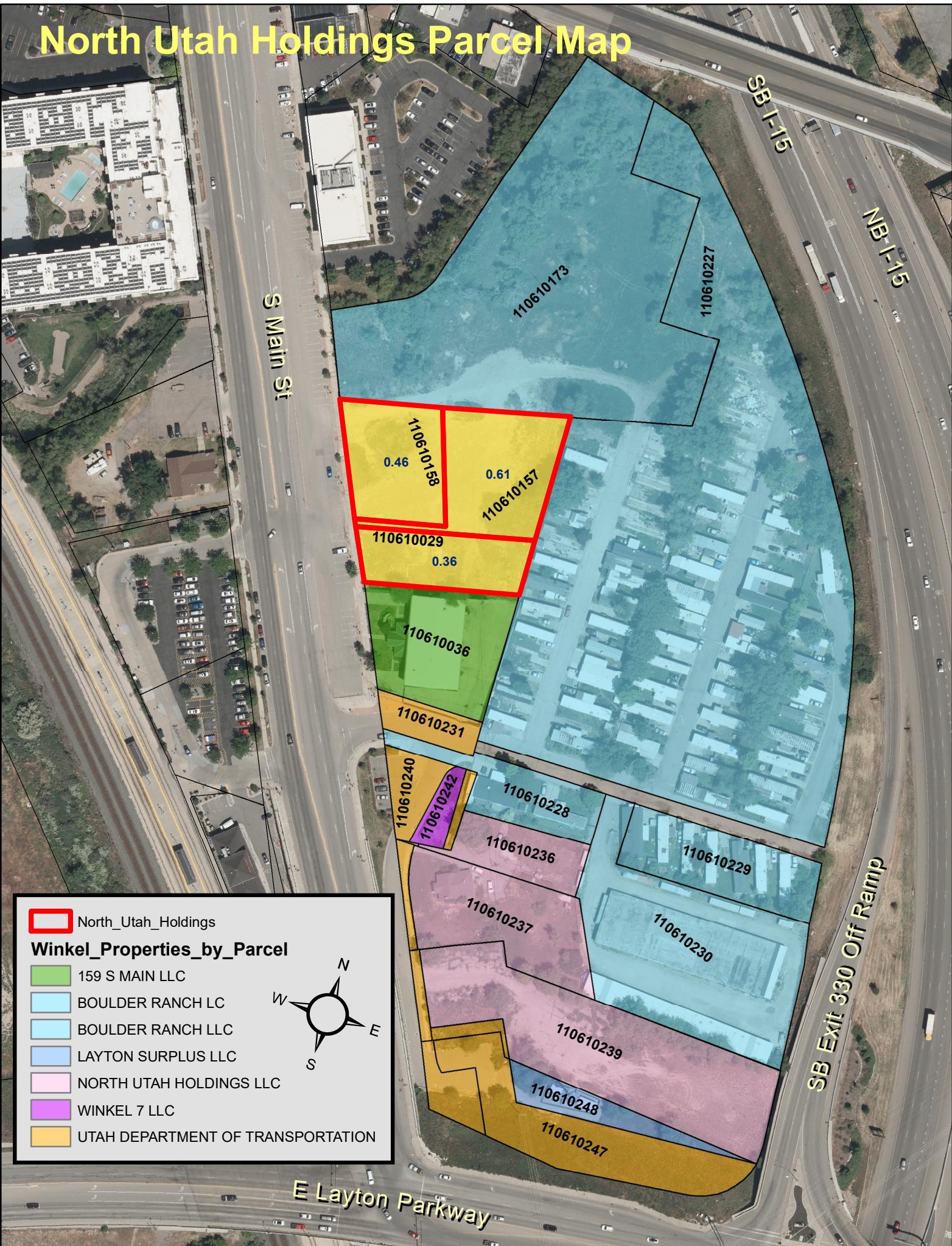
My Commission Expires:

\_\_\_\_\_

## EXHIBIT A



# North Utah Holdings Parcel Map



# Participation Agreement

By and Between

The Redevelopment Agency of Layton City,

And

North Utah Holdings, LLC

# Participation Agreement

The parties hereto, the Redevelopment Agency of Layton City, a political subdivision of the State of Utah (the “**Agency**”) and North Utah Holdings, LLC, a Utah Limited Liability Company (“**Participant**”)—(the Agency and Participant may also be collectively referred to as “**Parties**”), agree as follows:

## 1. SUBJECT OF AGREEMENT

### 1.1 Purpose of the Agreement

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Plan for the South Main / South Fort Lane Redevelopment Project Area (the “**Plan**”<sup>1</sup> and Project Area Budget “**Budget**” are attached hereto as **Exhibit A**), by providing public right-of-way access, assembling the land under one property owner, and removing barriers to the future mixed-use development of the property within the South Main / South Fort Lane Project Area (the “**Project Area**”). Also, to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in purchasing land, establishing right-of-way, and future development guidelines, including funds the Agency will provide to assist in acquiring property, which will benefit the Project Area.

### 1.2 Agreement in the Best Interests of the City and Residents

This Agreement is in the vital and best interests of Layton City, and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated as amended (the “**Act**”).

### 1.3 The Project Area

The Project Area is located within the boundaries of Layton City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

### 1.4 The Project Area Plan and Budget

This Agreement is subject to the provisions of the Plan, as revised, amended and adopted on December 3, 2009, by the Agency and the Layton City Council (the “**Council**”) in accordance with Section 17C-3-106 of the Act.

---

<sup>1</sup> The Plan was originally adopted by the Layton City Council by Ordinance 04-44 on June 17, 2004. A copy of that Ordinance is attached as **Exhibit B**.

## **1.5 Description of the Site**

The site of the property (the “**Site**”) within the Project Area shall consist of three parcels property, totaling approximately 1.43 acres. The Site is shown in detail on the Site Map, attached hereto as **Exhibit C**, and described in the description(s), attached hereto as **Exhibit D**.

## **1.6 Parties to the Agreement**

### **1.6.1 The Agency**

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Community Development and Renewal Agencies Act. The address of the Agency for purposes of this Agreement is:

The Redevelopment Agency of Layton City  
Attn: RDA Executive Director  
437 Wasatch Drive  
Layton, Utah 84041

### **1.6.2 The Participant**

Participant is North Utah Holdings, LLC, a Utah Limited Liability Company (LLC), lawfully registered to do business in Utah. Participant’s address for purposes of this Agreement is:

North Utah Holdings, LLC  
Attn: McKay Winkel, Managing Member  
3651 North 100 East, No. 125  
Provo, UT 84604

## **1.7 Prohibition against Certain Changes**

### **1.7.1 Transfers of Property Prohibited**

Participant represents and agrees for itself and any successor(s) in interest that, during the term of this Agreement, it shall not deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency, and that the Agency may withhold its approval if such deed, sale, conveyance, assignment or alienation or lease would result in the objectives of the Agreement not being met. Notwithstanding the foregoing, Participant shall be entitled (without the consent of any party) to transfer any interest in the real estate to any wholly-owned subsidiary (or sister company that has substantially the same owners) of Participant, who agrees to continue to occupy and/or operate the business in substantially the same form and to undertake all obligations and restrictions of the

transferring Participant(s). Any such undertaking shall be in writing and properly executed. No subsequent transfer can occur without the written approval of the Agency.

### **1.7.2 Assignment or Transfer of Agreement**

For the reasons cited above, Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency. The assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach and default, under this Agreement, and relieves the Agency of any obligation to Participant under this Agreement. As a condition of the Agency approving an assignment of this Agreement by Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of Participant under this Agreement.

### **1.7.3 Transfer to Tax-Exempt Organization**

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or their successor in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency constitutes a material breach and default under this Agreement and will entitle the Agency, in its sole discretion, to terminate this Agreement.

### **1.7.4 Continuing Obligations**

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of this Agreement by the Agency, relieves Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement are and will remain binding upon and inure to the benefit of Participant and their successors and assigns.

## **1.8 Term of the Agreement**

Unless terminated sooner, by a breach or default as provided herein, this Agreement shall terminate, upon the issuance of a "Certificate of Completion," by the Agency upon completion of the obligations of the parties within the time periods set forth herein, under the terms of this Agreement.

## **2. OBLIGATIONS OF THE PARTIES**

### **2.1 Provision of Tax Increment**

The Agency agrees to provide an amount not to exceed eight hundred twenty thousand dollars (\$820,000.00) solely from Tax Increment generated by the Project Area for the purpose of writing down the cost of the Site. RDA funds will be deposited in Escrow prior to closing for the purchase of the Site by Participant.

The Participant shall submit a letter to the RDA requesting release of Tax Increment for the purchase of the following Parcel ID's: #110610158, #110610157, and #110610029. The letter shall include a fully executed Real Estate Purchase Contract, Title Company, closing instructions, and estimated time frame for closing. Prior to closing, the RDA shall receive a copy of the HUD-1 Settlement Statement and proof of Title Insurance.

The amount of release of Tax Increment funds shall be:

Parcel ID #110610158, located at 127 South Main Street, also known as Kings First Stop Auto, in the amount of four hundred twenty thousand dollars (\$420,000.00).

Parcel ID #110610157, located at 137 South Main Street, and #110610029, located at 143 South Main Street, with both parcels also known as Tom Randall Distributing, in the amount of four hundred thousand dollars (\$400,000.00).

### **2.2 Tax Increment**

The Project Area Plan and payments contemplated in this Agreement will be funded by Tax Increment as budgeted by the RDA in compliance with the provisions of the Act.

For purposes of this Agreement:

(a) **“Tax Increment”** means the Taxes levied each year on land, real property improvements, personal property and other taxable property within the Project Site in excess of the Base Tax Amount (as defined below) for that same property; as defined in the Act;

(b) **“Taxes”** means all levies on an *ad valorem* basis upon land, real property improvements, personal property, or any other property;

(c) **“Base Tax Amount”** for the Site will be calculated by multiplying the combined 2004 tax rate of all taxing entities that levy taxes on property within the Project Area by the base year taxable value which is equal to the taxable value of the Project Site as determined by the Davis County Assessor based upon the assessment roll last equalized before November 1, 2004.

## **2.3 Conditions Precedent to Payment of Participant's Tax Increment Share**

### **2.3.1 Dispute over Receipt of Payment of Tax Increment**

In the event a dispute arises as to the person or entity entitled to receipt of Tax Increment under this Agreement due to a claimed assignment or claimed successor in interest to the Tax Increment or otherwise, the Agency may withhold payment of Tax Increment until the dispute is resolved either by agreement or by a court of competent jurisdiction. The Agency shall be entitled to deduct from its payment of Tax Increment any costs or expenses, including reasonable attorney's fees, incurred by the Agency due to the dispute.

## **2.4 Nature of Participant's Obligations**

To qualify to receive the Tax Increment funding set forth herein, Participant shall fulfill all of the obligations in this Agreement. Failure to fulfill any obligation shall be considered a material breach and termination of the Agreement. Participant agrees to sign, concurrent with this agreement, a Promissory Note (the Note) for the full amount of Tax Increment paid to Participant by the Agency. The Agency will not require that the Note be secured with a deed of trust. The Agency shall hold that Note until such time as all of Participant's responsibilities under this Agreement, are fully executed or until such time as a breach or default occurs under the terms of this Agreement. Upon completion of Participant's responsibilities, Participant shall request and the Agency shall issue a "Certificate of Completion" and the Note shall thereafter, be null and void. Upon a breach or default under the terms of this Agreement, the Agency shall, at its option and without waiving any rights under this Agreement, call the Note due, independent of the terms of this Agreement and proceed to collect on the Note.

### **2.4.1 Provision of a Public Right-Of-Way Access**

As part of the subdivision process, Participant shall deed or dedicate by plat, to Layton City, at no cost, a public right-of-way access connected to an intersection with Main Street to provide public access to the interior of the Site. The specific location and size of such public right-of-way shall be determined with the approval of a road dedication plat, or Commercial Subdivision or other division or dedication of the road, specifically approved as provided in the Layton Municipal Code, Title 18, Land Use Development. The conceptual orientation of the public right-of-way is illustrated in **Exhibit E**. Participant shall proceed with obtaining subdivision approval (if necessary) and complete the process in good faith and in a reasonable period of time, but no longer than five (5) years after Participant' acquisition of the last property within the Site.

### **2.4.2 Demolition and Environmental Remediation**

The Environmental Remediation of the Tom Randall Distributing Layton Bulk Plant at 137 South Main Street, Layton, Utah shall be performed under the Leaking Underground

Storage Tank Petroleum Cleanup Project Facility ID # 3000154, Release Site KYZ and shall not be the responsibility of Participant or the Agency.

Participant agrees when each parcel within the Site is acquired, the existing buildings shall be demolished and all debris removed from the Site within one (1) year of acquisition of all parcels referenced in this Agreement. Participant and Agency agree to remediate additional environmental contaminations, if any, as determined in the conclusions of the Limited Subsurface Investigations dated June 2, 2015 and June 5, 2015 conducted by EarthTouch Inc for the Site and in a manner consistent with the all Federal, State, and Local requirements. If there is any contamination on the King parcel not covered by the Leaking Underground Storage Tank Petroleum Cleanup Project Facility ID # 3000154, Release Site KYZ then the Agency shall bear up to the first fifty thousand dollars (\$50,000.00) of the costs of environmental remediation. Participant and Agency shall each be responsible for 50% of any additional remediation costs on the King parcel beyond the costs covered by the UDEQ Cleanup Project and the Agency's subsequent \$50,000.00. In no case shall the demolition and remediation of the site exceed one (1) year from acquisition of all parcels referenced in this Agreement. Participant shall not be responsible for any delays cause by the DEQ remediation which shall be an act of force majeure.

#### **2.4.3 Street Frontage Land Use**

Participant agrees, for itself and any successors in interest, that the development of the Main Street frontage of the Site shall be compliant with the MU-TOD zoning regulations and shall include, at a minimum, office/retail uses on the main floor level of the Main Street frontage. All residential dwelling units, if any, must be located above the main floor level or not on the Main Street Frontage. Office, retail and residential uses shall be the sole uses of all floors of the buildings unless otherwise approved by the Agency.

#### **2.4.4 Billboards/Signage**

Participant agrees to not erect, or cause to be erected, any billboards advertising off-site businesses on the entire development site, which shall include any associated property south of Gentile Street, east of Main Street, north of Layton Parkway, and west of I-15. All signage for on-site businesses shall comply with applicable City codes as may be modified by any development agreement.

### **2.5 Funding Responsibility**

The Parties understand and agree that funding for the construction upon the Site and related improvements comes entirely from either Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

## **2.6 Use of Tax Increment Funds**

Participant agrees to use the funding received from Agency solely for buying down of the purchase price of the property within the Site and direct costs associated with acquisition. The Agency shall have the opportunity to review all documents relating to the acquisition of the property within the Site, prior to making payment on behalf of Participant. Participant shall demonstrate to the Agency, through proper documentation, that the Tax Increment was used to purchase property within the Site or make the payment jointly to property owner and Participant.

## **3. OPERATION AND DEVELOPMENT OF THE SITE**

### **3.1 Development of the Site**

Participant will at all times be responsible for all development of the Site pursuant to the Plan and this Agreement. In light of the level of capital investment by the Participant in the development of the Site, the Agency has determined that it is in best interests of the residents of Layton City to provide Tax Increment, upon the terms and conditions set forth in this Agreement, to Participant as an incentive to undertake the development of the Site as contemplated in this Agreement and in the Project Area Plan.

### **3.2 Responsibility for Development Plans and Permits**

Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site. All plans must be in accordance with all applicable federal, state and local laws and regulations. Before commencing development, Participant must secure or cause to be secured, at its own expense, all zoning or land use approvals and permits required in order to proceed with the development of the Site.

### **3.3 Site Improvements and Future Development**

Participant agrees to improve and develop the Site according to the terms of this Agreement. During the term of this Agreement, Participant and the Agency hereby agree as follows:

#### **3.3.1 Hold Harmless Agreement**

Participant agrees to defend and hold the Agency and its directors, officers, agents, employees and consultants harmless for any and all claims, liability and damages arising out of any work or activity of Participant, their agents, or their contractors or employees.

#### **3.3.2 Hazardous, Toxic, and/or Contaminating Materials**

Participant agrees to defend and hold the Agency its directors, officers, agents, employees and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous,

toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the Agency or where such claims existed (regardless of whether asserted) prior to the effective date of this Agreement.

### **3.3.3 Indemnification**

Participant agrees to and shall indemnify and hold the Agency and its directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Participant or their agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of the Agency or its directors, officers, agents, employees and constants. Likewise, the Agency agrees and shall indemnify and hold Participant and their directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Agency or its agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of Participant or their directors, officers, agents, employees and consultants.

### **3.3.4 Discrimination**

Participant agrees for itself and their successors and assigns that they will not unlawfully discriminate against any employee or applicants for employment, or any contractor or any bidder on any contract.

### **3.3.5 Local, State, and Federal Laws**

Participant shall develop the Site in conformity with all applicable laws; provided, however, that nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law. Development of the Site shall also be subject to review and approval of the Agency.

### **3.3.6 County and Other Governmental Agency Permits**

Participant shall, at its own expense, secure or cause to be secured, any and all permits that may be required by Davis County or any other governmental agency affected by the development or operation of the Site.

### **3.3.7 Rights of Access**

Representatives of the Agency shall have the right of reasonable access to the Site and any and all improvements thereon for purposes of inspection, with reasonable and prior notice, and without charges or fees, at normal hours. Such representatives of the Agency and other visitors to the site shall observe any reasonable rules adopted by Participant for purposes of maintaining safety and security on the site, including requirements that such representatives or visitors be escorted by the General Manager or other designated agent of Participant at all times. Such representatives of the Agency shall be those who are so identified in writing by the Agency. The Agency agrees to and shall indemnify and hold Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from the Agency's entry upon or activities on the Site, except that this indemnity shall not apply to proportional negligence or willful misconduct of Participant.

### **3.3.8 Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Nothing herein shall be construed as requiring the Agency to pre-approve or prejudge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to appropriate hearing (if required), review, or compliance with any other requirement. Participant shall not have any obligation under this Agreement other than those specifically provided for herein.

## **4. EFFECT AND DURATION OF COVENANTS**

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be binding on Participant and any successors in interest to the Site for the benefit and in favor of the Agency, its successors and assigns during the Term of this Agreement.

## **5. DEFAULTS, REMEDIES AND TERMINATION**

### **5.1 Default**

If either the Agency or Participant fail to perform or delays performance of any material term or provision of this Agreement, such conduct constitutes a default of this Agreement ("Default"). The party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within the periods provided in Section 5.3 hereof.

## 5.2 Notice

If a Default under this Agreement occurs, the non-defaulting shall give written notice (a “**Default Notice**”) of the Default to the party in Default, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the injured party; but the injured party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

## 5.3 Cure Period

The non-defaulting party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting party, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have.

### 5.3.1 Rights and Remedies

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law), the non-defaulting party shall have all rights and remedies against the defaulting party as may be available at law or in equity to cure, correct or remedy any Default, to terminate this Agreement, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement, including the filing of the Note as a Trust Deed. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting party.

### **5.3.2 Legal Actions**

#### **5.3.2.1 Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Second District Court for the State of Utah located in Layton, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

#### **5.3.2.2 Services of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law.

Service of process on Participant shall be by personal service upon their Registered Agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

#### **5.3.2.3 Applicable Law**

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

## **6. GENERAL PROVISIONS**

### **6.1 Notices, Demands, and Communications Between the Parties**

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

### **6.2 Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If

such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

### **6.3 Nonliability of Agency Officials and Employees**

No director, officer, agent, employee or consultant of the Agency shall be personally liable to Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to Participant or to their successors, or on any obligations under the terms of this Agreement.

### **6.4 Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other party, or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause on the party of Agency's Executive Director or its governing board or on the part of Participant. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

### **6.5 Approvals**

Whenever the consent or approval is required of any party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

### **6.6 Time of the Essence**

Time shall be of the essence in the performance of this Agreement.

### **6.7 Interpretation**

The parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties hereto.

## **6.8 No Third-Party Beneficiaries**

It is understood and agreed that this Agreement shall not create for either party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

## **6.9 Incorporation of Exhibits**

All Exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

# **7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS**

## **7.1 Duplicate Originals**

This Agreement shall be executed in two duplicate originals, each of which shall be deemed an original. This Agreement (including its Exhibits) constitutes the entire understanding and agreement of the parties.

## **7.2 Integration**

When executed by the parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

## **7.3 Waivers and Amendments**

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

## 8. DATE OF AGREEMENT

The effective date of this Agreement shall be the date it is signed by the Agency.

Attest:



Thieda Wellman  
Thieda Wellman, Agency Secretary

State of Utah )  
: SS  
County of Davis )

On this 2nd day of June, 2016, before me, the undersigned Notary Public, personally appeared ROBERT J STEVENSON, who affirmed that he is the CHAIR, and acknowledged to me that he is authorized to, and did in fact execute the foregoing Participation Agreement. Witness my hand and official seal.

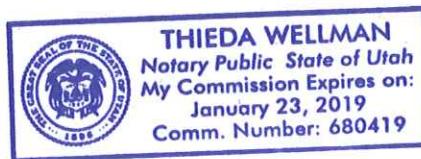
THE REDEVELOPMENT AGENCY OF LAYTON CITY

Robert J. Stevenson 6/2/16,  
Robert J Stevenson, Agency Chair Date

APPROVED AS TO FORM:

Gary R. Crane  
GARY R. CRANE, City Attorney

Thieda Wellman  
Notary Public



North Utah Holdings, LLC, a Utah Limited Liability Company



6-6-16

F. McKay Winkel, Managing Member

Date

State of Utah      )  
Utah : SS  
County of Davis      )

On this 6th day of June, 2016, before me, the undersigned Notary Public, personally appeared F. MCKAY WINKEL, who affirmed that he is the MANAGING MEMBER of NORTH UTAH HOLDINGS, LLC, a Utah Limited Liability Company, and acknowledged to me that he is authorized to, and did in fact execute the foregoing Participation Agreement. Witness my hand and official seal.



Karen F. Harbold

Notary Public

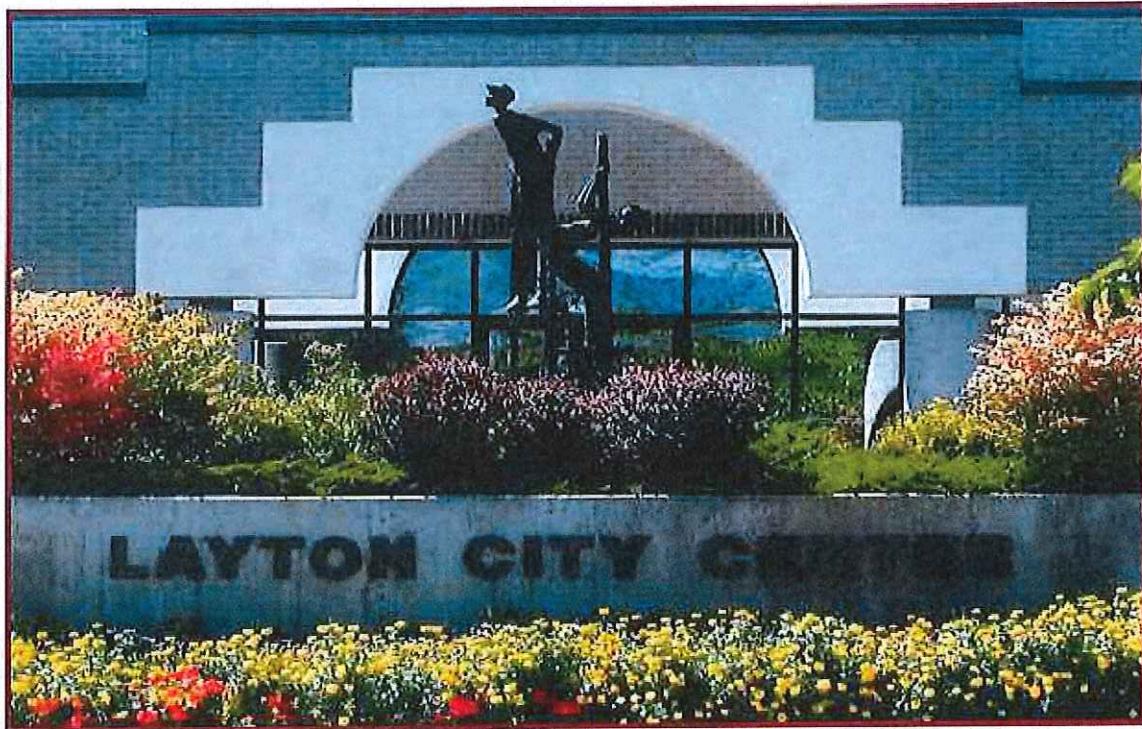
# **EXHIBIT "A"**

# **LAYTON CITY REDEVELOPMENT AGENCY**



Revised South Main / South Fort Lane  
Redevelopment Project Area Plan

June 17, 2004





**SOUTH MAIN STREET / SOUTH FORT LANE  
REDEVELOPMENT PROJECT AREA PLAN**

**June 17, 2004**

**Redevelopment Agency of Layton City  
437 North Wasatch Drive  
Layton, Utah**

## **DESCRIPTION OF THE REDEVELOPMENT PROJECT AREA**

The Redevelopment Project Area is enclosed within the following boundaries:

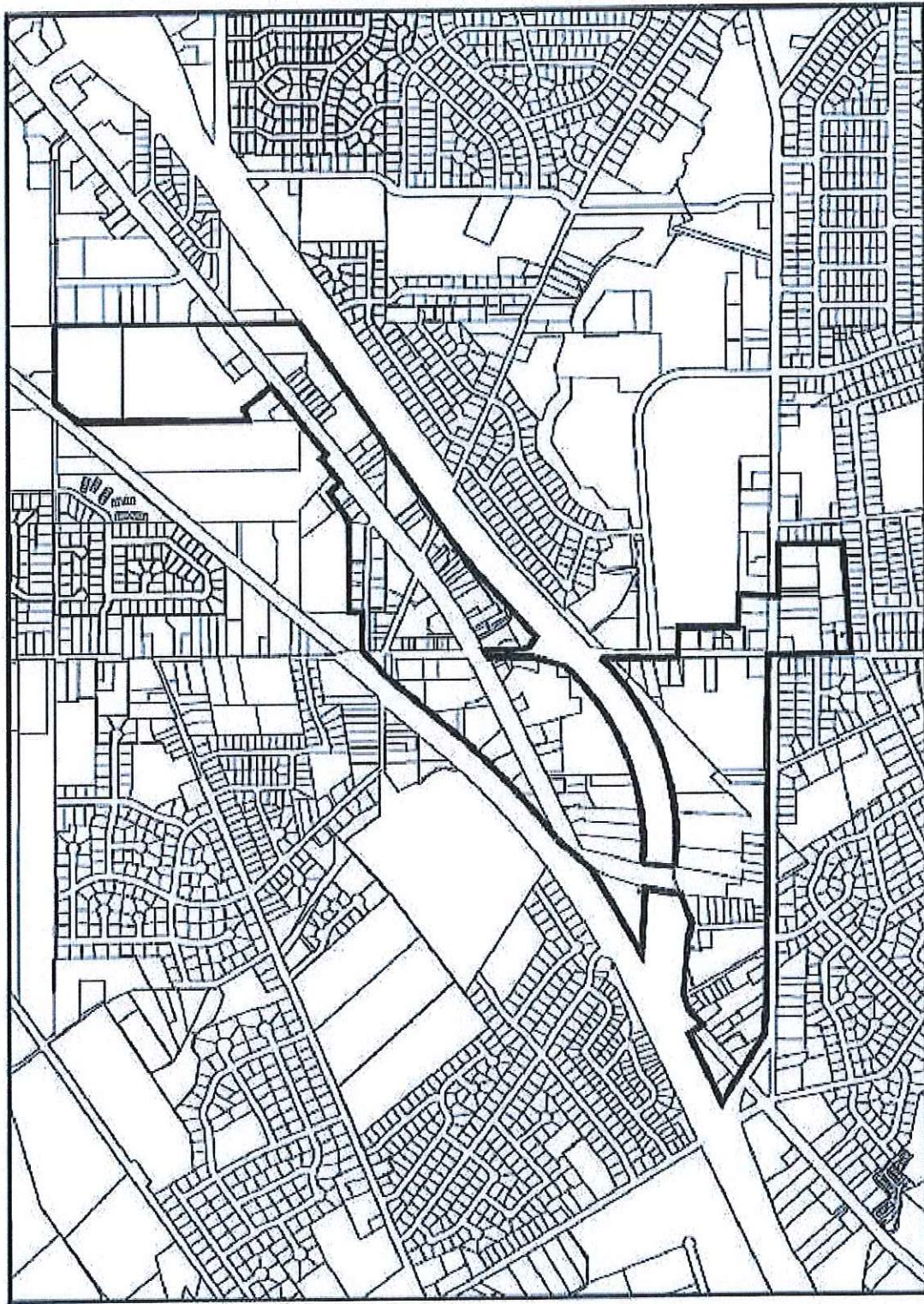
Beginning at the center of Section 20, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°59'25" East 1951.31 feet, thence South 34°49'32" East 1861.38 feet, thence southeasterly 567.10 feet along the arc of a 5818.16 foot radius curve to the left, (long chord bears South 36°23'06" East 566.88 feet, with a central angle of 5°35'05") thence South 42°05'33" East 709.69 feet, thence South 36°32'42" West 105.80 feet, thence South 81°28'09" West 121.34 feet, thence North 89°29'59" West 229.01 feet, thence South 33°27'12" East 67.12 feet, thence North 90°00'00" East 332.57 feet, thence South 74°06'30" East 273.90 feet, thence southeasterly 1762.83 feet along the arc of a 1914.03 foot radius curve to the right, (long chord bears South 21°28'57" East 1701.18 feet, with a central angle of 52°46'10") thence South 84°48'07" East 256.53 feet, thence northwesterly 1828.15 feet along the arc of a 1990.31 foot radius curve to the left, (long chord bears North 19°24'44" West 1764.55 feet, with a central angle of 52°37'39") thence South 89°37'41" East 616.01 feet, thence North 2°37'27" East 240.25 feet, thence North 89°45'20" East 469.00 feet, thence North 0°48'25" East 256.03 feet, thence South 86°47'37" East 313.08 feet, thence North 0°06'37" East 417.51 feet, thence North 89°46'22" East 507.18 feet, thence South 4°06'40" East 876.27 feet, thence South 89°05'26" West 656.39 feet, thence South 0°24'20" West 2780.48 feet, thence South 3°38'27" West 238.39 feet, thence South 31°59'40" West 635.83 feet, thence North 24°52'49" West 608.47 feet, thence North 57°52'14" East 126.68 feet, thence North 40°59'22" West 168.11 feet, thence North 18°46'44" West 124.99 feet, thence North 5°08'59" East 447.81 feet, thence North 13°33'21" East 123.85 feet, thence North 21°01'48" West 244.92 feet, thence North 80°08'17" West 288.37 feet, thence South 3°23'55" West 522.92 feet, thence North 30°16'58" West 779.34 feet, thence North 48°36'10" West 382.59 feet, thence northwesterly 1075.88 feet along the arc of a 5693.11 foot radius curve to the left, (long chord bears North 42°39'40" West 1074.28 feet, with a central angle of 10°49'40") thence North 49°57'40" West 817.65 feet, thence North 42°54'04" West 270.30 feet, thence North 0°33'39" East 305.01 feet, thence North 89°08'08" West 105.00 feet, thence North 0°4'46" East 718.32 feet, thence North 33°30'43" West 284.36 feet, thence North 51°20'25" East 115.26 feet, thence North 38°41'47" West 244.72 feet, thence North 48°00'46" East 53.81 feet, thence North 38°53'20" West 695.55 feet, thence South 51°26'29" West 278.58 feet, thence South 18°26'31" East 99.15 feet, thence North 89°57'09" West 1359.60 feet, thence North 49°27'25" West 238.20 feet, thence North 0°8'11" East 613.02 feet to the point of beginning.

Contains 194.67 acres.

## **MAPS OF THE PROJECT AREA**

The following maps describe the project area boundary, the various land uses within the project area, and the zoning of each parcel in the project area. The principal streets in the project area are shown on each of the maps.

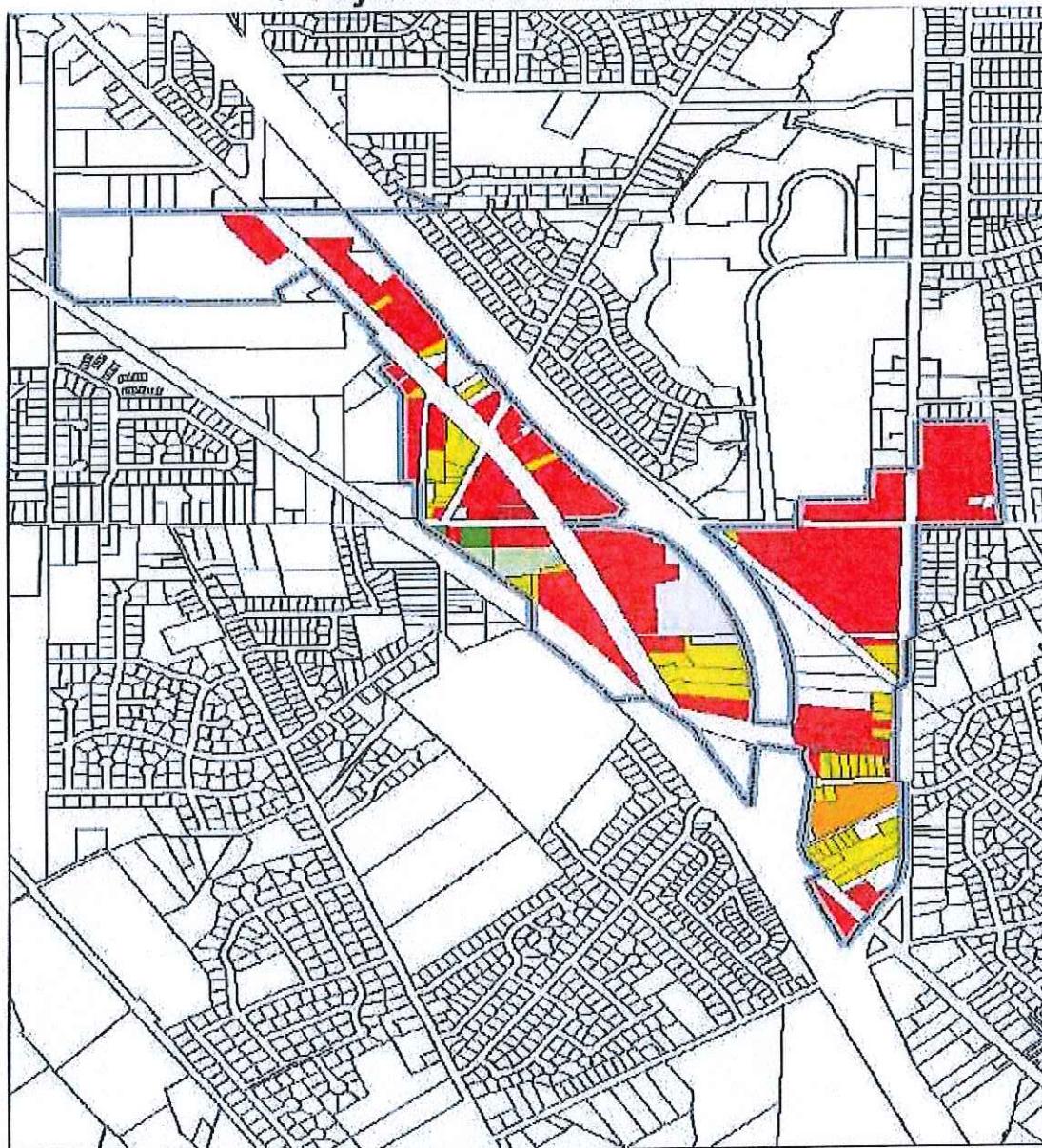
# RDA PROJECT AREA



### Land Use

The various land use categories are described in the following map with the corresponding acreage for each land use category. The permitted land uses within the Redevelopment Project Area shall be those uses permitted by the officially adopted zoning ordinances of the City, as those ordinances may be amended from time to time.

**RDA**  
**Project Area Land Use**



## **POPULATION DENSITIES**

There are 52 single-family residential structures currently being used for residential occupancy in the Project Area. No new single family residential uses are contemplated in the project area. The majority of these structures are zoned commercial and are considered to be legal non-conforming structures and uses.

In addition, there is one mobile home park (Cedar Wood) with 65 units/pads, and one multiple family residential complex (El Dorado Apartments) with 96 units. Both projects are considered conforming to their respective zoning districts.

## **BUILDING INTENSITIES**

The building intensities within the boundaries of the Redevelopment Project Area were analyzed along with the condition of each structure as described in the blight survey. No unusual evidence of building intensities was found in the Redevelopment Project Area.

## **STANDARDS TO GUIDE REDEVELOPMENT IN THE PROJECT AREA**

In order to provide owners and developers maximum flexibility in the redevelopment of land located within the Redevelopment Project Area and to encourage and obtain the highest quality design and development, specific development controls for the land uses identified above are not set forth herein. Each redevelopment proposal may be considered subject to: (1) appropriate elements of the City's master or general plan; (2) the planning and zoning code of the City; (3) other applicable building codes and ordinances of the City; (4) a review and recommendation by the Layton City Planning Commission; and (5) approval by the Agency to ensure that the redevelopment is consistent with the Redevelopment Plan.

## **REVIEW OF REDEVELOPMENT PROPOSALS**

An advisory design review committee established by the Agency, which shall include one or more members of the planning commission, may also make a review of redevelopment proposals. Each redevelopment proposal by an owner or a developer shall be accompanied by site plans, development data and other appropriate material that clearly describes the extent of redevelopment proposed, including land coverage, setbacks, heights and bulk proposed, off-street parking and loading to be provided, use of public transportation, and any other data determined to be necessary or requested by the City or the Agency.

## **HOW THE PURPOSES OF STATE LAW WILL BE ATTAINED BY REDEVELOPMENT**

It is the intent of the Agency, with the assistance and participation of private owners, to remove, if possible, all blight and blighting influences from the Project Area by the removal or clearance of buildings, structures, or improvements which are blighted, or through the renovation or rehabilitation of buildings, structures or improvements which are blighted. With the clearance of land or the rehabilitation of buildings and structures, private development should be encouraged to undertake new development or redevelopment which will strengthen the tax base of the community in furtherance of the objectives set forth in the Act.

### **Redevelopment Plan Restrictions**

Pursuant to the provisions of Sections 17B-4-404 of the Act, the Redevelopment Plan provides as follows:

#### **100 Acre Limitation**

The Redevelopment Project Area described in the Redevelopment Plan may not exceed 100 acres of privately-owned property unless the governing board of each local taxing entities that levies taxes upon property within the proposed Redevelopment Project Area consents in writing to exceeding the limit of 100 acres of privately owned property in the Redevelopment Project Area.

On May 14, 2002, the Taxing Entity Committee approved the boundaries of the Redevelopment Project Area to exceed 100 acres in size. The approved boundary of the Project Area is 143 acres as described in the first section of this document.

#### **Three (3) Year Time Limit to Commence Implementation**

Implementation of the Project Area Plan shall commence within three (3) from the adoption date of the Project Area Plan unless the Plan is adopted again.

#### **OWNER PARTICIPATION**

The Redevelopment Plan provides for reasonable opportunities to participate in the redevelopment of property in the Redevelopment Project Area by the owners of property in the Redevelopment Project Area if the owners (and certain tenants having the right to become owners enter into a participation agreement with the Agency agreeable with the Agency. The Agency and the City have previously adopted an Owner Participation Plan, copies of which may be obtained from the office of the Agency upon request. The Owner Participation Plan permits owners within the Redevelopment Project Area reasonable opportunities to participate in the redevelopment of the Project Area by executing a participation agreement.

with the Agency. The Owner Participation Plan provides the following kinds of possible participation:

#### **Guidelines for Owner Participation**

Property owner participation in the redevelopment project may consist of one or more of the following:

1. Retaining, maintaining and, if necessary, rehabilitation of all or portions of the owner's property.
2. Acquiring adjacent or other properties in the redevelopment project area.
3. Selling all or portions of the owner's improvements to the agency or other private sector entities, retaining the land, and developing the owner's property.
4. Selling all or portions of the owner's property to the agency or private sector entities and purchasing other property in the redevelopment project area.
5. Selling all or a portion of the owner's property to the agency or private sector entities and obtaining preferences to reenter the redevelopment project area.
6. Other methods approved by the agency.

Tenant participation:

1. Becoming an owner of property in the redevelopment project area, subject to the opportunities of persons who are already record owners of property in the redevelopment project area.
2. Other methods approved by the agency.

#### **HOW THE PROPOSED REDEVELOPMENT CONFORMS TO THE GENERAL PLAN**

The Redevelopment Plan conforms to the general plan of the City in the following respects:

### *Zoning Ordinance*

The majority of the property is currently zoned commercial, either "C-H" (Highway Commercial) along Main Street or "CP-2" (Community Commercial) in the South Fort Lane area. The City general plan calls for the entire Project Area to become commercial uses. The proposed development is permitted under the current zoning classifications of the City. If any zoning changes are required, such changes would be submitted to the City for consideration and approval, according to the Municipal Code.

### *Building Codes*

The construction of all new buildings and improvements and the rehabilitation of any existing buildings or improvements will be done in accordance with the standards set forth in the general plan of the City and in accordance with International Building Code adopted by the City. The City will issue all building permits for construction or rehabilitation in order to assure that new development or redevelopment is consistent with the general plan and zoning ordinance of the City.

### *Planning Commission Approval*

The provisions of this Redevelopment Plan were reviewed and approved by the Planning Commission. The Redevelopment Plan is consistent with the general plan or of the City.

## **FINDINGS OF BLIGHT IN THE PROJECT STUDY AREA**

On December 6, 2001 the Redevelopment Agency of Layton, Utah adopted Resolution No. 01-02 entitled, "South Main and Fort Lane Survey Area". This resolution authorized the undertaking of a study of the survey area to determine whether or not a redevelopment project or projects within the area are feasible and/or desirable.

The purpose of this study is to survey and analyze the incidence of blighted conditions, if any, which may exist within the survey area. The Utah Redevelopment Agencies Act defines "blight" as a wide range of problems including, but not limited to, physical deterioration of buildings, deterioration of the environment, and health and social problems. The Act provides, along with other elements, that any three of a number of factors may constitute blight in an area. In recognition of the complexity of a blight analysis, this study measures a wide range of influences. This report summarizes the field and records survey undertaken by

trained professionals, and the principal findings and conclusions.

### **Background of the Blight Survey Area**

The Survey Area demonstrates a variety of different uses from residential, commercial on to light industrial. Vacant parcels and buildings are interspersed throughout the entire survey area. Varying degrees of marginally used land and buildings are also present. Since this area could be considered the Downtown of Layton, better use of this vacant and marginally used land would benefit the City. The area also represents much of the historic core of Layton City.

The present zoning districts are CH, Highway Commercial, CP-2, Community Commercial, R-MH, Residential Mobile Home Park, R-M2, Residential Medium Density, and (DTO), Downtown Overlay with CH and R-M2.

### **Blight Criteria**

In accordance with the Utah Redevelopment Agencies Act, redevelopment planning involves a multi-step process. The process begins with the designation of a "Redevelopment Survey Area" and the performance of a detailed study of existing factors such as health, safety, crime, and physical conditions. Once this is done, a determination of the presence or absence of blight conditions in the area can be made. If blight is determined after holding a public hearing and the presentation of evidentiary materials the Redevelopment Agency and the City Council are authorized to continue the redevelopment planning. The Agency prepares a preliminary plan for the area. Following a public hearing to consider the preliminary plan and its adoption, redevelopment activities are undertaken to provide the needed corrective action as may be appropriate to assist in the removal of blight.

### **Definition of Blight**

In order to conduct an accurate and useful study, an understanding of blight is required. The term "blight" describes a wide range of problems ranging from physical deterioration of buildings to the presence of health and social problems. The term "blight" is a legal term enacted by the legislature. It may not mean the same as "blight" when used in common every day language. For purposes of this study, the Utah Redevelopment Agencies Act shall be cited and used as a basis for defining blight. The following excerpt from the law defines "blight" and the factors that contribute to it:

"Blight" or a "blighted area" is an area with buildings or improvements used or intended to be used for residential, commercial, industrial, or other urban purposes or any combination of these uses, which:

- (i) contains buildings and improvements, not including out-building, on at least 50% of the number of parcels and the area of those parcels is at least 50% of the Survey Area;
- (ii) and is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors:
  - (A) defective character of physical construction;
  - (B) high density of population and overcrowding;
  - (C) inadequate provisions for ventilation, light, sanitation, and open spaces;
  - (D) mixed character and shifting of uses, which results in obsolescence, deterioration, or dilapidation;
  - (E) economic deterioration, or continued disuse;
  - (F) lots of irregular form and shape and inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;
  - (G) existence of inadequate streets, open spaces, and utilities;
  - (H) existence of lots or other areas which are subject to being submerged by water; and
  - (I) existence of any hazardous or solid waste defined as any substance defined, regulated, or listed as 'hazardous substances,' 'hazardous materials,' 'hazardous waste,' 'toxic waste,' 'pollutant,' 'contaminant,' or 'toxic substances,' or identified as hazardous to human health or the environment under state or federal law or regulation.

The definition of "blight" or "blighted area" in the Act is, by necessity, broad in outline and criteria since it must apply to varied problems and conditions throughout the State. For the purpose of this study, we have tried to define "blight" or "blighted area" narrowly and more specifically, selecting only those factors that could be evaluated in a survey of the area, and from public records.

The Act provides specific criteria for a finding of "blight." We have divided our evaluation into two parts, as follows:

#### 1. LEVEL 1 ANALYSIS

An area may only be considered for designation as a "blighted area" if it first meets two criteria as set forth in Section 17B-4-604(1)

- (a) contains buildings or improvements used or intended to be used for residential, commercial, industrial, or other urban purposes, or any combination of those uses;
- (b) contains buildings or improvements on at least 50% of the number of

parcels of private real property whose acreage is at least 50% of the acreage of the private real property within the proposed redevelopment project area.

## 2. LEVEL 2 ANALYSIS

In order for an area to be determined "blighted", the area must meet one or both of the following criteria:

- (a) Is unfit or unsafe to occupy; or
- (b) May be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime.

The determination of either or both of the above Level 2 conditions shall be based on finding three or more of the following blight criteria present within the survey area.

### **Legislative Criteria**

Letters refer to Section 17B-4-604(1)(c) Utah Code.

<u>FACTOR</u>	<u>INDICATOR(S)</u>	<u>SOURCE</u>
(A) Defective character of physical construction.	Building condition Poor site design	Field survey Field survey
(B) Not Used		
(C) Not Used		
(D) Not Used		
(E) Economic deterioration or continued disuse.	Vacant buildings Vacant land High turnover	Field survey Field survey Business license
(F) Lots of irregular form and inadequate size for proper usefulness and development	Poor/no access Poor size Poor frontage	Plat maps Plat maps Plat maps
(G) Existence of inadequate open space, utilities, streets	Inadequate storm sewer	Engineering Department
(H) Existence of lots or other areas subject to being submerged by water.	Areas within 100 or 500-year flood plain	FEMA maps

(I) Existence of any hazardous pollutant or contaminant substances.	Presence of contaminant or pollutant substances	State underground leaking fuel tanks list
---	---	---

### **Summary and Conclusions of Blight**

As stated in the beginning of this report, the purpose of this blight study was to determine whether or not the Survey Area is a blighted area as defined by law. Based on the findings, it is the opinion of the staff that the Survey Area:

(1) Meets the statutory criteria:

- (a) contains buildings and improvements on at least 50% of the number of parcels and the area of these parcels is at least 50% of the project area.
- (b) more than three of the blighting criteria are present within the survey area.

(2) Therefore the Survey Area is a 'blighted area' as defined by law.

Redevelopment action is necessary to reverse present trends and to allow the Survey Area to realize its full economic potential to the benefit of the City of Layton.

### **DESCRIPTION OF WAY IN WHICH THE REDEVELOPMENT WILL REDUCE OR ELIMINATE ANY FINDINGS OF BLIGHT**

The Redevelopment Agency and the City Council have found that the real property located within the boundaries of the Project Area is a blighted area. It is the purpose of the Redevelopment Plan to aid in the removal of blight within the Project Area by rehabilitation or renovation of buildings and structures that were found to be blighted, if such blighting factors can be eliminated through the renovation and rehabilitation of such buildings and structures.

With the proposal that the Project Area be incorporated as part of a Redevelopment Plan, a number of the owners of real property located within the Project Area have indicated a willingness to undertake a program which has or will result in the removal or rehabilitation of many of the blighted buildings and structures and the construction of new buildings and improvements on the cleared land or the rehabilitation of existing buildings and improvements within the Project Area.

### **Use of Eminent Domain in the Redevelopment Project Area**

The use of eminent domain to acquire property within the project area is subject to the provisions of Section 17B-4-1101 of the Redevelopment Act. The use of eminent domain in the project area for the acquisition of property must commence within five (5) years after the effective date of the redevelopment project area plan.

### **Description of the Specific Project or Projects That Are The Object of the Proposed Redevelopment**

The Agency believes on the basis of public input received by the Agency from the owners at a public hearing and in other discussions with owners of real property within the Project Area that a number of separate redevelopment projects may be undertaken by one or more private owners to accomplish the purposes of the Redevelopment Plan. The Agency believes that because of the size of the proposed project area, a master plan showing a mixed use of office, commercial and retail should be undertaken by the owner showing an orderly development over a multi-year period. Among the proposals which the Agency believes are possible or forthcoming are:

1. The immediate demolition of blighted structures in the Project Area.
2. The construction of one or more new City streets to open up new business activities.

### **OTHER REDEVELOPMENT PLAN OBJECTIVES**

#### **Continued Use of Existing Buildings**

Redevelopment shall include and encourage the continuance of existing buildings or uses so long as blight conditions, if any, are removed and the buildings have an economic life after rehabilitation of at least twenty (20) years. The Agency believes there are existing buildings that should be continued or rehabilitated within the Project Area.

#### **Retail Sales**

Because blight has been found in the Redevelopment Project Area, the development of retail sales is an objective of the Project Area in order to strengthen the tax base of the community and the State.

### **Residential Development**

The provision of new residential development that is compatible with a mixed use environment and a transit oriented environment is an objective of the Project Area Plan through the implementation of appropriate planning and zoning amendments for the project area.

### **STANDARDS PROPOSED AS THE BASIS FOR THE REDEVELOPMENT**

#### **Statement of Development Objectives**

- Removal of structurally substandard buildings or improvements to permit the return of the Redevelopment Project Area land to economic use and new construction.
- Removal of impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels served by improved public utilities, infrastructure improvements and new community facilities.
- The elimination of environmental deficiencies, including: irregular sized lots, improper drainage, weeds and excessive vegetation. The land is currently underutilized.
- Achievement of an environment reflecting a high level of concern for architectural, landscape and urban design principles, developed through encouragement, guidance, appropriate controls, and professional assistance to owner participants and redevelopers.
- Promote and market sites for development or redevelopment that would be complementary to existing businesses and industries or would enhance the economic base through diversification.
- Provide utilities, streets, curbs, sidewalks, parking areas, landscape areas, plantings, and/or street furniture to give the area a new look and to attract business activity.
- Provide for the strengthening of the tax base and economic health of the entire community, region and the State of Utah.
- Provide improved public streets and road access to the area to facilitate better traffic circulation and reduce traffic hazards.
- Insure compatible relationships among land uses and quality standards for their development, such that the area functions as a unified and viable center of social and economic activity for the City.
- Provide attractive pedestrian circulation systems.
- Coordinate and improve the transportation system, including streets and public transit services within the project area.

### **General Design Objectives**

The general design of redevelopment projects may be developed by the Agency in cooperation with the Planning Commission. The particular elements of the design should be such that the overall redevelopment of the Project Area will:

- Provide an attractive urban environment;
- Blend harmoniously with the adjoining areas;

### **Provide for the optimum amount of open space in relation to new buildings**

- Provide unobtrusive parking areas, appropriately screened and landscaped to blend harmoniously with the area;
- Provide open spaces and pedestrian walks which are oriented to the directions of maximum use and designed to derive benefit from topographical conditions and views;
- Provide for the maximum separation and protection of pedestrian access routes from vehicular traffic arteries;
- The development of land within the Redevelopment Project Area will be undertaken in such a manner that available off-street parking will be maintained to the maximum degree. Special emphasis will be placed on phases of construction of all new development projects to support the parking program.

### **Specific Design Objectives and Control**

#### **Building Design Objectives**

- All new buildings shall be of design and materials which will be in harmony with other new development and shall be subject to design review and approval by the Agency.
- The design of buildings shall take optimum advantage of available views and topography and shall provide, where appropriate, separate levels of access.
- Buildings within the Redevelopment Project Area should be designed and placed to act as significant landmarks in the Redevelopment Project Area and the City.

#### **Open Space Pedestrian Walks and Interior Drive Design Objectives**

- All open spaces, pedestrian walks and interior drives shall be designed as an integral part of an overall site design, properly related to existing and proposed buildings.
- Attractively landscaped open spaces shall be provided, which will offer maximum usability to occupants of the building for which they are developed.

- Landscaped, paved, and comfortably graded pedestrian walks should be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings on the same site.
- The location and design of pedestrian walks should afford maximum safety and separation from vehicular traffic, and should recognize desirable views of new and existing development in the area and surrounding community.
- Materials and design of paving, retaining walls, fences, curbs, benches, and other accouterments, shall be of good appearance, easily maintained, and indicative of their purpose.

#### Landscape Design Objectives

- A coordinated landscaped design over the entire Redevelopment Project Area incorporating landscaped treatment for open space, roads, paths, and parking areas into a continuous and integrated design shall be a primary objective.
- Primary landscape treatment shall consist of non deciduous shrubs, ground cover, and shade trees as appropriate to the character of the Redevelopment Project Area.

#### Project Improvement Design Objectives

- Public rights-of-way. All streets, sidewalks and walkways within public rights-of-way will be designed or approved by the City and will be consistent with all design objectives.
- Street lighting and signs. Lighting standards and signs of pleasant appearance and modern illumination standards shall be provided as necessary.

#### Techniques to Achieve The Redevelopment Plan Objectives:

Activities contemplated in carrying out the plan in the area include the acquisition, clearance and rehabilitation of properties in the Redevelopment Project Area.

- Rehabilitation:

- Implementation of Redevelopment Projects:

Redevelopment projects may be undertaken and carried out as provided in Section 17B-4-401, 402 and 403, of the Act. Funding for redevelopment projects and activities shall be provided for in the Project Area or the annual budget of the Agency.

- Cooperation with the Community and Public Bodies:

The community and certain public bodies are authorized by state law to aid and cooperate, with or without consideration, in the planning, undertaking, construction, or operation of this project. The Agency shall seek the aid and cooperation of such public bodies in order to accomplish the purposes of redevelopment and the highest public good.

### **IMPLEMENTATION OF REDEVELOPMENT PROJECT PROGRAM**

The proposed South Main/South Fort Lane Redevelopment Project Area Budget and project program has been developed using the following guidelines:

1. The City of Layton left 123 acres of undeveloped land out of the survey area that will be impacted by the interchange. This was done so that all taxing entities will have an increase in taxes during the same time that the Redevelopment Agency is receiving taxes.
2. Most of the budget data was developed by Diversified Technology Consultants, The Hoyt Company and Sanders Herman Architects when they accomplished the Old Downtown Layton Revitalization Plan in 2000.
3. The budget reflects the build-up of the increment and uses 100% of the increment the first 15 years and then reduces by the school district increment.
4. The budget also has \$8,033,649 in contingent liabilities that hopefully will not be needed but needs to be reflected in the budget just in case that it is needed. This is 36% of the budget.
5. This budget addresses all six of the blight conditions outlined in the blight study.
  - A. Defective character of physical construction is being addressed by the City Building Department. It is also being addressed by this budget by making the area a prime area for development so the two addresses identified will be redeveloped.
  - B. Economic deterioration or continued disuse. The vacant land will become more valuable and will be sought after by developers.
  - C. Lots of irregular form and inadequate size for proper usefulness and development will become more valuable and will be sought after by

developers.

- D. Existence of inadequate open space, utilities, streets. All of the Inadequate utilities will be upgraded as well as the streets, sidewalks and open space.
- E. Existence of lots of other areas subject to being submerged by water. Part of the area is within the 100-year flood plain however by upgrading the Storm Sewers and making the planning staff aware of the problem we can require plans to address the flooding potential, thereby minimizing the blight problem.
- F. Existence of any hazardous pollutant or contaminant substances is being worked on by the State EPA. They have identified three underground leaking tanks.

#### **RELOCATION PLAN**

The Project Area Plan does not include any plans, or participation on the part of the RDA, for the relocation of any residents or businesses. This process will be managed by the private sector.

#### **PROVISIONS FOR AMENDING THE REDEVELOPMENT PLAN**

The Redevelopment Plan may be amended or modified any time by the Agency in the same manner as if the amendment or modification constituted a Redevelopment Plan being originally proposed or as provided in Section 17B-4-411, of the Act.

#### **HISTORIC STRUCTURES AND HISTORIC USES**

The preservation and use of historical buildings is important to help maintain the character and charm of the City. Historical buildings should be encouraged to remain in private ownership and continue to be put to a beneficial use to help ensure their preservation if consistent with the plan.

Existing buildings or historical uses included in or eligible for inclusion in the National Register of Historic Places, or the State Register are to be continued if possible. The Redevelopment Plan does hereby incorporate the provisions of Subsection 9-8-404(1), Utah Code Annotated.

The First National Bank building (Farmers Coop) is the only structure in the plan area that is listed on the National Register of Historic Places. Other significant buildings exist and are listed in the Layton City Reconnaissance Survey (1996). In

addition, the Layton City Historic Preservation Commission has completed Intensive Level Surveys (ILS) on 10 historic structures along Main Street at the following addresses:

- 27 South Main Street (Ernest Layton Building)
- 23 South Main Street (Howard's O.P. Skaggs Store)
- 15-19 South Main Street (Sanitary Market)
- 13 South Main Street (Shell Service Station)
- 10 North Main Street (Adams & Sons, General Mercantile Store)
- 16 North Main Street (Davis County Furniture)
- 90 North Main Street (Dr. Walter Whitlock Office)
- 110 North Main Street (Golden Rule Store)
- 50 West Gentile Street (First National Bank of Layton)
- 85 North Church Street (St. Rose of Lima Catholic Church)

The Historic Preservation Commission will continue to document the historic structures in the plan area. In addition, the Commission is scheduled to prepare a walking tour brochure for the area.

#### **OTHER CONSIDERATIONS**

The south Main Street area falls under the guidelines of the Downtown Overlay Zone (DTO). The overlay zone regulates what type of land uses are allowed in the area. The primary goal of the overlay zone is to eliminate higher impact uses that are not conducive to the existing and future character of the area.

The recommendations of this Plan and other relevant planning documents support the amendment of the overlay zone to add design guidelines and to expand the overlay zone to include the south Fort Lane area. In addition, supporting documents recommend the addition of a residential component in the study area. Residential densities in the project area would increase the day and night population to support a mixed-use environment.

#### **SUPPORTING DOCUMENTS**

The following documents are part of the South Main Street/South Fort Lane Redevelopment Project Area Plan and are incorporated by reference. The documents support the statements and findings incorporated in the Project Area Plan.

- Blight Survey South Main Street/South Fort Lane Redevelopment Project Area – January 22, 2002
- South Main Street/South Fort Lane Redevelopment Project Area Budget – May 2002

- South Main Street/South Fort Lane Redevelopment Project Area – Housing Plan
- Land Use/Population Element of the Layton City General Plan
- Transportation Element/Master Street Plan of the Layton City General Plan
- Old Downtown Revitalization Plan – February 2002

Other supporting documents include:

- Layton City CDBG 2001 and 2002 Annual Action Plans
- South Main Street Interchange Environmental Assessment "Draft"
- Envision Utah Transit Oriented Development (TOD) demonstration project
- Wasatch Front TOD Guidelines – Envision Utah

#### **BENEFITS OF FINANCIAL ASSISTANCE PROVIDED BY THE REDEVELOPMENT AGENCY**

The redevelopment budget for the South Main/South Fort Lane Redevelopment Project is a twenty-five year budget in the amount of \$23,866,690. This budget receives 100 % of the increase in property tax for fifteen years and then excludes the property tax for the school district for the last ten years. The State Code requires that twenty percent of the funds be allocated to affordable housing so \$4,773,330 is budgeted for housing. These funds will be allocated each year from the yearly increment. The balance of the expenditures, \$19,093,360 will be spent during the first nine years of the project. This will require the agency to bond so that the funds are available to accomplish the programmed work during the first years of the project. The expenditures are all for the infrastructure work and needs to be accomplished at the start of the project. The infrastructure that will be provided is all of the utilities, streets, sidewalk, curb & gutter, trees, lighting, traffic control, signage, benches and trash receptacles. Some funds are budgeted for the I-15 interchange and for loan guarantees. These funds are on a contingency basis and will only be used if other funding is not available.

The benefits provided to the private sector by this plan are limited but felt to be adequate to accomplish the plan. The infrastructure will be provided and the private sector will be responsible for their on-site funding. The budget projects a private investment of \$136,000,000 within the project area. This equates to a 570% return on investment during the twenty-five years, in addition to the projected \$75,000,000 investment that will take place on the fringe area of the project area. Using the fringe area investment, the return on investment increases to around 900%.

Other financial benefits provided by the project include the projected \$966,765 in property tax funds that the school district will receive during the last 10 years of the

project. The \$963,900 per year property tax shared by all the taxing entities that are projected from the investments made on the fringe area of the project area.

The main benefit derived from this project is hard to equate to dollars. The area has a decreasing tax base now and contains some blight. The tax base will make a drastic increase and the blight will disappear. The residents of Layton City will have a very nice pedestrian friendly area to live in, to shop in, to walk in, to eat in and to be proud of for years to come.

Why did the city look at the redevelopment process to address the needs of this area? The answer is two fold; first, the new interchange will bring a big increase of traffic into the area. This will bring many developers to the area and the city needed a plan in place to help direct the development into a pedestrian friendly, cohesive area that will function well for many years. The second reason is that the area needed some incentive to make the development happen in the proper way. That is to tie it all together in its look, in its design and in its function. By providing the infrastructure and the plan the city can see that this happens. The cost of the infrastructure should not be shouldered by the entire city but should be born by the area it self, so the redevelopment process looked like the best option to use.

## South Main/South Fort Lane Redevelopment Budget Detail

Year	Expenditure	Description			
2005	\$430,000	Environmental for Interchange			
	10,000	Sidewalks			
	<u>4,000</u>	Administrative, advertising, postage & printing			
	\$444,000				
	<u>44,400</u>	10% Contingency			
	\$488,400				
2006	\$196,800	Storm Drain Main Street	2400lf	@\$40.00	
	103,800	Storm Drain Gentile St	1700lf	@\$40.00	
	52,800	Storm Drain Church St	600lf	@\$40.00	
	50,200	Storm Drain Cross St	550lf	@\$40.00	
	106,400	Storm Drain Fort Lane	1100lf	@\$40.00	
	<u>151,400</u>	Demolition of existing lines			
	\$661,400				
	<u>66,140</u>	10% Contingency			
	\$727,540				
2007	\$204,000	Water Lines Main Street	2400lf	@\$85.00	
	144,500	Water Lines Gentile St	1700lf	@\$85.00	
	51,000	Water Lines Church St	600lf	@\$85.00	
	46,750	Water Lines Cross St	550lf	@\$85.00	
	<u>156,100</u>	Demolition of existing lines			
	\$602,350				
	<u>60,235</u>	10% Contingency			
	\$662,585				
2008	\$252,000	Sanitary Sewer Main St	2400lf	@\$105.00	
	178,000	Sanitary Sewer Gentile St	1700lf	@\$105.00	
	63,000	Sanitary Sewer Church St	600lf	@\$105.00	
	57,750	Sanitary Sewer Cross St	550lf	@\$105.00	
	<u>192,500</u>	Demolition of existing lines			
	\$743,250				
	<u>74,325</u>	10% Contingency			
	\$817,575				
2009	\$4,180,000	Right-of-way for Interchange			
	<u>2,360,000</u>	Design/Engineering for Interchange			
	\$6,540,000	(Contingent Liability)			

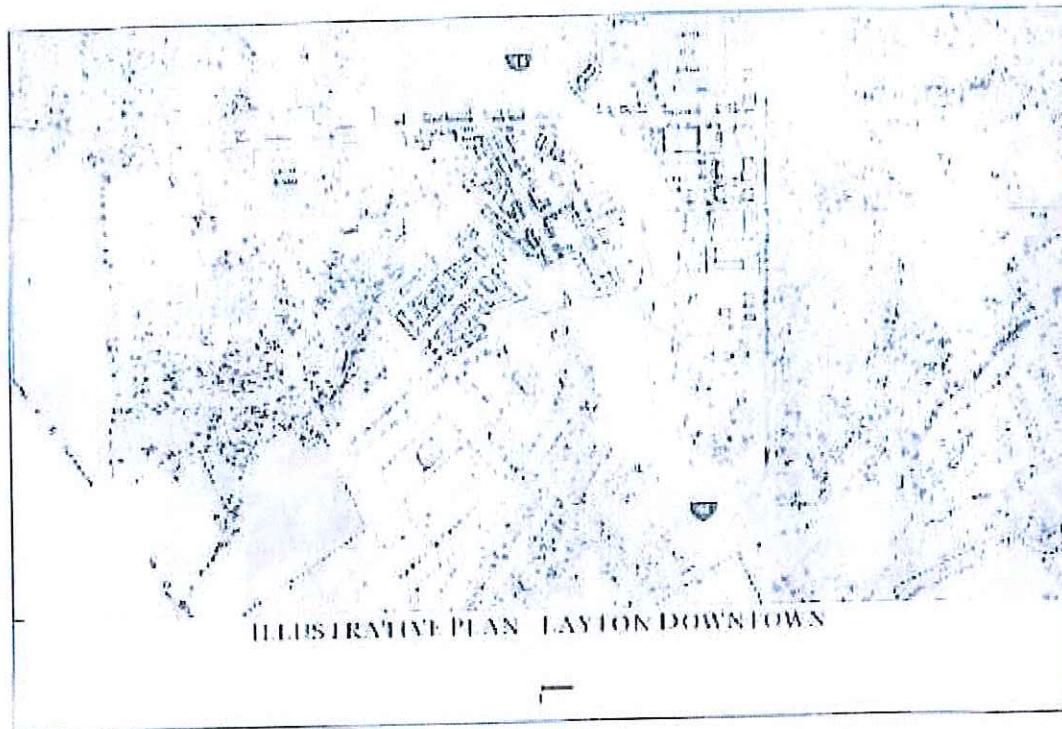
2010	\$1,046,850	Streets	Main Street	49,850sy	@\$21.00
	98,000	Streets	Gentile St	4,300sy	@\$23.00
	65,090	Streets	Church St	2,830sy	@\$23.00
	69,460	Streets	Cross St	3,020sy	@\$23.00
	<u>80,850</u>	Demolition on Main and Church		53,900sy	@\$ 1.50
	<u>\$1,360,250</u>				
	<u>136,025</u>	10% Contingency			
	<u>\$1,496,275</u>				
2011	\$ 75,000	Upgrade traffic control @ Main and Gentile			
	90,000	New traffic control @ Main and Church			
	75,000	New pedestrian signals @ Main and Kays creek			
	35,000	Traffic signal interconnect system (U.G.)			
	187,200	Crosswalks @ Main 15,600sf specialty paving @ \$12.00			
	<u>40,000</u>	Regulatory traffic signs, pavement markings with epoxy paint			
	<u>\$502,200</u>				
	<u>50,220</u>	10% Contingency			
	<u>\$552,420</u>				
	\$281,160	Curbs	Main Street	23,430lf	@\$12.00
	36,000	Curbs	Gentile St	3,000lf	@\$12.00
	25,200	Curbs	Church St	2,100lf	@\$12.00
	26,400	Curbs	Cross St	2,200lf	@\$12.00
	86,316	Curbs	Fort Lane	7,193lf	@\$12.00
	<u>55,000</u>	Curb Demolition		22,000lf	@\$ 2.50
	<u>\$510,076</u>				
	<u>51,008</u>	10% Contingency			
	<u>\$561,084</u>				
	\$629,200	Sidewalk	Main Street	114,400sq ft	@\$5.50
	80,850	Sidewalk	Gentile Street	14,700sq ft	@\$5.50
	56,100	Sidewalk	Church Street	10,200sq ft	@\$5.50
	59,400	Sidewalk	Cross Street	10,800sq ft	@\$5.50
	395,615	Sidewalk	Fort Lane	71,930sq ft	@\$5.50
	<u>68,400</u>	Demolition		45,600sq ft	@\$1.50
	<u>\$1,289,565</u>				
	<u>128,957</u>	10% Contingency			
	<u>\$1,418,522</u>				
	\$2,532,026	Total for 2011			

2012	\$1,080,000	Lights	Fort Lane	144 16'	@\$ 7,500
	760,000	Lights	Main Street	76 30' ornamental cobra	@\$10,000
	637,500	Lights	Main Street	85 16' pedestrian	@\$ 7,500
	285,000	Lights	Gentile Street	38 16' pedestrian	@\$ 7,500
	187,500	Lights	Church Street	25 16' pedestrian	@\$ 7,500
	210,000	Lights	Cross Street	28 16' pedestrian	@\$ 7,500
	<u>\$3,160,000</u>				
	<u>304,900</u>			10% Contingency	
	<u>\$3,464,900</u>				
	\$ 76,800	Trees	Main Street	128 4"	@\$600
	40,250	Trees	Main Street	115 3"	@\$350
	17,500	Trees	Gentile Street	50 3"	@\$350
	11,550	Trees	Church Street	33 3"	@\$350
	12,600	Trees	Cross Street	36 3"	@\$350
	<u>50,400</u>	Trees	Fort Lane	144 3"	@\$350
	<u>\$ 209,100</u>				
	<u>20,910</u>			10% Contingency	
	<u>\$ 230,010</u>				
	\$ 108,000	Benches		90	@\$1,200
	72,000	Trash Receptacles		90	@\$ 800
	75,000	Bus Shelters		5	@\$15,000
	30,000	Veterans Memorial Park Enhancements			
	9,000	Directional and Image Signage			
	<u>400,000</u>	Burying existing overhead electrical, telephone and cable			
	<u>\$ 694,000</u>				
	<u>69,400</u>			10% Contingency	
	<u>\$ 763,400</u>				
	<u>\$4,458,310</u>			Total for 2012	

2013 \$3,041,429 Loan Guarantees (Contingent Liability)

**Redevelopment  
Revised Budget**  
South Main/South Fort Lane

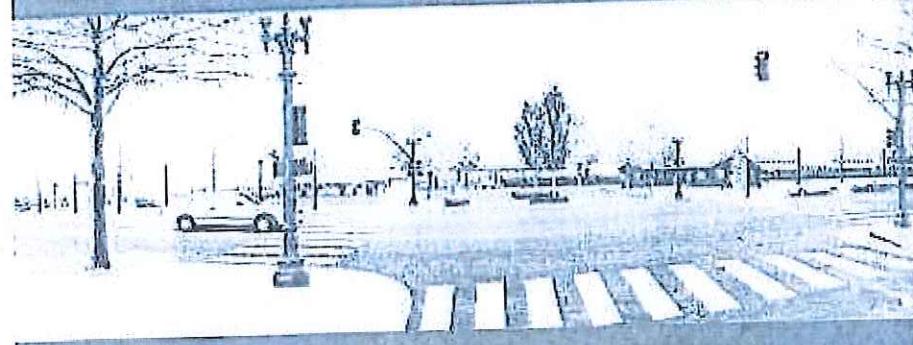
Year	Projected Investment	Projected Increment	Projected Housing	Projected Expenditures
2005	\$26,000	\$334	\$67	\$488,400
2006	50,000	642	128	727,540
2007	4,000,000	51,408	10,281	662,585
2008	10,000,000	128,200	25,640	817,575
2009	20,000,000	257,040	51,408	6,540,000
2010	60,000,000	771,120	154,224	1,496,275
2011	100,000,000	1,285,200	257,040	2,532,026
2012	111,000,000	1,426,572	285,314	4,458,310
2013	136,000,000	1,747,872	349,574	3,041,429
2014	136,000,000	1,747,872	349,574	0
2015	136,000,000	1,747,872	349,574	0
2016	136,000,000	1,747,872	349,574	0
2017	136,000,000	1,747,872	349,574	0
2018	136,000,000	1,747,872	349,574	0
2019	136,000,000	1,747,872	349,574	0
2020	136,000,000	1,045,285	261,321	0
2021	136,000,000	1,045,285	261,321	0
2022	136,000,000	1,045,285	261,321	0
2023	136,000,000	1,045,285	261,321	0
2024	136,000,000	1,045,285	261,321	0
2025	136,000,000	1,045,285	261,321	0
2026	136,000,000	1,045,285	261,321	0
2027	136,000,000	1,045,285	261,321	0
2028	136,000,000	1,045,285	261,321	0
2029	136,000,000	1,045,285	261,321	0
		\$26,608,470	\$5,844,330	\$20,764,140



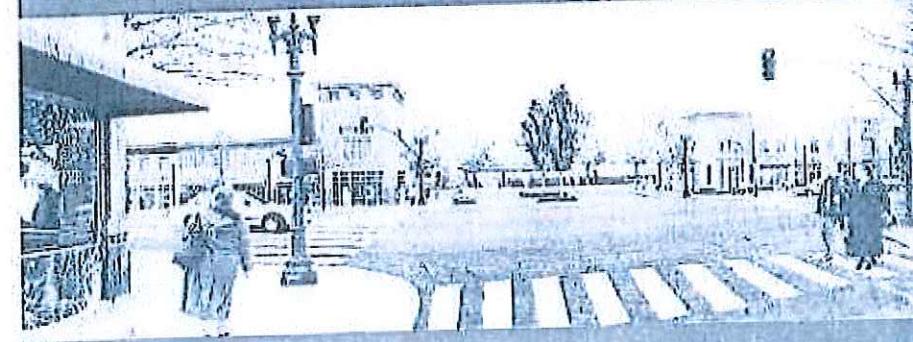
Layton, UT:  
Main Street



Layton, UT:  
Main Street



Layton, UT:  
Main Street



# **EXHIBIT "B"**

SCANNED

0 04.44

REB 17 2005

ORDINANCE 04-44

**AN ORDINANCE OF LAYTON CITY ADOPTING THE REVISED SOUTH MAIN/SOUTH FORT LANE REDEVELOPMENT PROJECT AREA PLAN**

**WHEREAS**, the Redevelopment Agency of Layton City has designated a survey area within Layton City; and

**WHEREAS**, the Redevelopment Agency has designated a revised project area from within the survey area named the Revised South Main/South Fort Lane Redevelopment Project Area; and

**WHEREAS**, the Redevelopment Agency has adopted a revised plan for the South Main/South Fort Lane project area.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF LAYTON, UTAH:**

1. The revised project area plan is attached hereto, incorporated into this Ordinance and designated as the official revised redevelopment project area plan for the South Main/South Fort Lane project area.
2. The legal description of the Revised South Main/South Fort Lane Project Area is:

Beginning at a point lying N 89-53-25 W 687.06 feet from the west quarter corner of Section 21, Township 4 North Range 1 West Salt Lake Base and Meridian and running thence N 89-30-34 W 830.756 ft; thence S 00-03-17 W 632.081; thence S 49-12-19 E 200.938; thence S 89-31-30 E 1,353.513; thence N 18-04-53 W 109.309; thence N 51-47-29 E 281.724; thence S 38-29-02E 352.316; thence S 39-59-19 W 351.360; thence S 48-03-03 W 53.939; thence S 35-48-42E 244.883; thence S 51-58-43 W 103.821; thence S 39-10-46 E 135.817; thence S 31-31-21 E 149.796; thence S 29-25-52 W 17.608; thence S 00-25-18 W 709.821; thence S 89-05-46 E 105.011; thence S 00-53-48 W 303.574; thence S 29-24-40 E 77.38; thence S 49-22-52 E 670.059; thence S 49-27-02 E 285.248; thence S 00-22-47 E 263.979; thence SE along the arc of a 5,120.37 ft radius curve to the right. Arc length 802.105 ft, Delta angle 8-58-31; thence N 83-44-18 E 232.814; thence S 48-05-19 E 383.298; thence S 29-59-05 E 778.341; thence N 03-42-15 E 522.413; thence S 80-03-26 E 315.099; thence S 03-12-00 E 49.266; thence S 17-50-27 E 186.043; thence S 06-47-41 W 105.65; thence S 06-17-25 W 470.026; thence S 05-56-11 E 36.258; thence S 20-14-41 E 76.941; thence S 40-38-36 E 170.795; thence S 61-09-29-W 95.037; thence S 49-34-19 W 32.841; thence S 24-30-34 E 609.251; thence N 29-48-17 E 219.039; thence N 40-38-02 E 86.374; thence N 33-03-08 E 336.21; thence N 09-33-10 E 192.817; thence N 00-02-36 W 660.699; thence S 87-43-48 W 49.138; thence N 00-50-54 N 52.328; thence N 1-9-49 E 2,117.61; thence N 89-40-43 E 677.537; thence N 67-01-28 E 63.828; thence N 00-48-51 E 943.28; thence N 89-40-43 E 573.87; thence N 03-46-42 W 876.358; thence N 89-48-21 W 506.990; thence S 00-36-59 W 418.219; thence N 78-21-30 W 80.530; thence N 89-11-01 W 232.518; thence S 01-05-28 W 255.988; thence N 89-59-33 W 468.863; thence S 01-20-38 W 239.929; thence N 89-11-25 W 624.669; thence Along the arc of a 2000 ft radius curve to the right, angle bearing S 19-08-32 E Chord distance 1,767.178 ft, arc length 1,830.392; thence N 84-62-02 W 217.584; thence Along the arc of a 1,920 ft radius curve to the left, chord bearing N 21-09-36 W, chord distance 1,700.562 ft, arc length 1,761.716 ft; thence N 74-12-23 W 32-53-02 W 65.393; thence S 89-10-16 E 229.018; thence N 83-46-12 E 60.481; thence N 37-11-59 E 105.027; thence N 41-47-29 W 711.036; thence N 37-27-50 W 212.685; thence N 34-24-45 W 618.658; thence N 88-16-31 W 55.023; thence N 32-38-02 W 428.347; thence N 53-20-17 E 13.713; thence N 34-09-58 W 1,138.246 To Point of Beginning.

Contains 199.71 acres

3. The purpose and intent of this plan is to help guide the growth and development of the area and at the same time insures that the infrastructure is upgraded to accommodate that growth.
4. The board made a finding of blight on February 21, 2002 and passed Resolution 01-06. No new finding of blight has been made.
5. The board finds and determines that:
  - (a) there is a need to effectuate a public purpose;
  - (b) there is a public benefit under the analysis described in Subsections 17B-4-403(1)(t) and (2);
  - (c) it is economically sound and feasible to adopt and carry out the revised project area plan;
  - (d) the revised project area plan conforms to the community's general plan; and
  - (e) carrying out the revised project area plan will promote the public peace, health, safety, and welfare of the City of Layton.
6. The board further finds and determines that: (a) the use of eminent domain is or may be necessary to the execution of the revised redevelopment project area plan however, eminent domain will not be used in the area added to the project area by this revised plan; and adequate provisions have been made for just compensation for property acquired by eminent domain; (b) the plan does not plan on the displacement of any residential occupants in the project area but if the project area plan may result in the temporary or permanent displacement of any residential occupants in the project area the agency has a feasible method for the relocation of families and persons displaced from the project area and comparable dwellings exist or will be provided to the families and persons and the board is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and, pending the development of these housing facilities, there will be available to the displace occupants adequate temporary housing facilities at rents comparable to those in the community a the time of their displacement

APPROVED AND ADOPTED by the City Council of Layton, Utah this 17th day of June, 2004.

ATTEST:

Thieda Wellman  
THIEDA WELLMAN, City Recorder



Jerry Stevenson  
JERRY STEVENSON, Mayor

SCANNED

0 04.44

JUN 21 2004

STATE OF UTAH )  
COUNTY OF DAVIS ) : ss.

I, **Thieda Wellman**, do hereby certify that I am the duly qualified and acting **City Recorder** of Layton City Corporation, a municipal corporation located in Davis County, State of Utah. I further certify that on the **18<sup>th</sup> day of June, 2004**, I posted **Ordinance 04-44** to which this certificate is attached, by posting a full, true and correct copy thereof, in each of the following three public places within the corporate limits of Layton City, to wit:

**One copy at Layton City Hall**

**One copy at Davis County Library, Layton Branch**

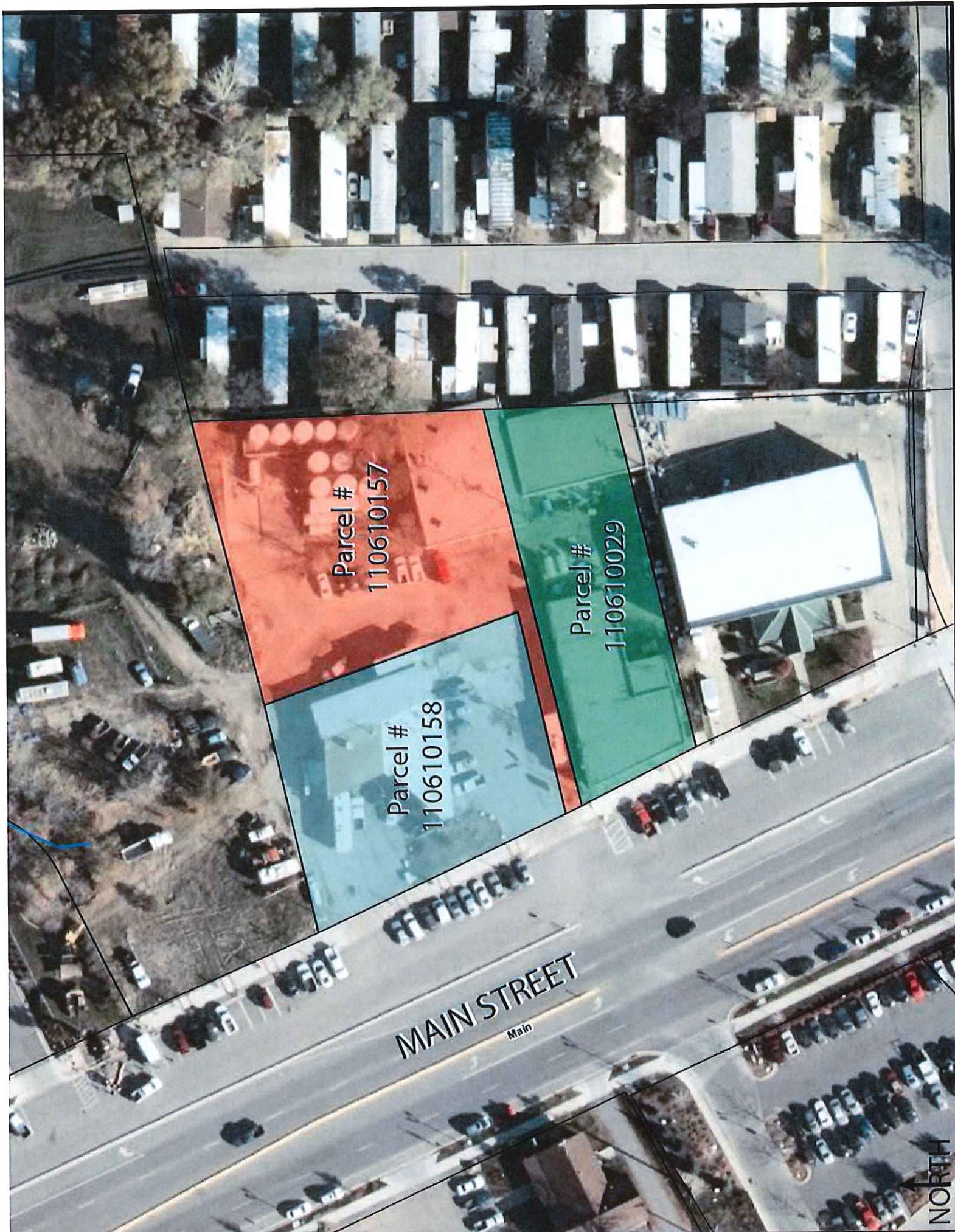
**One copy at Layton City Police Department**

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the corporate seal of Layton City this **18<sup>th</sup> day of June, 2004**.



*Thieda Wellman*  
THIEDA WELLMAN, City Recorder

# **EXHIBIT "C"**



## **EXHIBIT "D"**

### Legal Description(s)

**Land Serial Number 11-061-0158:**

BEG ON A PT ON THE E LINE OF HWY 91; N 89 $^{\circ}$ 27'20" W 1473.12 (1459.80) FT & S 727.24 (740.74) FT FR THE N 1/4 COR OF SEC 28-T4N-R1W, SLM; TH N 25 $^{\circ}$ 25'00" W 159.47 FT ALG THE E LINE OF HWY 91; TH N 76 $^{\circ}$ 33'00" E 136.00 FT; TH S 19 $^{\circ}$ 51'55" E 157.19 FT; TH S 76 $^{\circ}$ 39'00" W 120.50 FT TO THE POB. CONT. 0.46 ACRES

Land Serial Number 11-061-0157:

BEG 1528.22 FT W 582.84 FT S & N 76<sup>33'</sup> E 136.00 FT FR NE COR OF NW 1/4 OF SEC 28-T4N-R1W, SLM; TH N 76<sup>33'</sup> E 171.21 FT; TH S 1<sup>56'</sup> E 119.95 FT; TH S 76<sup>36'</sup> W 137.85 FT; TH N 19<sup>51'55"</sup> W 113.97 FT TO BEG. CONT. 0.42 ACRES ALSO: BEG 1476.71 FT W; 691.22 FT S & N 76<sup>33'</sup> E 120.50 FT FR NE COR OF NW 1/4 OF SEC 28-T4N-R1W, SLM; TH N 76<sup>36'</sup> E 137.85 FT; TH S 1<sup>55'</sup> E 55 FT; TH S 76<sup>39'</sup> W 235.92 FT; TH N 25<sup>25'</sup> W 15.53 FT; TH N 76<sup>33'</sup> E 120.50 FT; TH N 19<sup>51'55"</sup> W 43.22 FT TO BEG. CONT. 0.19 ACRES TOTAL ACRES 0.61 ACRES

Land Serial Number 11-061-0029:

BEG ON E LINE OF HWY 91 AT A PT WHICH S 25 $^{\circ}$ 25' E 55 FT FR A PT ALSO ON E LINE OF SD HWY 91, 1476.71 FT W, 691.22 FT S FR NE COR OF NW 1/4 OF SEC 28-T4N-R1W, SLM, S 25 $^{\circ}$ 25' E 75 FT, N 76 $^{\circ}$ 39' E 205.42 FT, N 1 $^{\circ}$ 55' W 74.95 FT, S 76 $^{\circ}$ 39' W 240 FT TO BEG. CONT. 0.36 ACRES

# **EXHIBIT "E"**



**REDEVELOPMENT AGENCY OF LAYTON CITY**  
**AGENDA ITEM COVER SHEET**

**Item Number:** 3.

**Subject:**

Consent and Acknowledgement for Transfer of Property from F. M. Winkel Family, LLC, to Winkel Rock, LLC, Including Certain Obligations as Required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and F. M. Winkel Family, LLC – RDA Resolution 23-02 – 159 South Main Street

**Background:**

Resolution 23-02 is a request for the Redevelopment Agency of Layton City (Agency) for consideration to approve a request to transfer property ownership from F.M. Winkel Family, LLC (Owner), to Winkel Rock, LLC (Developer), for the purpose of developing the property.

Winkel Rock LLC, the development arm representing Rockworth Companies and F.M. Winkel, LLC, is ready to develop Phase I of the proposed development. As part of the development process, Winkel Rock LLC requires authority to sign on behalf of and encumber the property title.

The existing Agreement known as Participation Agreement By and Between The Redevelopment Agency of Layton City (Agency), And F. M. Winkel Family, LLC, executed on April 2, 2018, requires Agency approval to transfer ownership in accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement. The Participation Agreement has certain obligations which are the responsibility of the Owner to complete. However, the remaining obligations are all attached to the development of Phase I as proposed. The approval of this request will allow for the implementation of those obligations and the development to be completed. The Agreement is very specific and only applies to the following parcels of property:

Parcel A: 11-061-0036, containing 0.7 acres, or 30,492 square feet

For this purpose, both the Owner and the Developer are requesting the Agency to consider allowing the property to be transferred from F.M. Winkel, LLC, to Winkel Rock, LLC.

**Alternatives:**

Alternatives are to: 1) Adopt Resolution 23-02 approving the Consent and Acknowledgement for Transfer of Property from F. M. Winkel Family, LLC, to Winkel Rock, LLC, including certain obligations as required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and F. M. Winkel Family, LLC; 2) Adopt Resolution 23-02 with any amendments the Agency deems appropriate; or 3) Not adopt Resolution 23-02 and remand to Staff with directions.

**Recommendation:**

Staff recommends the Agency adopt Resolution 23-02 as submitted, approving the Consent and Acknowledgement for Transfer of Property from F. M. Winkel Family, LLC, to Winkel Rock, LLC, including certain obligations as required in the Participation Agreement By and Between the Redevelopment Agency of Layton City and F. M. Winkel Family, LLC, and authorize the Chair to sign the resolution on behalf of the Agency.

**RDA RESOLUTION 23-02**

**A RESOLUTION APPROVING THE CONSENT AND ACKNOWLEDGEMENT  
FOR TRANSFER OF PROPERTY FROM F. M. WINKEL FAMILY, LLC, TO  
WINKEL ROCK, LLC, INCLUDING CERTAIN OBLIGATIONS AS REQUIRED  
IN THE PARTICIPATION AGREEMENT BY AND BETWEEN THE  
REDEVELOPMENT AGENCY OF LAYTON CITY AND F. M. WINKEL  
FAMILY, LLC**

**WHEREAS**, the Redevelopment Agency of Layton City (hereinafter called the "Agency") has prepared and adopted, and Layton City through its Council (hereinafter called "the City") and the adoption of Ordinance 04-44, has approved, the South Main/South Fort Lane Redevelopment Project Area Plan and Budget dated June 17, 2004 (hereinafter called the "Development Plan"), providing for the development of certain lands within the Development Plan boundary (hereinafter called the "RDA Plan Area") and the future uses of such land, which Development Plan has been filed in the office of the City Recorder of the City and the Agency; and

**WHEREAS**, to enable the City and the Agency to achieve the objectives of the Development Plan, and particularly to make the land in the RDA Plan Area viable for development by private enterprise, and influence additional development and investment in accordance with the uses specified in the Development Plan, the Agency desires to approve this Consent and Acknowledgment with F. M. Winkel Family, LLC (hereinafter called "the Owner"), for the purpose of development of land as it pertains to the Site; and

**WHEREAS**, the Owner owns certain land ("Site") situated in the RDA Plan Area, which land is located at 159 S Main Street Layton, Utah 84041 and otherwise known as Parcel 11-061-0036 as recorded in the Davis County Utah Recorder's Office, containing approximately 0.7 acres, and the Owner desires to Transfer ownership of the Site for and in accordance with the uses specified in the Development Plan and as more particularly described in this Consent and Acknowledgement; and

**WHEREAS**, the Owner entered into a Participation Agreement with the Agency, known as the Participation Agreement by and between The Redevelopment Agency of Layton City, and F. M. Winkel Family, LLC, executed on June 2, 2016 (hereinafter called the "Agreement"), which requires the Owner to request Agency's prior consent to "deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency"; and

**WHEREAS**, the Owner is requesting approval of the Agency to Transfer Property, in accordance with Section 1.7.1 and Section 1.7.2 in the Agreement, from the Owner to Winkel Rock, LLC (Developer) for the purpose of developing Phase I on the Site and as more particularly described in this Consent and Acknowledgement; and

**WHEREAS**, this Consent and Acknowledgment will allow the Developer to complete, and obligate the Developer to meet, all of the remaining responsibilities of the Owner as outlined in the Participation Agreement.

**WHEREAS**, the City and the Agency believe that the development of the Site, pursuant to this Consent and Acknowledgment ("Consent") and the Agreement, and Development Plan, and the fulfillment generally of this Consent and the intentions set forth herein, are in the vital and best interests of the City, the Agency and in the best interest of the health, safety, morals, and welfare of City residents; and are in accord with the public purposes and provisions of the applicable State laws and requirements under which said Project has been undertaken.

**NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF LAYTON, UTAH:**

1. That the agreement entitled "CONSENT AND ACKNOWLEDGEMENT BETWEEN THE REDEVELOPMENT AGENCY OF LAYTON CITY AND F. M. WINKEL FAMILY, LLC" which is attached hereto and incorporated herein by this reference, be adopted and approved.
2. That the Agency Chair be authorized to execute the Agreement.
3. This Resolution shall become effective immediately upon adoption by the Agency.

**PASSED AND ADOPTED** by the City Council of Layton, Utah, this 4th day of May, 2023.

---

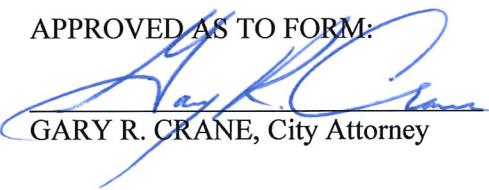
JOY PETRO, Mayor

ATTEST:

---

KIMBERLY S READ, City Recorder

APPROVED AS TO FORM:

  
GARY R. CRANE, City Attorney

---

  
CHAD WILKINSON, Department Director  
Community and Economic Development

## CONSENT AND ACKNOWLEDGMENT

### [Participation Agreement]

This CONSENT AND ACKNOWLEDGMENT (“**Consent**”), dated effective as of \_\_\_\_\_, 2023 (the “**Effective Date**”), is made by and between F.M. WINKEL FAMILY, LLC, a Utah limited liability company (“**Participant**”) and the REDEVELOPMENT AGENCY OF LAYTON CITY, a political subdivision of the State of Utah (the “**RDA**”).

### RECITALS

A. Participant and RDA are parties to that certain Participation Agreement, dated April 2, 2018 (the “**Participation Agreement**”). The Participation Agreement sets forth a payment obligation by the RDA (the “**RDA Payment**”) to Participant, which RDA Payment obligation has been completed by RDA, and also sets forth certain development obligations to be completed by Participant (the “**Obligations**”) for the “Site” (as defined in the Participation Agreement), and otherwise referred to as Tax Parcel ID: #11-061-0036.

B. Winkel Rock, LLC, a Utah limited liability company (“**Developer**”) contemplates developing the Site and other adjacent real property as a multifamily, retail, commercial, and hospitality development (the “**Mixed-Use Project**”). Developer is currently in the process of obtaining the necessary land use approvals and permits necessary for the first phase of the Mixed-Use Project (the “**Phase 1**”).

C. Participant, by and through its member(s) and/or manager(s) or other affiliate(s), has a membership interest in Developer and is contributing, deeding, or otherwise conveying the Site to Developer, and other adjacent real property, for the completion of Phase 1 of the Mixed-Use Project.

D. In accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement, RDA’s prior written consent is required for deeding, selling, conveying, assigning, or otherwise alienating or leasing the Site.

E. RDA is entering into this Consent for the limited purpose of (i) consenting to the conveyance of the Site from Participant to Developer; and (ii) agreeing to the scope of the outstanding Obligations as of the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participant and RDA agree as follows:

1. **Consent.** In accordance with Section 1.7.1 and 1.7.2 of the Participation Agreement, the RDA hereby provides its express consent to the contribution, deed, and/or conveyance of the Site by Participant to Developer.

2. **Outstanding Obligations.** The RDA and Participant hereby agree and acknowledge that the following table sets forth the Obligations under the Participation Agreement and the status for the same:

Section	Obligation	Status
2.4	Participant agrees to sign a Promissory Note (the Note) for the full amount of the Tax Increment paid to Participant.	Completed by Participant.
2.4.1	Participant agrees that the existing building(s) shall be demolished, and all debris removed from the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.2	Participant agrees that development of the Main Street	Outstanding – this obligation will

	frontage of the Site shall be compliant with MU-TOD zoning regulations and include, at minimum, office/retail uses on the main floor level of the Main Street frontage.	be completed by Developer in its development of Phase 1.
2.4.3	Participant agrees to not erect, or cause to be erected, any billboards advertising off-site business on the entire development site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.1; 3.3	Participant will at all times be responsible for all development of the Site pursuant to the “Plan” (as defined in the Participation Agreement). Participant agrees to improve and develop the Site according to the terms of the Participation Agreement.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.2	Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.

As set forth in the Participation Agreement, upon completion of the foregoing Obligations through construction of improvements depicted on the attached Exhibit A, the RDA shall issue a “Certificate of Completion” and thereafter terminate and release the promissory note contemplated under the Participation Agreement. The parties agree that upon issuance of the last certificate of occupancy on Phase 1, as depicted on Exhibit A, the RDA shall issue a Certificate of Completion and consider all of the Obligations discharged and terminated as they relate to the owner of the Site and Participant under the Participation Agreement.

### 3. Miscellaneous.

a. Governing Law. This Consent shall be governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule.

b. Successors and Assigns. This Consent shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

c. Counterparts. This Consent may be executed in counterparts, each of which will be deemed an original, but which together constitute one and the same instrument. Delivery of executed signature pages by facsimile or email transmission shall be effective.

*[Signatures and Acknowledgments Follow]*

IN WITNESS WHEREOF, the Participant and Developer have executed this Consent as of the Effective Date.

**PARTICIPANT:**

**F.M. Winkel Family, LLC,**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of F.M. Winkel Family, LLC, a Utah limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
[Signatures and Acknowledgments Continue on Following Page]

*Signature Page to Assignment and Assumption Agreement*

**RDA:**

REDEVELOPMENT AGENCY OF LAYTON CITY,  
a political subdivision of the State of Utah

By \_\_\_\_\_

Name \_\_\_\_\_

Its: Board Chair

**Attest:**

By: \_\_\_\_\_  
Secretary

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as the chair of the governing board of the REDEVELOPMENT AGENCY OF LAYTON CITY, a political subdivision of the State of Utah.

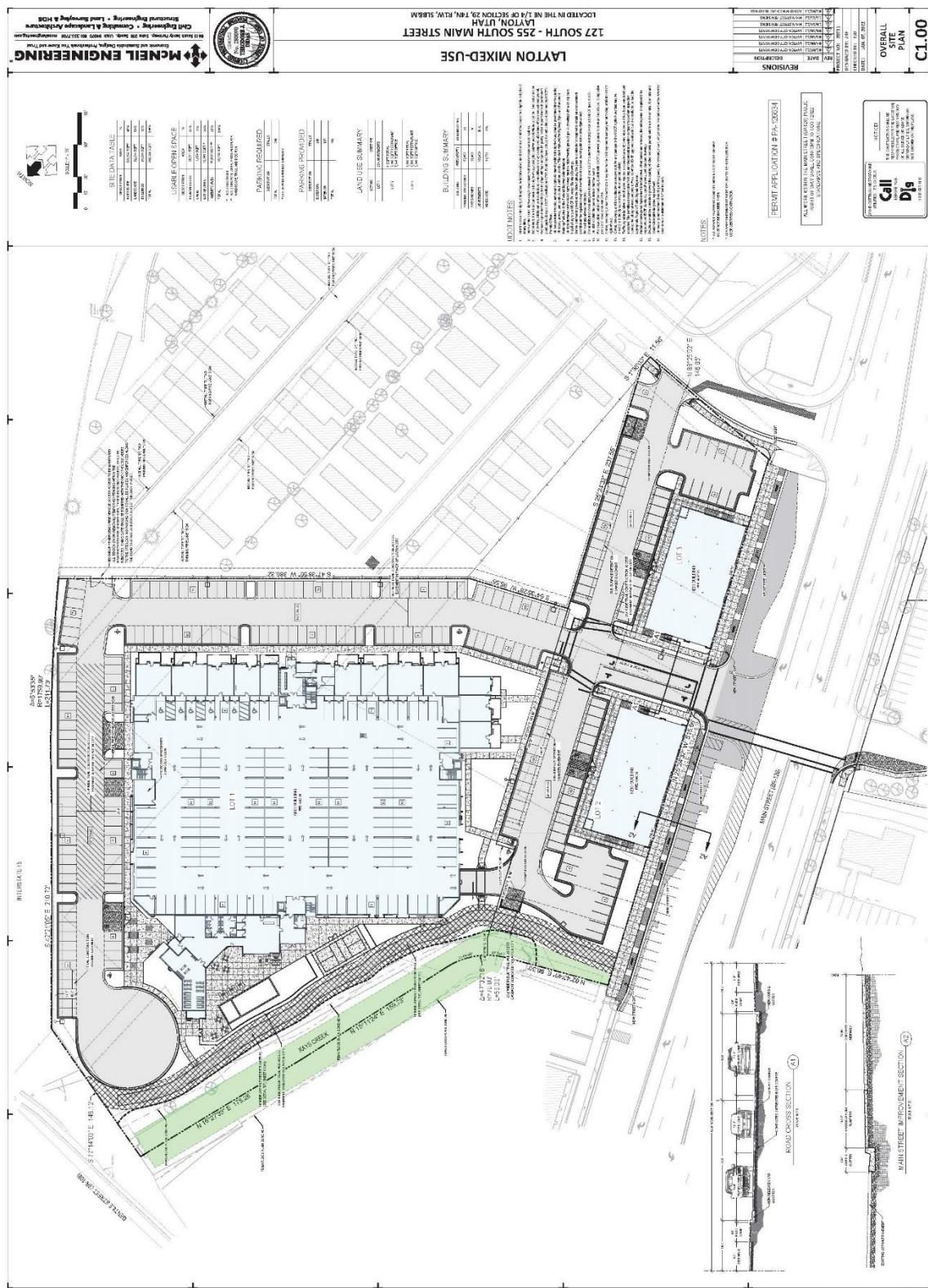
\_\_\_\_\_  
NOTARY PUBLIC

Residing at: \_\_\_\_\_

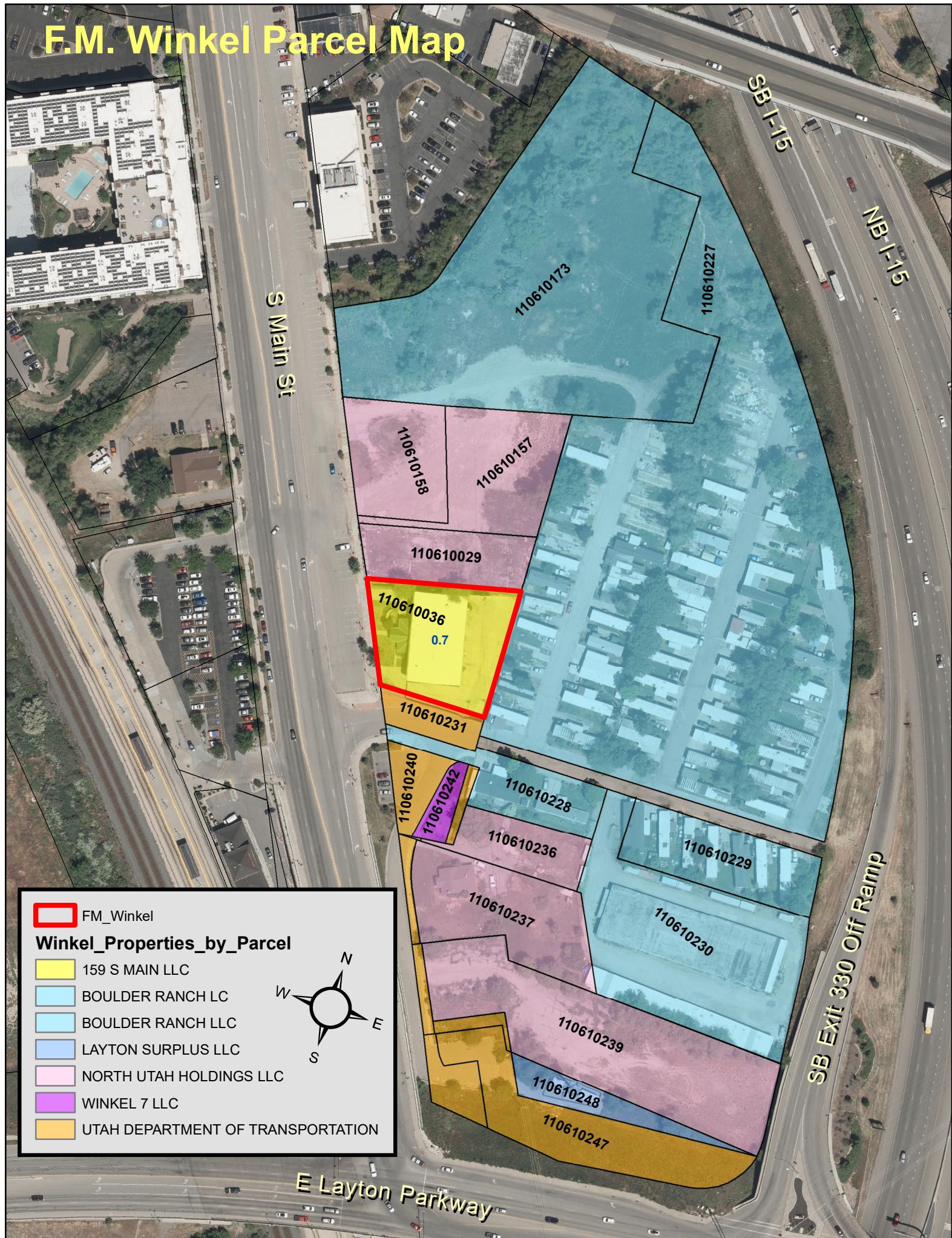
My Commission Expires:

\_\_\_\_\_

## EXHIBIT A



# F.M. Winkel Parcel Map



# Participation Agreement

By and Between

The Redevelopment Agency of Layton City,

And

F.M. Winkel Family, LLC

*January 4, 2018*

# **Participation Agreement**

The parties hereto, the Redevelopment Agency of Layton City, a political subdivision of the State of Utah (the “**Agency**”) and F.M. Winkel Family, LLC, a Utah Limited Liability Company (“**Participant**”)—(the Agency and Participant may also be collectively referred to as “**Parties**”), agree as follows:

## **1. SUBJECT OF AGREEMENT**

### **1.1 Purpose of the Agreement**

The purpose of this Participation Agreement (the “**Agreement**”) is to carry out in part the Plan for the South Main / South Fort Lane Redevelopment Project Area (the “**Plan**”<sup>1</sup> and Project Area Budget “**Budget**” are attached hereto as **Exhibit A**), by assembling the land under one property owner, and removing barriers to the future mixed-use development of the property within the South Main / South Fort Lane Project Area (the “**Project Area**”). Also, to specify the terms and conditions pursuant to which the Agency and Participant will cooperate in purchasing land and future development guidelines, including funds the Agency will provide to assist in acquiring property, which will benefit the Project Area.

### **1.2 Agreement in the Best Interests of the City and Residents**

This Agreement is in the vital and best interests of Layton City, and the health, safety and welfare of its residents, and in accord with public purposes. This Agreement is carried out pursuant to the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act, Title 17C, Utah Code Annotated as amended (the “**Act**”).

### **1.3 The Project Area**

The Project Area is located within the boundaries of Layton City. The exact boundaries of the Project Area are specifically and legally described in the Plan.

### **1.4 The Project Area Plan and Budget**

This Agreement is subject to the provisions of the Plan, as revised, amended and adopted on December 3, 2009, by the Agency and the Layton City Council (the “**Council**”) in accordance with Section 17C-3-106 of the Act.

---

<sup>1</sup> The Plan was originally adopted by the Layton City Council by Ordinance 04-44 on June 17, 2004. A copy of that Ordinance is attached as **Exhibit B**.

## **1.5 Description of the Site**

The site of the property (the “Site”) within the Project Area shall consist of one parcel of property, totaling approximately 0.70 acres. The Site is shown in detail on the Site Map, attached hereto as **Exhibit C**, and described in the description(s), attached hereto as **Exhibit D**.

## **1.6 Parties to the Agreement**

### **1.6.1 The Agency**

The Agency is a public body, corporate and political, exercising governmental functions and powers, and organized and existing under the Community Development and Renewal Agencies Act. The address of the Agency for purposes of this Agreement is:

The Redevelopment Agency of Layton City  
Attn: RDA Executive Director  
437 Wasatch Drive  
Layton, Utah 84041

### **1.6.2 The Participant**

Participant is F.M. Winkel Family, LLC, a Utah Limited Liability Company (LLC), lawfully registered to do business in Utah. Participant’s address for purposes of this Agreement is:

F.M. Winkel Family, LLC  
Attn: McKay Winkel, Managing Member  
3651 North 100 East, No. 125  
Provo, UT 84604

## **1.7 Prohibition against Certain Changes**

### **1.7.1 Transfers of Property Prohibited**

Participant represents and agrees for itself and any successor(s) in interest that, during the term of this Agreement, it shall not deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency, and that the Agency may withhold its approval if such deed, sale, conveyance, assignment or alienation or lease would result in the objectives of the Agreement not being met. Notwithstanding the foregoing, Participant shall be entitled (without the consent of any party) to (a) transfer any interest in the real estate to any wholly-owned subsidiary (or sister company that has substantially the same owners) of Participant, who agrees to continue to occupy and/or operate the business in substantially the same form and to undertake all obligations and restrictions of the

transferring Participant(s) and/or (b) transfer a portion of the interest to Rockworth Companies or an affiliated entity. Any such undertaking shall be in writing and properly executed. No subsequent transfer can occur without the written approval of the Agency.

#### **1.7.2 Assignment or Transfer of Agreement**

For the reasons cited above, Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency. The assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach and default, under this Agreement, and relieves the Agency of any obligation to Participant under this Agreement. As a condition of the Agency approving an assignment of this Agreement by Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of Participant under this Agreement.

#### **1.7.3 Transfer to Tax-Exempt Organization**

Notwithstanding anything in this Agreement to the contrary, any attempt by Participant or their successor in interest to transfer any of the real or personal property within the Site to a tax-exempt organization or otherwise to exempt any of the real or personal property within the Project Area from *ad valorem* property taxation without the prior written consent of the Agency constitutes a material breach and default under this Agreement and will entitle the Agency, in its sole discretion, to terminate this Agreement.

#### **1.7.4 Continuing Obligations**

In the absence of a specific written agreement by the Agency, no assignment or transfer of this Agreement, in whole or in part, or approval of this Agreement by the Agency, relieves Participant from any obligation under this Agreement. All of the terms, covenants, and conditions of this Agreement are and will remain binding upon and inure to the benefit of Participant and their successors and assigns.

### **1.8 Term of the Agreement**

Unless terminated sooner, by a breach or default as provided herein, this Agreement shall terminate, upon the issuance of a “Certificate of Completion,” by the Agency upon completion of the obligations of the parties within the time periods set forth herein, under the terms of this Agreement.

## 2. OBLIGATIONS OF THE PARTIES

### 2.1 Provision of Tax Increment

The Agency agrees to provide an amount not to exceed four hundred twenty five thousand dollars (\$425,000.00) solely from Tax Increment generated by the Project Area for the purpose of writing down the cost of the Site. RDA funds will be deposited in Escrow prior to closing for the purchase of the Site by Participant.

The Participant shall submit a letter to the RDA requesting release of Tax Increment for the purchase of the following Parcel ID: #11-061-0036. The letter shall include a fully executed Real Estate Purchase Contract, Title Company, closing instructions, and estimated time frame for closing. Prior to closing, the RDA shall receive a copy of the HUD-1 Settlement Statement and proof of Title Insurance.

The amount of release of Tax Increment funds shall be:

Parcel ID #11-061-0036, located at 159 South Main Street, also known as Bill's Comfort Systems, in the amount of four hundred twenty five thousand dollars (\$425,000.00).

### 2.2 Tax Increment

The Project Area Plan and payments contemplated in this Agreement will be funded by Tax Increment as budgeted by the RDA in compliance with the provisions of the Act.

For purposes of this Agreement:

(a) "**Tax Increment**" means the Taxes levied each year on land, real property improvements, personal property and other taxable property within the Project Site in excess of the Base Tax Amount (as defined below) for that same property; as defined in the Act;

(b) "**Taxes**" means all levies on an *ad valorem* basis upon land, real property improvements, personal property, or any other property;

(c) "**Base Tax Amount**" for the Site will be calculated by multiplying the combined 2004 tax rate of all taxing entities that levy taxes on property within the Project Area by the base year taxable value which is equal to the taxable value of the Project Site as determined by the Davis County Assessor based upon the assessment roll last equalized before November 1, 2004.

## **2.3 Conditions Precedent to Payment of Participant's Tax Increment Share**

### **2.3.1 Dispute over Receipt of Payment of Tax Increment**

In the event a dispute arises as to the person or entity entitled to receipt of Tax Increment under this Agreement due to a claimed assignment or claimed successor in interest to the Tax Increment or otherwise, the Agency may withhold payment of Tax Increment until the dispute is resolved either by agreement or by a court of competent jurisdiction. The Agency shall be entitled to deduct from its payment of Tax Increment any costs or expenses, including reasonable attorney's fees, incurred by the Agency due to the dispute.

## **2.4 Nature of Participant's Obligations**

To qualify to receive the Tax Increment funding set forth herein, Participant shall fulfill all of the obligations in this Agreement. Failure to fulfill any obligation shall be considered a material breach and termination of the Agreement. Participant agrees to sign, concurrent with this agreement, a Promissory Note (the Note) for the full amount of Tax Increment paid to Participant by the Agency. The Agency will not require that the Note be secured with a deed of trust. The Agency shall hold that Note until such time as all of Participant's responsibilities under this Agreement, are fully executed or until such time as a breach or default occurs under the terms of this Agreement. Upon completion of Participant's responsibilities, Participant shall request and the Agency shall issue a "Certificate of Completion" and the Note shall thereafter, be null and void. Upon a breach or default under the terms of this Agreement, the Agency shall, at its option and without waiving any rights under this Agreement, call the Note due, independent of the terms of this Agreement and proceed to collect on the Note.

### **2.4.1 Building Use and Demolition**

Participant agrees that when the Site parcel is acquired by the Participant, the existing building(s) shall be demolished and all debris removed from the Site within five (5) years of acquisition of Parcel ID #110610157, located at 137 South Main Street, and Parcel ID #110610029, located at 143 South Main Street, with both parcels also known as Tom Randall Distributing, but in no case longer than seven (7) years from the date of this Agreement regardless of the acquisition of the parcels associated with Tom Randall Distributing. Participant agrees that any non-conforming right for the use of building(s) on the Site, or uses not consistent with the Mixed-Use/Transit Oriented Development (MU-TOD) zoning district, shall expire upon the vacation of Bill's Comfort Systems.

### **2.4.2 Street Frontage Land Use**

Participant agrees, for itself and any successors in interest, that the development of the Main Street frontage of the Site shall be compliant with the MU-TOD zoning regulations and shall include, at a minimum, office/retail uses on the main floor level of the Main Street frontage. All residential dwelling units, if any, must be located above the main floor level or not on the Main Street Frontage. Office, retail and residential uses shall be the sole uses of all floors of the buildings

unless otherwise approved by the Agency.

#### **2.4.3 Billboards/Signage**

Participant agrees to not erect, or cause to be erected, any billboards advertising off-site businesses on the entire development site, which shall include any associated property south of Gentile Street, east of Main Street, north of Layton Parkway, and west of I-15. All signage for on-site businesses shall comply with applicable City codes as may be modified by any development agreement.

#### **2.5 Funding Responsibility**

The Parties understand and agree that funding for the construction upon the Site and related improvements comes entirely from either Participant's internal capital or from financing obtained by Participant. The Agency shall not be liable or responsible for providing, obtaining, or guaranteeing such financing.

#### **2.6 Use of Tax Increment Funds**

Participant agrees to use the funding received from Agency solely for buying down of the purchase price of the property within the Site and direct costs associated with acquisition. The Agency shall have the opportunity to review all documents relating to the acquisition of the property within the Site, prior to making payment on behalf of Participant. Participant shall demonstrate to the Agency, through proper documentation, that the Tax Increment was used to purchase property within the Site or make the payment jointly to property owner and Participant.

### **3. OPERATION AND DEVELOPMENT OF THE SITE**

#### **3.1 Development of the Site**

Participant will at all times be responsible for all development of the Site pursuant to the Plan and this Agreement. In light of the level of capital investment by the Participant in the development of the Site, the Agency has determined that it is in best interests of the residents of Layton City to provide Tax Increment, upon the terms and conditions set forth in this Agreement, to Participant as an incentive to undertake the development of the Site as contemplated in this Agreement and in the Project Area Plan.

#### **3.2 Responsibility for Development Plans and Permits**

Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site. All plans must be in accordance with all applicable federal, state and local laws and regulations. Before commencing development, Participant must secure or cause to be secured, at its own expense, all zoning or land use approvals and permits required in order to proceed with the development of the Site.

### **3.3 Site Improvements and Future Development**

Participant agrees to improve and develop the Site according to the terms of this Agreement. During the term of this Agreement, Participant and the Agency hereby agree as follows:

#### **3.3.1 Hold Harmless Agreement**

Participant agrees to defend and hold the Agency and its directors, officers, agents, employees and consultants harmless for any and all claims, liability and damages arising out of any work or activity of Participant, their agents, or their contractors or employees.

#### **3.3.2 Hazardous, Toxic, and/or Contaminating Materials**

Participant agrees to defend and hold the Agency its directors, officers, agents, employees and consultants, harmless from any and all claims, liability, costs, fines, penalties, charges and/or claims of any kind whatsoever relating to the existence and removal of hazardous, toxic and/or contaminating materials, except where such claims, liability, costs, fines, penalties, charges and/or claims are due to the actions of the Agency or where such claims existed (regardless of whether asserted) prior to the effective date of this Agreement.

#### **3.3.3 Indemnification**

Participant agrees to and shall indemnify and hold the Agency and its directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Participant or their agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of the Agency or its directors, officers, agents, employees and constants. Likewise, the Agency agrees and shall indemnify and hold Participant and their directors, officers, agents, employees and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, directly or indirectly caused by any acts done thereon or any errors or omissions of Agency or its agents, servants, employees, or contractors except for willful misconduct or negligent acts or omissions of Participant or their directors, officers, agents, employees and consultants.

#### **3.3.4 Discrimination**

Participant agrees for itself and their successors and assigns that they will not unlawfully discriminate against any employee or applicants for employment, or any contractor or any bidder on any contract.

### **3.3.5 Local, State, and Federal Laws**

Participant shall develop the Site in conformity with all applicable laws; provided, however, that nothing herein shall limit the right of Participant to properly challenge any such law or the applicability of such law. Development of the Site shall also be subject to review and approval of the Agency.

### **3.3.6 County and Other Governmental Agency Permits**

Participant shall, at its own expense, secure or cause to be secured, any and all permits that may be required by Davis County or any other governmental agency affected by the development or operation of the Site.

### **3.3.7 Rights of Access**

Representatives of the Agency shall have the right of reasonable access to the Site and any and all improvements thereon for purposes of inspection, with reasonable and prior notice, and without charges or fees, at normal hours. Such representatives of the Agency and other visitors to the site shall observe any reasonable rules adopted by Participant for purposes of maintaining safety and security on the site, including requirements that such representatives or visitors be escorted by the General Manager or other designated agent of Participant at all times. Such representatives of the Agency shall be those who are so identified in writing by the Agency. The Agency agrees to and shall indemnify and hold Participant harmless from and against all liability, loss, damage, costs, or expenses arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur as a result of or arising from the Agency's entry upon or activities on the Site, except that this indemnity shall not apply to proportional negligence or willful misconduct of Participant.

### **3.3.8 Responsibility of the Agency**

The Agency shall not have any obligation under this Agreement other than those specifically provided for herein. Nothing herein shall be construed as requiring the Agency to pre-approve or pre-judge any matter, or as otherwise binding the Agency's discretion or judgment on any issue prior to appropriate hearing (if required), review, or compliance with any other requirement. Participant shall not have any obligation under this Agreement other than those specifically provided for herein.

## **4. EFFECT AND DURATION OF COVENANTS**

The covenants, including but not limited to conformance with federal, local, and state laws, established in this Agreement shall, without regard to technical classification and designation, be

binding on Participant and any successors in interest to the Site for the benefit and in favor of the Agency, its successors and assigns during the Term of this Agreement.

## **5. DEFAULTS, REMEDIES AND TERMINATION**

### **5.1 Default**

If either the Agency or Participant fail to perform or delays performance of any material term or provision of this Agreement, such conduct constitutes a default of this Agreement (“**Default**”). The party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within the periods provided in Section 5.3 hereof.

### **5.2 Notice**

If a Default under this Agreement occurs, the non-defaulting shall give written notice (a “**Default Notice**”) of the Default to the party in Default, specifying the nature of the Default. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default, nor shall it operate as a waiver of any rights or remedies of the injured party; but the injured party shall have no right to exercise any remedy hereunder without delivering the Default Notice as provided herein. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

### **5.3 Cure Period**

The non-defaulting party shall have no right to exercise a right or remedy hereunder unless the subject Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot be cured within such thirty (30) day period, the defaulting party fails to commence such cure within thirty (30) days and to diligently proceed to complete the same. A Default which can be cured by the payment of money is understood and agreed to be among the types of defaults which can be cured within thirty (30) days. If the Default is not cured, or commenced to be cured if such default is of a nature which cannot be cured within thirty (30) days, by such party within thirty (30) days of delivery of the Default Notice, such failure to cure shall be an Event of Default, and the non-defaulting party, at its option, may institute an action for specific performances of the terms of this Agreement or pursue such other rights and remedies as it may have.

#### **5.3.1 Rights and Remedies**

Upon the occurrence of a Default (following the expiration of the applicable cure period provided herein or by law), the non-defaulting party shall have all rights and remedies against the defaulting party as may be available at law or in equity to cure, correct or remedy any

Default, to terminate this Agreement, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement, including the filing of the Note as a Trust Deed. Such rights and remedies are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same Default or any other Default by the defaulting party.

### **5.3.2 Legal Actions**

#### **5.3.2.1 Venue**

All legal actions between the Parties, arising under this Agreement, shall be conducted exclusively in the Second District Court for the State of Utah located in Layton, Utah, unless they involve a case with federal jurisdiction, in which case they shall be conducted exclusively in the Federal District Court for the District of Utah.

#### **5.3.2.2 Services of Process**

Service of process on the Agency shall be made by personal service upon the Chairman or Executive Director of the Agency or in such other manner as may be provided by law.

Service of process on Participant shall be by personal service upon their Registered Agent, or in such other manner as may be provided by law, whether made within or without the State of Utah.

#### **5.3.2.3 Applicable Law**

The laws of the State of Utah shall govern the interpretation and enforcement of this Agreement.

## **6. GENERAL PROVISIONS**

### **6.1 Notices, Demands, and Communications Between the Parties**

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and Participant, as designated in Sections 1.6.1 and 1.6.2 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by formal notice hereunder. Delivery of notice shall be complete upon mailing or making physical delivery of the writing containing the notice.

## **6.2 Severability**

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained unless such severance shall have a material effect on the terms of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope, all other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

## **6.3 Nonliability of Agency Officials and Employees**

No director, officer, agent, employee or consultant of the Agency shall be personally liable to Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to Participant or to their successors, or on any obligations under the terms of this Agreement.

## **6.4 Enforced Delay; Extension of Time and Performance**

In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, terrorist activity, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other party, or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause on the party of Agency's Executive Director or its governing board or on the part of Participant. Time of performance under this Agreement may also be extended in writing by the Agency and Participant by mutual agreement.

## **6.5 Approvals**

Whenever the consent or approval is required of any party hereunder, except as otherwise herein specifically provided, such consent or approval shall not be unreasonably withheld or delayed.

## **6.6 Time of the Essence**

Time shall be of the essence in the performance of this Agreement.

## **6.7 Interpretation**

The parties hereto agree that they intend by this Agreement to create only the contractual relationship established herein, and that no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the parties hereto.

## **6.8 No Third-Party Beneficiaries**

It is understood and agreed that this Agreement shall not create for either party any independent duties, liabilities, agreements, or rights to or with any third party, nor does this Agreement contemplate or intend that any benefits hereunder accrue to any third party.

## **6.9 Incorporation of Exhibits**

All Exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

# **7. DUPLICATION, INTEGRATION, WAIVERS, AND AMENDMENTS**

## **7.1 Duplicate Originals**

This Agreement shall be executed in two duplicate originals, each of which shall be deemed an original. This Agreement (including its Exhibits) constitutes the entire understanding and agreement of the parties.

## **7.2 Integration**

When executed by the parties, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

## **7.3 Waivers and Amendments**

All waivers of the provisions of this Agreement must be in writing. This Agreement and any provisions hereof may be amended only by mutual written agreement between Participant and the Agency.

## 8. DATE OF AGREEMENT

The effective date of this Agreement shall be the date it is signed by the Agency.



THE REDEVELOPMENT AGENCY OF LAYTON CITY

 Robert J Stevenson, Agency Chair

 April 2, 2018

Date

Attest:

  
\_\_\_\_\_  
Kimberly S Read

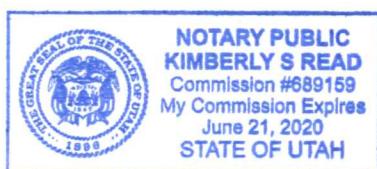
Kimberly S Read, Agency Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GARY R. CRANE, City Attorney

State of Utah      )  
                      : SS  
County of Davis    )

On this 2<sup>nd</sup> day of April, 2018, before me, the undersigned Notary Public, personally appeared ROBERT J STEVENSON, who affirmed that he is the CHAIR, and acknowledged to me that he is authorized to, and did in fact execute the foregoing Participation Agreement. Witness my hand and official seal.



  
\_\_\_\_\_  
Notary Public

F.M. Winkel Family, LLC, a Utah Limited Liability Company



3/22/18

F. McKay Winkel, Managing Member

Date

*F. McKay H. Winkel, Managing Member*

State of Utah )  
Utah : SS  
County of Davis )

On this 22nd day of March, 2018, before me, the undersigned Notary Public, personally appeared F. MCKAY WINKEL, who affirmed that he is the MANAGING MEMBER of F.M. Winkel Family, LLC, a Utah Limited Liability Company, and acknowledged to me that he is authorized to, and did in fact execute the foregoing Participation Agreement. Witness my hand and official seal.



Karen F. Harbold  
Notary Public

**ADDITIONAL**

**PACKET**

**ATTACHMENTS**

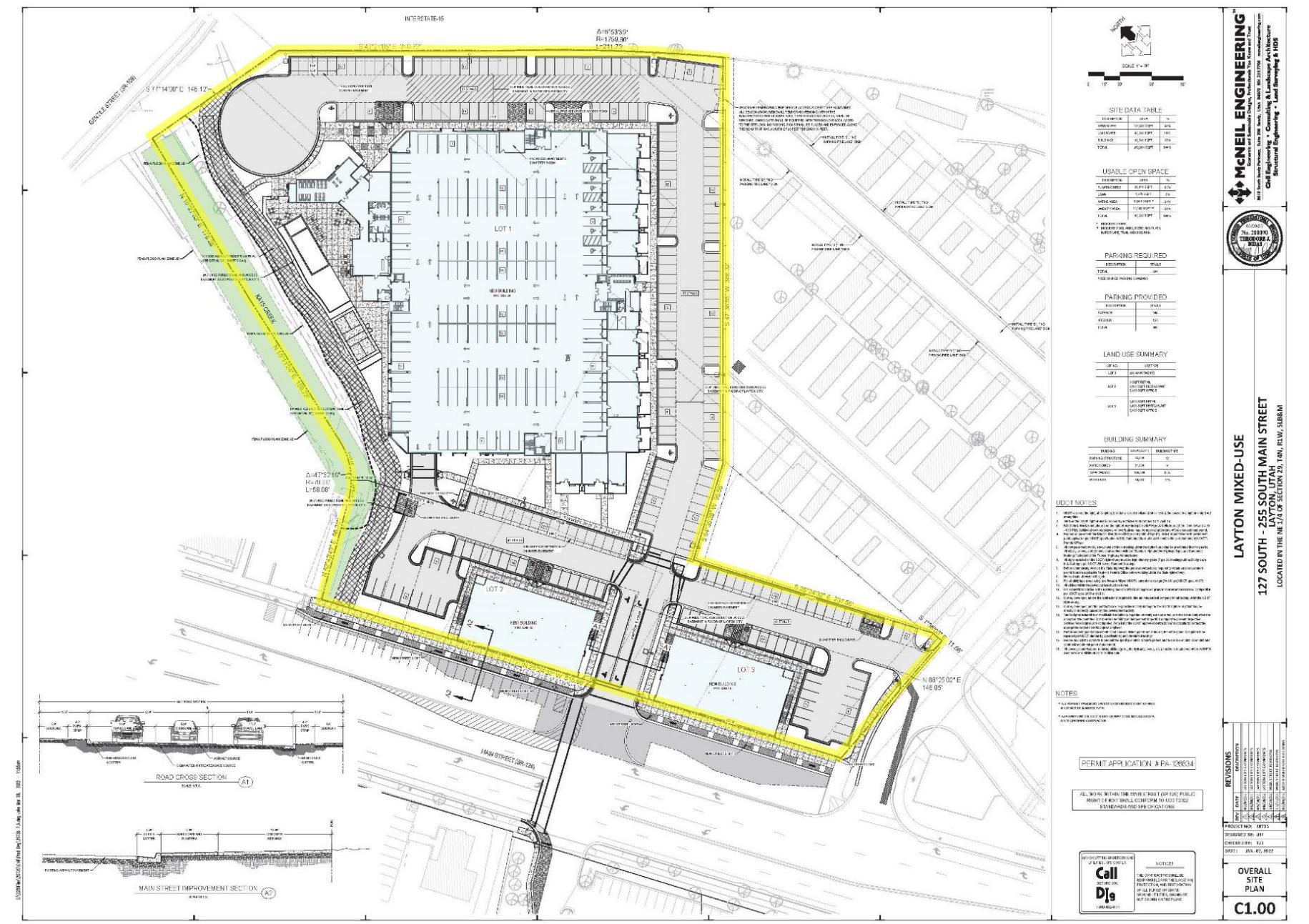


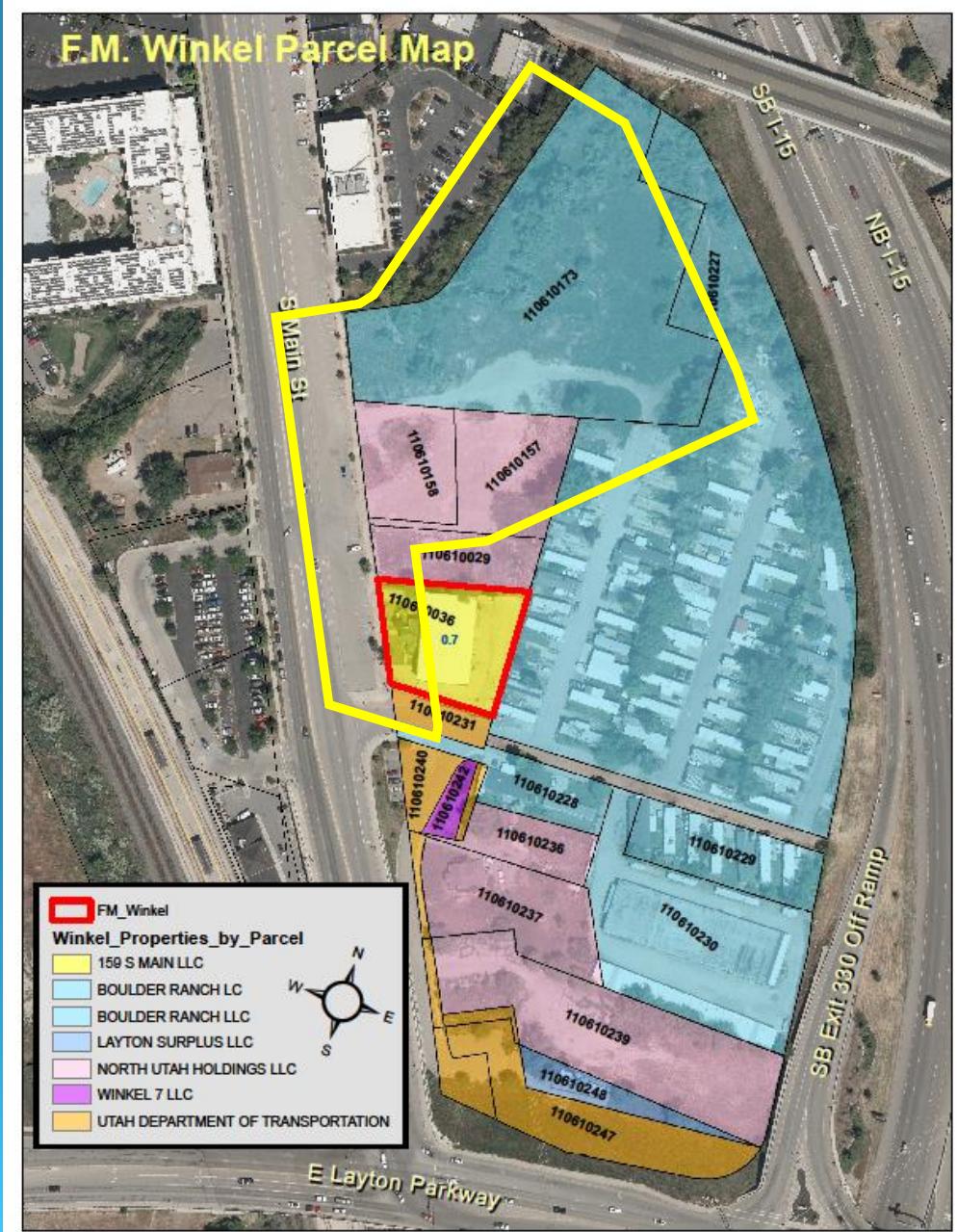
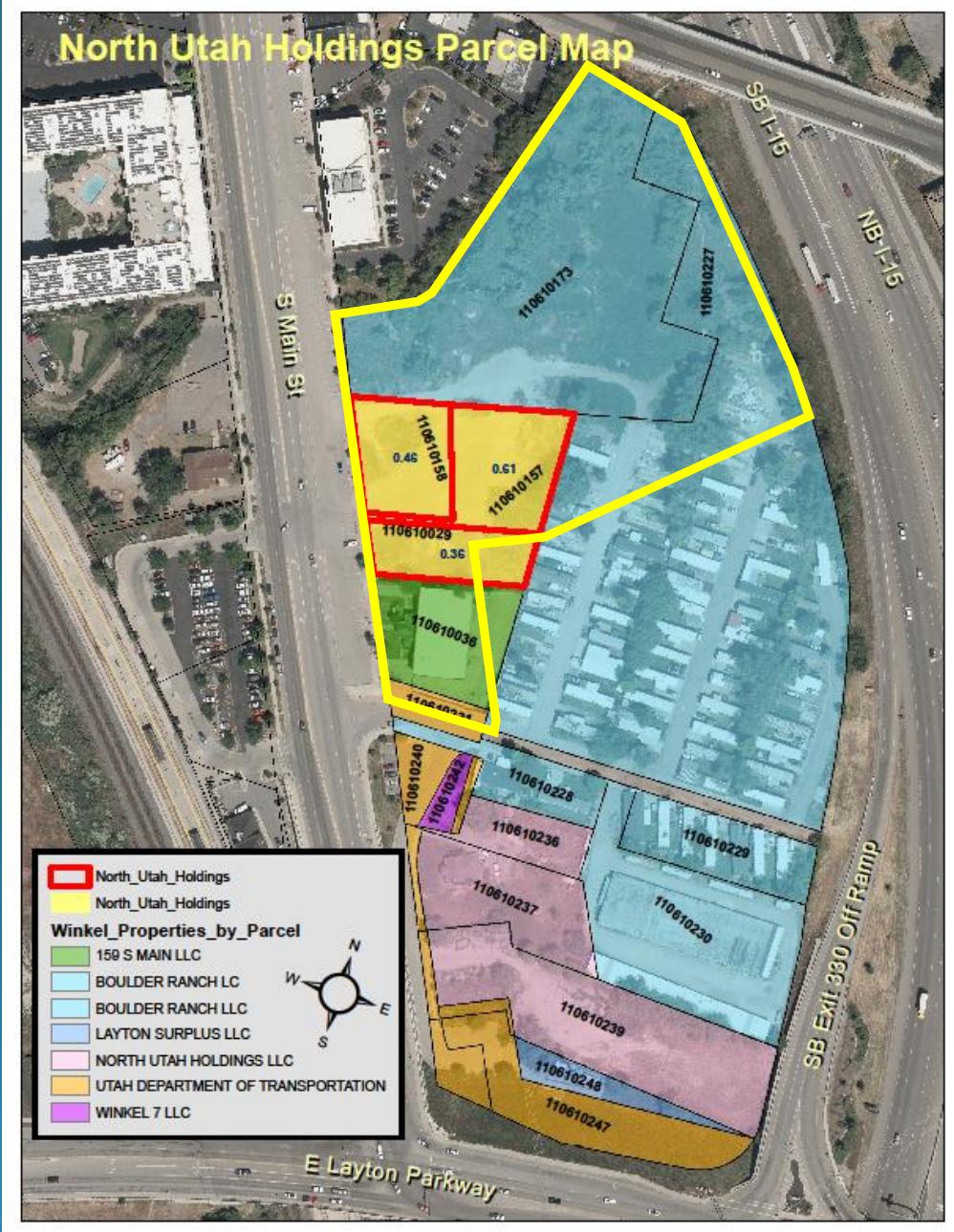
## RDA RESOLUTION 23-01

A RESOLUTION APPROVING THE CONSENT AND ACKNOWLEDGEMENT FOR TRANSFER OF PROPERTY FROM **NORTH UTAH HOLDINGS, LLC**, TO WINKEL ROCK, LLC, INCLUDING CERTAIN OBLIGATIONS AS REQUIRED IN THE PARTICIPATION AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF LAYTON CITY AND NORTH UTAH HOLDINGS, LLC

## RDA RESOLUTION 23-02

A RESOLUTION APPROVING THE CONSENT AND ACKNOWLEDGEMENT FOR TRANSFER OF PROPERTY FROM **F. M. WINKEL FAMILY, LLC**, TO WINKEL ROCK, LLC, INCLUDING CERTAIN OBLIGATIONS AS REQUIRED IN THE PARTICIPATION AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF LAYTON CITY AND F. M. WINKEL FAMILY, LLC





### **1.7.1 Transfers of Property Prohibited**

Participant represents and agrees for itself and any successor(s) in interest that, **during the term of this Agreement, it shall not deed, sell, convey, assign or otherwise alienate or lease the Site or any portion thereof or interest therein without the prior written approval of the Agency**, and that the Agency may withhold its approval if such deed, sale, conveyance, assignment or alienation or lease would result in the objectives of the Agreement not being met. Notwithstanding the foregoing, Participant shall be entitled (without the consent of any party) to transfer any interest in the real estate to any wholly-owned subsidiary (or sister company that has substantially the same owners) of Participant, who agrees to continue to occupy and/or operate the business in substantially the same form and to undertake all obligations and restrictions of the transferring Participant(s). Any such undertaking shall be in writing and property executed. No subsequent transfer can occur without the write approval of the Agency.

### **1.7.2 Assignment or Transfer of Agreement**

For the reasons cited above, Participant represents and agrees for itself and its successors and assigns that during the term of this Agreement **Participant will not assign or transfer or attempt to assign or transfer all or any part of this Agreement, or any rights herein or obligations hereunder, without the prior written consent of the Agency**. The assignment or delegation of this Agreement without the prior written consent of the Agency is a material breach and default, under this Agreement, and relieves the Agency of any obligation to Participant under this Agreement. As a condition of the Agency approving an assignment of this Agreement by Participant the Agency may, among other things, require the proposed assignee to execute an acknowledgement of its acceptance to perform all duties and obligations of Participant under this Agreement.

## North Utah Holdings, LLC

Section	Obligation	Status
2.4	Participant agrees to sign a Promissory Note (the Note) for the full amount of the Tax Increment paid to Participant.	Completed by Participant.
2.4.1	Participant shall deed or dedicate by plat to Layton City, at no cost, a public right-of-way access connected to an intersection with Main Street.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.1	Participant shall proceed with obtaining subdivision approval (if necessary) and complete the process in good faith and in a reasonable period of time.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.2	Participant agrees that the existing building(s) shall be demolished and all debris removed from the Site.	Completed by Participant.
2.4.2	Participant and RDA agree to remediate additional environmental contaminations, if any, as determined in the conclusions of the Limited Subsurface Investigations dated June 2, 2015 and June 5, 2015 conducted by EarthTouch Inc. for the Site.	Completed by Participant.
2.4.3	Participant agrees that development of the Main Street frontage of the Site shall be compliant with MU-TOD zoning regulations and include, at minimum, office/retail uses on the main floor level of the Main Street frontage.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.4	Participant agrees to not erect, or cause to be erected, any billboards advertising off-site business on the entire development site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.1; 3.3	Participant will at all times be responsible for all development of the Site pursuant to the “Plan” (as defined in the Participation Agreement). Participant agrees to improve and develop the Site according to the terms of the Participation Agreement.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.2	Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.

## F.M. Winkel Family, LLC

Section	Obligation	Status
2.4	Participant agrees to sign a Promissory Note (the Note) for the full amount of the Tax Increment paid to Participant.	Completed by Participant.
2.4.1	Participant agrees that the existing building(s) shall be demolished, and all debris removed from the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.2	Participant agrees that development of the Main Street frontage of the Site shall be compliant with MU-TOD zoning regulations and include, at minimum, office/retail uses on the main floor level of the Main Street frontage.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
2.4.3	Participant agrees to not erect, or cause to be erected, any billboards advertising off-site business on the entire development site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.1; 3.3	Participant will at all times be responsible for all development of the Site pursuant to the “Plan” (as defined in the Participation Agreement). Participant agrees to improve and develop the Site according to the terms of the Participation Agreement.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.
3.2	Participant shall be responsible for the preparation of all plans and securing all permits for the development of the Site.	Outstanding – this obligation will be completed by Developer in its development of Phase 1.

