

**DEVELOPMENT AGREEMENT
FOR
TLW INVESTMENTS, LLC**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of March, 2021 (the “Effective Date”), by and between the TOWN OF APPLE VALLEY, a Utah municipal corporation, hereinafter referred to as “Town,” and TLW INVESTMENTS, LLC, an Idaho limited liability company, hereinafter referred to as “Developer.” The Town and Developer are hereinafter collectively referred to as “Parties.”

RECITALS

A. Developer is the owner of approximately 58 acres of land located within the Town as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the “Property”).

B. On January 20, 2021, the Town Council approved Ordinance _____, vesting zoning (the “Vesting Ordinance”), based on the Concept Plan set forth on EXHIBIT B (“Concept Plan”), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the “Project”).

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the Town’s general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The Town Council accepted Developer’s proffer to enter into this Agreement to memorialize the intent of Developer and Town and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Washington County Recorder.

E. The Town Council further authorized the Mayor of the Town to execute and deliver this Agreement on behalf of the Town.

F. The Town has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable Town Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the Town’s General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the Town pursuant to Town Ordinances and regulations.

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the Town to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the RE-1.0 and RE-2.5 Zones, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the Town’s Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official Town Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

a. The developer agrees to construct a paved roadway on the existing City road, (Rome Ave) with a twenty foot (20’) Wide asphalt road for 1,150 feet from the end of the existing pavement to the north end of the west boundary of the development.

b. The developer agrees to provide a secondary access to Main Street. This roadway will be all weather gravel access road.

c. Developer shall transfer fee title by special warranty deed of 4 acres inside the Project to the Town for the future development of a regional detention basin as depicted on Exhibit A hereto. The regional detention basin shall be designed and constructed by the Town at the Town's expense.

d. Developer shall provide a temporary construction easement and a perpetual use easement to the Town for access to the regional detention basin acreage. These easements will be for the use of Town employees and contractors only for construction and maintenance of the regional detention basin.

e. Developer shall design and install detention facilities sufficient for their development to be utilized at least until the Town completes the construction of the regional detention basin and places it into full service. These onsite facilities will be designed and constructed at Developer's expense.

f. The Developer will not develop more than 25 lots and no lot will be less than 1 acre per resident.

g. The Town acknowledges that its impact fees include amounts for management of flood waters and that the regional detention basin is part of that management plan. The Town further acknowledges that the value of the 4 acres being transferred to the Town exceeds the amount of the impact fees that would be accessible to the 25 lots being developed in the Project. Accordingly, the Town hereby waives the collection of all stormwater impact fees for the Project and deems them satisfied and paid in full with the transfer of the 4 acres.

Developer agrees that final plat cannot be recorded until development has all services needed for the development. In the event that the entire development cannot be serviced and only a portion is able to be serviced, Developer may phase the development as long as it has adequate services and meets the Town's requirements.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the Town Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Concept Plan, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the Town Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer "vested rights" as that term is construed in Utah's common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to Town Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the Town that would be applicable to the Project:

1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;

2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the Town and which are required to comply with State and Federal laws and regulations affecting the Project;

3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,

4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the Town to all properties, applications, persons and entities similarly situated.

5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the Town (or a portion of the Town as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.

6. Impact Fees. No Impact Fees will be charged to this Project as all such fees have been paid through the transfer of the 4 acres to the Town.

b. Reserved Legislative Powers. The Developer acknowledges that the Town is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the Town all of its police power that cannot be so limited. Notwithstanding the retained power of the Town to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. Town of Logan*, 617 P.2d 388 (Utah 1980), its

progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

7. Default. An “Event of Default” shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney’s fees.

2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: TLW Investments, LLC

By: _____
Libby Wells

By: _____
Travis Wells

Its: Managers

Apple Valley, Utah 8 _____

Phone: _____

deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the Town and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the Town shall be given or withheld by the Town in compliance with this Agreement and the Town Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Washington County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the Town shall have the right, but not the obligation, at the sole discretion of the Town Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the Town and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the Town as provided herein.

- a. Notice. Developer shall give Notice to the Town of any proposed assignment and provide such information regarding the proposed assignee that the Town may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the Town with all necessary contact information for the proposed assignee.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The Town may only withhold its consent if the Town is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the Town as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the Town except as otherwise provided herein.

12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

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

TOWN:

TOWN OF APPLE VALLEY

ATTEST:

By: _____
Town Recorder

By: _____
Mayor _____

DEVELOPER:

TLW INVESTMENTS, LLC

By: _____
Travis Wells

By: _____
Libby Wells
Its: Managers

STATE OF UTAH)
 :ss
COUNTY OF _____)

On the ____ day of March, 2021, personally appeared before me Travis and Libby Wells, the signers of the above instrument, who duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

1560616

Exhibit A

DESCRIPTION OF THE PROPERTY

Exhibit B
CONCEPT PLAN