

NIBLEY CITY DEVELOPMENT AGREEMENT WITH THE STOKES NATURE CENTER

This Development Agreement ("**Agreement**") is entered into by NIBLEY CITY ("**City**") and STOKES NATURE CENTER, a 501(c)(3) non-profit organization ("**Developer**"), and is effective as of the date that it is executed by all parties, as shown by the signatures contained herein.

RECITALS

- A. Developer owns or otherwise has the right to develop certain property located within the City and seeks to develop the same ("**Development**"), containing approximately 9.77 acres, which property is more particularly described as:

Parcel #03-004-0011

BEG 20 RDS N & 16 RDS E OF SW COR OF SE/4 OF SE/4 SEC 16 T 11N R 1E, TH N 3 RDS W 13 RDS N 13 RDS W 3 RDS N 89 FT E 670 FT SE'LY TO PT E OF BEG W TO BEG CONT 4.95 AC SUBJ TO PIPELINE EASEMENT 453/515 ALSO: BEG 683 FT N & 679 FT W FROM SE COR SEC 16 T 11N R 1E, TH E 132.5 FT SE'LY TO W LINE OF STATE ROAD, S'LY ALG SD W LINE TO ITS INTERSECT WITH S LINE OF SE/4 SD SEC 16 W 744 FT N 20 RDS E IN NIBLEY CORP LIMITS TO ITS CHANGE IN DIRECTION RUNNING NW'LY TH NW'LY TO BEG CONT 6.42 AC LESS 0.06 AC TO UDOT 485/881 LESS: BEG AT S/4 COR SEC 16 T 11N R 1E & TH S 89*56'07" E 2198.5 FT ALG SEC LN TH N 0*03'53" E 16.5 FT TO N LN OF 2600 S ST & TRUE POB TH S 89*56'07" E 122.02 FT ALG SD ST TO W LN OF HWY 165 TH ALG HWY IN 3 COURSES: N 34*54'26" E 14.95 FT TH N 1*17'40" W 402.77 FT TH N 2*55'10" W 62.39 FT TH LEAVING HWY N 40*46'48" W 33.75 FT TH S 37*16'04" W 251.25 FT TH S 10*27'39" E 307.83 FT TO TRUE POB CONT 1.54 AC M/B (0027) NET 4.82 AC CONT 9.77 AC M/L IN ALL A R/W OVER 1 RD IN WIDTH ON BOTH SIDES & RUNNING FULL LENGTH OF ALL QUARTER SEC LINES WITHIN SD SEC WHICH IS RESERVED & FOREVER DEDICATED TO THE PUBLIC USE AS HIGHWAYS

- B. The Development is zoned under applicable City land use regulations as Park/School Zone ("**Zoning**").
- C. Developer desires to create an outdoor learning space for preschool and elementary use that will also be used as a nature park and location for outdoor events ("**Nature Park**").
- D. Developer has prepared a site plan and documents for the Development, which plans show the proposed uses and improvements for the Development ("**Site Plan**"), which Site Plan is attached and incorporated herein as Exhibit A.
- E. City has, determined that the approval of this Agreement with Developer, and the establishment thereby of specific requirements, elements, and aspects of the Development,

some or all of which are not currently allowed under the Zoning, will result in benefits to the City and its residents that are not provided by the Zoning.

- F. The Parties therefore desire to enter into this Agreement in order to provide specific requirements, elements, conditions, and standards that will govern the Development.

TERMS

1. Compliance with Regulations.

- a. The Development remains subject to all terms, conditions, and requirements of the Zoning and all other applicable federal, state, county, and City laws, ordinances, codes, standards, and land use regulations applicable to the Development and to any building, improvement, landscaping, excavation, or other work required or related to the Development, including but not limited to payment of fees and compliance with design, construction, and building and fire code standards. Developer shall be subject to all land use decision, including as detailed in the Record of Decision dated June 28, 2024 by the Nibley City Planning Commission attached here as Exhibit B. This Agreement does not grant any land use approval or land use permit, and Developer agrees to apply for all such required approvals and permits prior to commencing any work or construction.
- b. To the extent that the terms, conditions, and requirements of this Agreement and the Development Plans expressly modify or are in direct conflict with the Zoning or another City-adopted ordinance, standard, or land use regulation applicable to the Development, this Agreement shall control and take precedence, but only to the extent of the express modification or direct conflict.
- c. Nothing herein alters any current non-conforming status of the Development.

2. **Construction of Nature Park.** Developer shall be entitled to construct, and maintain the Nature Park in a manner substantially similar to and in substantial compliance with the Site Plan, attached hereto, and the terms, conditions, and requirements set forth below. The express terms of this Agreement shall control and take precedence in the event of a conflict between the Site Plan and this Agreement.

- a. Improvements. Improvements including a pavilion, picnic tables, yurts, and other improvements shall be constructed in accordance with the site plan as shown in Exhibit A. Deviations or additions to the Site Plan shall receive direct approval from the City before they are initiated.
- b. Permits: Permits shall be obtained for all improvements as required under the Nibley City Code and shall conform to all design standards imposed by the Nibley City Code on like structures.
- c. Water Rights: The Developer shall be required to provide its own irrigation water for the Development. For irrigation, the Developer agrees to maintain 2.94 water shares that are sufficient for the needs of the Nature Park. Developer agrees to make

reasonable efforts to ensure that these water shares will always be available to maintain the Nature Park during its existence. The Developer shall dedicate to the City 0.06 shares of culinary water for use on the Development. No culinary water shall be used for irrigation purposes by the Nature Park.

- d. Trail: Other than the 10 ft wide pathway on 2600 South, The City agrees to except this Development from the requirement to build or dedicate land for trails in accordance with the Nibley City Trails Master Plan and Nibley City Code 21.12.060(F)(1).
 - e. Road: The Developer agrees to dedicate additional right of way for the construction of 40 ft of the width, measuring from the center line of 2600 South on the front of the Development as depicted on the City's Master Transportation Plan as well as a 10 ft-wide public utility easement fronting 2600 S. The 40-ft represents half of the width 2600 S. The Developer shall provide for the construction or an improvement warranty for the construction of 2600 S. to the current arterial standards which include but are not limited to the following standards:
 1. 6-inches of asphalt
 2. 8-inches of base course
 3. 12-inches of granular borrow
 4. Provide striping for a bike lane
 5. Provide for the construction of a sidewalk, curb and gutter
 6. Provide a streetlight on 2600 S. in accordance with City standards.
 - f. Stormwater Maintenance Agreement: Developer shall complete and record a post construction Storm Water Maintenance Agreement.
 - g. Water Meter: Developer shall provide a new water meter outside of the swale for serving the Development in accordance with City standards, or shall provide for grading the ground around the existing water meter to prevent flooding, which grading must be approved by the City.
 - h. Stormwater: Storm water curb cuts along 2600 S. will be designed to prevent excessive spread outside the gutter pan as determined by Nibley City.
3. **Reserved Legislative Powers.** The execution of this Agreement and the establishment of the vested rights shall not prevent the City, pursuant to the exercise of its legislative authority and power, to amend, enact, or repeal any provision of the Zoning or any other ordinance, specification, standard, or code, provided that no such legislative action shall reduce or eliminate the Developer's vested rights under this Agreement unless facts and circumstances are present and specifically found by the governing body of the City that meet the compelling, countervailing public interest exception to the vested rights doctrine under Utah law. Any such proposed legislative action affecting the vested rights shall be of general application to all development activity in the City.
 4. **Recordation.** This Agreement, including the Development Plans, shall be recorded against title to all real property that is included the Development prior to any further land use

application, permit, or approval being sought for the Development. Developer shall ensure that there are no holders of interest that are superior in title to this Agreement, and that all interests, including but not limited to liens, mortgages, deeds of trust, and other similar instruments, have been made subordinate to this Agreement. Developer shall provide such documentation as is necessary to establish the fact of the recordation and of the priority of this Agreement prior to receiving any further approval related to the Development.

5. **Assignment; Successors Bound.** This Agreement may be assigned and transferred by Developer. This Agreement shall run with the land and be binding on and inure to the benefit of the successors and assigns of Developer, such that any person who obtains any right, title, or interest to any portion of the Development shall be bound by the rights and obligations of this Agreement and shall be responsible for performance of Developer's obligations related to such portion in the same manner as Developer. All assignees, transferees, and successors in interest shall be bound by all terms of this Agreement applicable to Developer as though such party were named herein as Developer.

6. **Modifications to Development.**

- a. Developer shall develop, construct, improve, and maintain the Nature Park in a manner substantially similar to and in substantial compliance with the Site Plan and this Agreement, provided that Developer may adjust the final placement or location of the Site Plan and improvements within and upon the Development as approved by the City and through the City building permit review and approval processes.

7. **Term.** The term of this Agreement shall commence as of the Agreement's effective date and shall continue until it is terminated, rendering the Development subject to the general zoning regulations applicable to the affected property, as set forth herein:

- a. The Agreement may be terminated due to the uncured breach or default of one of the parties hereto, subject to the provisions set forth in Section 15.
 - b. The Agreement may be terminated by the mutual agreement of the parties.
 - c. The Agreement may be terminated by the City if Developer fails to begin construction on improvements with the Nature Park within twelve (12) months after the effective date of this Agreement, or fails to complete the construction of the Nature Park within twenty-four (24) months after the effective date of this Agreement.
 - d. Developer may apply for an extension of the deadlines set forth in this Section from the governing body of the City, who may grant an extension, with such terms and conditions as the body finds expedient, upon a finding of good cause for the delay or extension.

8. **Default.**

- a. In the event of a breach or default of any term of this Agreement, the non-breaching party shall provide written notice to the breaching party. Such notice shall describe

the alleged breach, the applicable provisions of this Agreement, and the actions necessary to remedy and cure the breach.

- b. Within 30 days after the date of such notice, the breaching party shall either:
 - i. cure the breach and notify the non-breaching party, in writing, of the actions taken to cure the breach; or
 - ii. notify the non-breaching party, in writing, why the breach cannot be cured within 30 days and establishing a reasonable time to cure such breach, with a description of the actions to be taken by the breaching party.
 - c. In the event the breaching party does not cure the breach or default within the specified timeframes, the non-breaching party may declare this Agreement to be terminated and send written notice of such declaration to the breaching party.
9. **Severability.** Each provision of this Agreement shall be separate, severable, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provisions shall not affect the enforceability of any other provision hereof.
10. **No Waiver.** Failure of a party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise, at some future time, said right or any other right it may have hereunder, provided that this provision shall not operate to excuse Developer's non-compliance with the deadlines set forth in Section 14. No modification, waiver, or amendment to any right, term, condition, obligation, or provision of this Agreement shall be valid unless adopted through the process set forth in Section 13.
11. **Entire Agreement.**
- a. This Agreement is the entire agreement between the Parties with respect to the Development and the special rights and obligations granted to and assumed by Developer related to the Development.
 - b. This Agreement shall supersede all prior agreements, conversations, understandings, contracts, and representations related to the Development or any term or provision of this Agreement. Neither party shall rely on or attempt to enforce any statement or representation, not contained herein, made by any person regarding the Development or Developer's rights and obligations thereto.
12. **Enforcement and Governing Law.** This Agreement may be enforced by any means available to the parties, subject to the notice and default provisions set forth in Section 15. This Agreement shall be governed by the laws of the State of Utah, and any court proceedings shall be brought in the First Judicial District Court of the State of Utah. Prior to initiating any such litigation, the parties shall first attempt to mediate or seek an advisory opinion regarding any dispute related to this Agreement through the Utah Property Rights Ombudsman's office or another qualified mediator that both parties agree upon. A party that prevails in any litigation following such mediation or opinion regarding this

Agreement shall be entitled to recover their reasonable court costs and attorney fees related to the litigation.

13. **Third Parties.** This Agreement is intended for the sole benefit of the named parties thereto. No third party, except for permitted assignees, transferees, and successors-in-interest, shall have any right to enforce any of the terms or obligations herein contained.
14. **Representations.** The persons signing this Agreement on behalf of the parties represent and warrant that they have the authority and authorization to execute the Agreement on behalf of the respective party such that the party will be bound by all rights, obligations, terms, and conditions herein, and that all steps, requirements, and processes necessary for a party to approve and execute the Agreement have each been completed.

For Nibley City:
 By: [Signature]
 City Manager
 Date: 8-23-24

Attested by:
[Signature]
 City Recorder

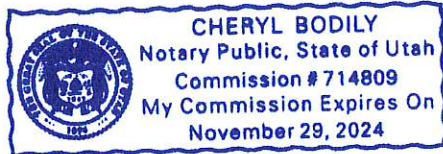
For Developer: STOKES NATURE CENTER

By: [Signature]
 Name: Kendra Perry-Clutter

Date: 8/27/2024
 Title: Executive Director

STATE OF UTAH)
 : ss
 County of Cache)

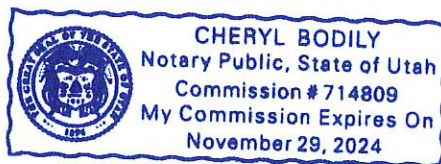
On the 23 day of August, 20 24, personally appeared before me, Justin Maughan, the City Manager of Nibley City, the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.



[Signature]
 NOTARY PUBLIC

STATE OF UTAH)
 : ss
 County of Cache)

On the 27 day of August, 20 24, personally appeared before me, Kendra Perry-Clutter, the Executive Director of Developer, the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.



[Signature]
 NOTARY PUBLIC