

NIBLEY CITY DEVELOPMENT AGREEMENT – FOUR LOT PLAT

This Development Agreement (“**Agreement**”) is entered into by and between Nibley City, a Utah municipality and political subdivision of the State of Utah (“**City**”), Nibley Development, LLC, a Utah limited liability company, and Wesley Nelson Farms, Inc, a Utah corporation (Nibley Development, LLC and Wesley Nelson Farms, Inc, or any successor-in-interest thereof, being collectively referred to herein as “**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, containing approximately 54.87+/- acres (“**Property**”), which property is more particularly described as:

Parcel # 03-007-0019

Legal Description:

Beginning at a point which is North 89°47'28" West 40.39 feet along the section line and North 00°12'32" East 33.00 feet from the North Quarter Corner of Section 20 and running thence: North 89°47'28" West 40.39 feet; thence North 00°12'32" East 33.00 feet; to the POINT OF BEGINNING thence North 89°47'28" West [1294.17 feet]1630.99 feet; thence northwesterly 113.93 feet along the arc of a 656.00-foot radius non-tangent curve to the right (center bears North 26°43'26" East and the long chord bears North 58°18'02" West 113.79 feet with a central angle of 09°57'04"); thence North 53°19'30" West 639.52 feet; thence North 55°26'46" West 148.60 feet; thence North 53°19'30" West 73.43 feet to the southerly right-of-way line of Highway 89/91; thence North 36°40'30" East 1300.79 feet along said right-of-way; thence South 74°36'16" East 381.86 feet to the westerly line of Sierra Commercial Park Subdivision; thence South 00°15'51" East 1059.52 feet along said westerly line and beyond; thence southerly 120.06 feet along the arc of a 533.00-foot radius tangent curve to the right (center bears South 89°44'09" West and the long chord bears South 06°11'19" West 119.80 feet with a central angle of 12°54'20"); thence Southerly 107.31 feet along the arc of a 467.00 feet radius curve to the left (center bears South 77°21'31" East and the long chord bears South 06°03'30" West 107.08 feet with a central angle of 13°09'59"); thence South 00°31'29" East 216.95 feet; thence South 89°47'28" East 1294.18 feet; thence South 00°27'41" East 11.00 feet to the Point of Beginning. CONT 27.80 AC

Parcel #03-007-0030

Legal Description:

BEG AT SE COR OF SW/4 OF SEC 17 T 11N R 1E, N 30 RDS W 54 RDS S 30 RDS E 54 RDS TO BEG CONT 10.12 AC===ALSO THAT PT OF SW/4 OF SW/4 SEC 17 LYING S & E OF STATE ROAD== ALSO BEG AT PT 30 RDS N OF S/4 COR SEC 17 N 10 RD W 80 RD S 40 RD E 26 RD N 30 RD E 54 RD TO BEG== ALSO AT SE COR OF NW/4 OF SW/4 SEC 17 N 13 RDS 10 FT W 21 RD 18 FT M/L TO CO RD SWLY ALG SD RD 20 RD 18 FT M/L TO PT DUE W OF BEG E 32 RD 8 FT TO BEG CONT 54.87 AC IN ALL A 1 RD WIDE R/W ON BOTH SIDES & RUNNING FULL LENGTH OF ALL 1/4 SEC LINES WITHIN ABOVE DESC LAND IS DEDICATED AS HIGHWAY LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL Beginning at a point which is North 89°47'28" West 40.39 feet along the section line and North 00°12'32" East 33.00 feet from the North Quarter Corner of Section 20 and running thence: North 89°47'28" West 40.39 feet; thence North 00°12'32" East 33.00 feet; to the POINT OF BEGINNING thence North 89°47'28" West [1294.17 feet]1630.99 feet; thence northwesterly 113.93 feet along the arc of a 656.00-foot radius non-tangent curve to the right (center bears North 26°43'26" East and the long chord bears North 58°18'02" West 113.79 feet with a central angle of 09°57'04"); thence North 53°19'30" West 639.52 feet; thence North 55°26'46" West 148.60 feet; thence North 53°19'30" West 73.43 feet to the southerly right-of-way line of Highway 89/91; thence North 36°40'30" East 1300.79 feet along said right-of-way; thence South 74°36'16" East 381.86 feet to the westerly line of Sierra Commercial Park Subdivision; thence South 00°15'51" East 1059.52 feet along said westerly line and beyond; thence southerly 120.06 feet along the arc of a 533.00-foot radius tangent curve to the right (center bears South 89°44'09" West and the long chord bears South 06°11'19" West 119.80 feet with a central angle of 12°54'20"); thence Southerly 107.31 feet along the arc of a 467.00 foot radius curve to the left (center bears South 77°21'31" East and the long chord bears South 06°03'30" West 107.08 feet with a central angle of 13°09'59"); thence South 00°31'29" East 216.95 feet; thence South 89°47'28" East 1294.18 feet; thence South 00°27'41" East 11.00 feet to the Point of Beginning. CONT 27.80 AC NET 27.07 LESS AND EXCEPTING THE FOLLOWING DESCRIBED PARCEL Beginning at a point which is North 00°27'41" West 44.00 feet from the North Quarter corner of Section 20; and running thence North 89°47'28" West 40.00 feet; thence North 89°47'28" West 1294.18 feet; thence North 00°31'29" West 216.95 feet; thence Northerly 107.31 feet along the arc of a 467.00 foot radius tangent to the right (center bears North 89°28'31" East and the long chord bears North 06°03'30" East 107.08 feet with a central angle of 13°09'59"); thence Northerly 120.06 feet along the arc of a 533.00 foot radius curve to the left (center bears North 77°21'31" West and the long chord bears North 06°11'19" East 119.80 feet with a central angle of 12°54'20"); thence North 00°15'51" West 180.29 feet to the South line of Sierra Commercial Park Subdivision; thence South 89°54'07" East 1307.74 feet along said South line and beyond to and along

the South line Spring Creek Crossing Phase 2 to the North-South Quarter Section line; thence South 00°27'41" East 625.46 feet along said Section line to the point of beginning. CONT 18.45 AC (CCR) NET 8.62 AC (CCR)

Parcel #03-007-0031

Legal Description:

Beginning at a point which is North 00°27'41" West 44.00 feet from the North Quarter corner of Section 20; and running thence North 89°47'28" West 40.00 feet; thence North 89°47'28" West 1294.18 feet; thence North 00°31'29" West 216.95 feet; thence Northerly 107.31 feet along the arc of a 467.00 foot radius tangent to the right (center bears North 89°28'31" East and the long chord bears North 06°03'30" East 107.08 feet with a central angle of 13°09'59"); thence Northerly 120.06 feet along the arc of a 533.00 foot radius curve to the left (center bears North 77°21'31" West and the long chord bears North 06°11'19" East 119.80 feet with a central angle of 12°54'20"); thence North 00°15'51" West 180.29 feet to the South line of Sierra Commercial Park Subdivision; thence South 89°54'07" East 1307.74 feet along said South line and beyond to and along the South line Spring Creek Crossing Phase 2 to the North-South Quarter Section line; thence South 00°27'41" East 625.46 feet along said Section line to the point of beginning. CONT 18.45 AC (CCR)

- B. The Property was previously a single parcel of land, known as Parcel # 03-005-0003, and the current divisions in and of the Property were performed by Developer without the approval of City and without the subdivision of the Property pursuant to City land use and subdivision regulations and ordinances.
- C. Developer has prepared and seeks City approval of a proposed subdivision plat for the Property, which plat subdivides the Property into four lots ("**Four Lot Plat**"), which Four Lot Plat is attached and incorporated herein as Exhibit A.
- D. City land use regulations require all subdivisions of property to comply with City subdivision, improvement, and development standards, including the requirement that the subdivider provide public infrastructure, utility, and other improvements (collectively, "**Subdivision Improvements**") in connection with the approval and recordation of any final subdivision plat. City land use regulations do not permit the approval and recordation of a subdivision plat without the completion or the financial assurance and guarantee of required Subdivision Improvements.
- E. Developer desires to postpone the completion of Subdivision Improvements related to the Property and the Four Lot Plat until the lots within the Four Lot Plat are developed, whether together or separately, in whole or part, with the owner or developer of each such lot or portion thereof being responsible to complete the portion of the Subdivision Improvements related to or necessitated by the development of such lot.

- F. The Parties therefore desire to enter into this Agreement to provide specific requirements, conditions, and standards that will apply to the approval of the Four Lot Plat and the future completion of the Subdivision Improvements.

TERMS

1. Compliance with Regulations.

- a. The only approval or right granted by this Agreement to Developer is as to the terms and conditions by which City will approve the subdivision of the Property by way of the Four Lot Plat. This Agreement does not constitute preliminary or final plat approval, the adoption of any land use regulation, the approval of any planned unit development or other zoning designation or regulation change, or permission to begin any other subdivision, development, excavation, or construction on or of the Property.
- b. The Property is subject to and shall remain subject to all terms, conditions, and requirements of all applicable federal, state, county, and City laws, ordinances, codes, standards, and land use and zoning regulations applicable to the Property and to any building, improvement, landscaping, subdivision, excavation, or other development or work on or of the Property, as the same may be amended from time to time (collectively, "**Land Use Regulations**").
- c. To the extent that a term, condition, or requirement of this Agreement expressly modifies or is in direct conflict with City-adopted Land Use Regulations, this Agreement shall control to the extent of the express modification or direct conflict.

2. Four Lot Plat.

- a. Developer shall complete each of the following conditions prior to seeking City approval of the Four Lot Plat and prior to recording the Four Lot Plat (collectively, the "**Conditions Precedent**"):
 - i. Developer completes all outstanding obligations regarding 2600 South, as such obligations are defined and described by that certain Nibley City Street Improvement and Dedication Agreement by and between Nibley Development, LLC and City, dated July 29, 2021, and all duly authorized, written, and executed addenda and amendments thereto. The City's acceptance of the dedication of 2600 South roadway will be conclusive evidence that Developer has satisfied this subparagraph i.
 - ii. Developer records this Agreement against title to all real property within the Property. 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. Upon request by the City, Developer shall provide such documentation as is necessary to establish the fact of the recordation and of the priority of this Agreement.

- iii. Developer provides for and includes the dedication of 2600 South to City as a public right of way as part of the recordation of the Four Lot Plat.
 - iv. Developer includes a note on the Four Lot Plat that references this Agreement and requires future development of any portion of the Property to comply with this Agreement.
 - b. City shall approve and allow Developer to record the Four Lot Plat if and when Developer completes the Conditions Precedent, subject to the following:
 - i. This approval shall be granted despite and notwithstanding any requirement within City Land Use Regulations that would require the construction or financial assurance of Subdivision Improvements in connection with the approval and recordation of the Four Lot Plat. Approval of the Four Lot Plat shall not be conditioned upon the construction or financial assurance of any Subdivision Improvement, and no Subdivision Improvement will be required as a condition to the approval and recordation of the Four Lot Plat.
 - ii. The City may process the approval of the preliminary and final plat of the Four Lot Plat concurrently, if requested by Developer.
 - iii. By approving the Four Lot Plat pursuant to this Agreement, City waives, settles, and releases any claim City may have had that any previous division, subdivision, or other adjustment to or of the boundaries of the lots or parcels within the Property were improper or illegal.
 - c. On June 8, 2023, a portion of the Property (Parcel #03-007-0019) was conditionally rezoned by the City Council to the Commercial district, with the condition being that a final plat must be approved before the zoning takes effect. The Four Lot Plat satisfies that condition and requirement. Accordingly, the approval of the Four Lot Plat as described in this Agreement shall satisfy the condition to of the rezone, and the applicable property (i.e., Parcel #03-007-0019) shall, upon approval of the Four Lot Plat as described in this Agreement, be is considered rezoned to the Commercial district.
3. **Future Subdivision Improvements.** The approval by City of any further or additional subdivision or other development of any portion of the Property subsequent to the recordation of the Four Lot Plat is expressly conditioned upon and subject to the owner or developer of such portion of the Property completing all Subdivision Improvements in accordance with all applicable Land Use Regulations, as such are in effect at the time a relevant land use application is submitted. It is not the purpose of this Agreement to establish, describe, or limit in any way the nature, type, scope, design, size, location, or other details of the Subdivision Improvements that will be required in connection with the future development and/or subdivision of the Property or any portion thereof.
4. **Reserved Legislative Powers.** The execution of this Agreement shall not prevent the City, pursuant to the exercise of its legislative authority and power, to amend, enact, or repeal any provision of the City-adopted Land Use Regulations or any other City ordinance,

specification, standard, or code, provided that no such legislative action shall reduce or eliminate Developer's rights under this Agreement regarding the approval and recordation of the Four Lot Plat 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 shall be of general application to all similar development activity in the City.

5. **Assignment; Successors Bound.** This Agreement may be assigned and transferred by Developer in connection with any sale or transfer of Developer's interest in or to the Property. 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 Property 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. **Term.** The term of this Agreement shall commence as of the Agreement's effective date and shall continue until it is terminated 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 7.
 - b. The Agreement may be terminated by the City if Developer fails to complete the Conditions Precedent and record the Four Lot Plat within twelve (12) months after the effective date of this Agreement. At least ninety (90) days prior to termination of this Agreement under this provision, City shall give Developer written notice of City's intent to terminate in accordance with the process set forth in Section 7.
7. **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 steps, processes, and 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.
8. **Severability.** Each provision of this Agreement shall be separate, several, 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, provided that, the provisions set forth in Sections 1 through 3 of this Agreement are material and essential to the purpose and intent of this Agreement. Accordingly, if any provision within Sections 1 through 3 is declared to be invalid, unenforceable, or illegal, either party may terminate this Agreement upon written notice to the other party.
9. **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 Conditions Precedent.
10. **Entire Agreement.**
 - a. This Agreement is the entire agreement between the Parties with respect to the Property and the special rights and obligations granted to and assumed by Developer related to the Property. No modification, waiver, or amendment to any right, term, condition, obligation, or provision of this Agreement shall be valid unless in a writing duly authorized and approved by the parties.
 - b. This Agreement shall supersede all prior agreements, conversations, understandings, contracts, and representations related to the Property except for that certain Nibley City Street Improvement and Dedication Agreement by and between Nibley Development, LLC, and City, dated July 29, 2021, and all duly authorized, written, and executed addenda and amendments thereto
 - c. Neither party shall rely on or attempt to enforce any statement or representation, not contained herein, made by any person regarding the Property, the Four Lot Plat, or Developer's rights and obligations related thereto.
11. **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 7. 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.
12. **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.

13. **Mutual Drafting.** Each party has participated in negotiating and drafting this Agreement, and no provision of this Agreement shall be construed for or against any party based on which party drafted any particular portion of this Agreement.
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.

-- SIGNATURE PAGE AND ACKNOWLEDGEMENT TO FOLLOW --

For Nibley City:

Attested by:

By: LARRY JACOBSEN
 Mayor
 Date: 29 Nov 2023

Cheryl Bodily
 City Recorder

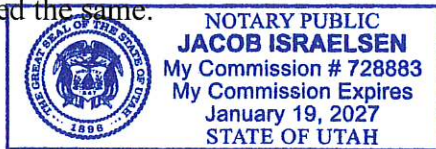
For Developer: Nibley Development, LLC

By: [Signature]
 Name: AL BINGHAM
 Title: MANAGING DIRECTOR

Date: 11-28-23

STATE OF UTAH)
 : ss
 County of Cache)

On the 29 day of Nov., 2023, personally appeared before me,
Allen Bingham, the President of Nibley
 Development, LLC, the signer of the foregoing instrument, who duly acknowledged to me that
 they executed the same.



[Signature]
 NOTARY PUBLIC

For Developer: Wesley Nelson Farms, Inc

By: [Signature]
 Name: AL BINGHAM
 Title: PRESIDENT

Date: 11-28-23

STATE OF UTAH)
 : ss
 County of Cache)

On the 29 day of Nov., 2023, personally appeared before me,
Allen Bingham, the President of Wesley Nelson
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[Signature]
 NOTARY PUBLIC