

**NIBLEY CITY  
R-PUD DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into this 17<sup>th</sup> day of March, 2020, between Return Nibley, hereinafter referred to as "Developer" and Nibley City, here in after referred to as "City", and

WHEREAS, Firefly Estates, hereinafter referred to as "the Development" seeks to obtain approval as a Residential Planned Unit Development ("R-PUD") under Nibley City Code Title 19, Chapter 32 ("R-PUD Ordinance"); and

WHEREAS, the approval of an R-PUD requires the City, by legislative act, to apply the R-PUD overlay zone to the Development, which act is preconditioned on the Developer entering into and complying with the terms of this Agreement; and

WHEREAS, the Developer has prepared preliminary plans for the Development, including a preliminary site plan, proposed amenity improvements, proposed open space, total number of units to be developed, proposed phasing, maintenance plans, and other supporting documentation as required by the City and the R-PUD Ordinance, ("Preliminary Plans") which plans are attached hereto and made part of this Agreement as Exhibit "A"; and

WHEREAS, it is necessary for the interest of the public welfare that the Development be developed and improved according to the specifications set forth in Nibley City Ordinances and Design Standards and this Agreement; and

NOW, THEREFORE, to induce Nibley City to approve the proposed R-PUD development and rezoning, the Developer does hereby unconditionally promise and agree with Nibley City as follows:

1. Developer hereby acknowledges receipt of a copy of the Nibley City Subdivision Ordinance, Nibley City Code Title 21, the R-PUD Ordinance and the Nibley City Design Standards. Developer hereby acknowledges that Developer, or an agent of Developer, has read and understands the provisions of the ordinances and standards and that Developer will fully and completely comply with the provisions and requirements therein contained.

2. Developer hereby acknowledges that the execution of this Agreement, on its own, does not constitute final plat approval, approval of the R-PUD rezone, or permission to begin development, and that any such approvals granted by the City may be granted only upon Developer's compliance with the terms of the Nibley City Ordinances, Design Standards, and this Agreement.

3. This Agreement, including the Preliminary Plans attached hereto, shall govern the Development. The Developer shall develop, construct, improve, and maintain the Development in a way that is substantially similar to the Preliminary Plans. In no event may the number of units in the Development exceed the number of units described in the Preliminary Plans.
4. Developer shall develop and construct all open space, landscaping, housing units, utilities, amenities, roadways, and all other improvements in accordance with the standards listed within Nibley City Design Standards, Nibley City Code Title 21, Nibley City Code Title 19 Chapter 32, and as shown on the Preliminary Plans.
  - a. The Developer shall submit full construction drawings as part of final approval with each phase. The Developer shall be responsible and pay for the construction and building of all roadways within the development, including Meadow Lane. The Developer shall also be required to make improvements to 2200 S and 1200 W as required by Nibley City Subdivision standards.
5. Developer shall develop the park and amenities in proportional phases as required in NCC 19.32.050(A). The development shall follow the phasing plan outlined in the Preliminary Plans.
  - a. The Developer shall provide the following amenities: two playgrounds, one swingset, trails as shown in pedestrian plan and Nibley City Master Plans, outdoor bathroom, covered pavilion with picnic tables, crossing flags at 2260 S and Meadow Lane, 150 sq. Ft. on the southwest corner of the 2200 S and Meadow Lane intersection for a Nibley City gateway sign to the same size and quality of sign at Nibley City Clear Creek Park, sufficient landscaping and trees planted in the eastern open space to provide light screening of the development, and any other amenities and landscaping as required by NCC 19.32 and as approved and contained in the Preliminary Plans.
6. All proposed improvements, including roadways, park and recreation amenities, Nibley City gateway sign, landscaping, trails, fencing, piping and improvements of irrigation ditches, and all other improvements required by Nibley Code and shown on the attached Preliminary Plans shall be built and paid for by the Developer.
7. Developer shall provide a preliminary maintenance plan with the Preliminary Plans for the maintenance of amenities as required by NCC 19.32.050(B).
8. A homeowner's association shall be established and maintained as required by NCC 19.32. Onsite office space shall be provided.
  - a. Onsite office space may take the form of a residential unit that is occupied by an HIOA board member, provided that such arrangement is also agreed to and established in the HOA's governing documents and CC&Rs.

9. The attached preliminary plat shall expire five years after the recording of this development agreement or date of approval by the Nibley City Council, whichever date comes first. Any phases that have not been submitted for final approval by the expiration date shall need to be submitted for preliminary approval, which submittal will be reviewed and governed pursuant to the Nibley City subdivision code in effect at the time of submission and this Agreement.

10. The City may at its option waive impact fees commensurate with costs up to the price of construction of Meadow Lane south of the development, and inexchange require the Developer to construct Meadow Lane from the south end of the Development to 2450 S to Nibley City standards. Any such agreement shall be pursuant to Nibley City Code 17.06.040.

11. Developer shall build and install a six-foot fence along the property line of the development and parcel 03-174-0001.

12. Each unit shall provide for a two-car garage.

13. This Agreement and the Preliminary Plans may be revised or amended only upon the approval of the Nibley City Council, with the recommendation of the Planning Commission.

14. Developer shall ensure that there are no holders of interests 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 devices, have been made subordinate to this Agreement. Developer shall provide such documentation as is necessary to establish these facts prior to receiving final plat approval or approval of the R-PUD rezone.

15. Developer shall comply with all applicable federal, state, county and City requirements, regulations and laws for each aspect of this Development, including payment of fees, provision of bonds and other guarantees, and compliance with design and construction standards. Nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws, ordinances and requirements as now existing and as enacted and/or amended prior to construction. In the event of a conflict between this Agreement and any applicable federal, state, county, or city requirement, regulation, or law, the federal, state, county, or city requirement, regulation, or law shall prevail to the extent of such conflict.

16. Developer shall not engage in any construction or disturbance of soil in the development prior to issuance of the Notice to Proceed by the Public Works Director.

17. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto mentioned and permitted successors and assigns including all parties who acquire title to any portion of the Development; provided, however, that this Agreement cannot be otherwise assigned, transferred or conveyed by either party, without the express, written consent of the other party.

18. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.

19. Time is of the Essence. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

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

21. Entire Agreement. This Agreement, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

22. No Third Parties. This Agreement, and all Exhibits thereto, is intended for the sole benefit of the named parties thereto. No third party, except for permitted successors and assigns, shall have any right to enforce any of the terms or obligations herein.

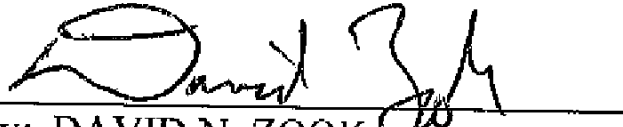
23. Recordation and Running with the Land. This Agreement shall be recorded in the chain of title for the Development. This Agreement shall be deemed to run with the land and bind all future owners of any part of the Development. Unless otherwise agreed to in writing by the City, all construction, development, and improvement of the Development, whether by Developer or another party, shall conform to this Agreement.

24. Attorney Fees. Both Parties shall pay for their own attorney fees and costs arising out of or connected in any way to the execution of this Agreement. Any Party that prevails in any legal proceeding, including court proceedings, arbitration, and administrative proceedings, to enforce this Agreement or adjudicate any issues under or in connection with this Agreement will be entitled to recover its reasonable attorney fees, costs, and expenses of such proceedings.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

**NIBLEY CITY**

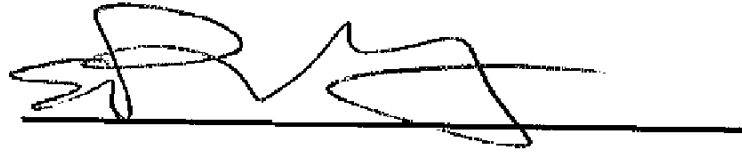
**DEVELOPER**



By: DAVID N. ZOOK  
Its: City Manager

RETURN DEVELOPMENT LLC

By:



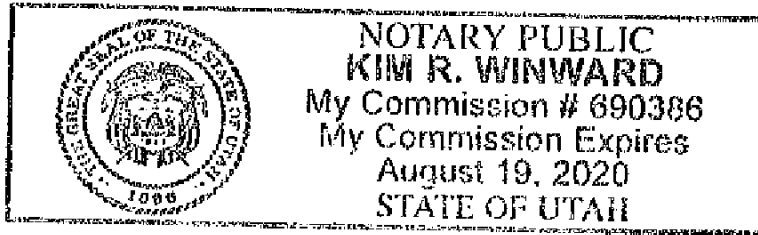
By:

STATE OF UTAH )

:ss

County of Cache )

On this 17 day of March, 2020, personally appeared before me DAVID N. ZOOK, City Manager, the signer of the within instrument, who duly acknowledged to me that he executed the same as City Manager for Nibley City Corporation.



  
NOTARY PUBLIC

STATE OF UTAH )

: ss

County of Cache )

~~On the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared before me, \_\_\_\_\_, Developer, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.~~

*see attached*

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

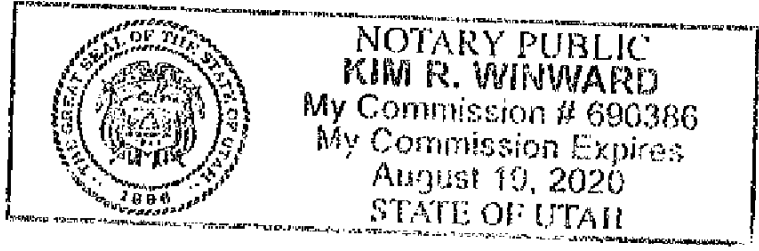
**Exhibit A**  
**Preliminary Plans**

STATE OF UTAH     )  
                                  §  
COUNTY OF CACHE )

On the 17th day of March, 2020, personally appeared before me Ethan Poppleton, who being duly sworn, did say that he is the Manager of RETURN DEVELOPMENT, LLC., by authority of its Articles of Organization and duly acknowledged to me that the said Limited Liability Company executed the same.

*Kimi R. Winward*

Notary Public  
My Commission Expires: *8/19/20*  
Residing at: *Logan, UT*









February 27, 2020

Nibley City,

This letter is to provide additional information pertaining to the proposed Firefly Estate PUD subdivision located at 2200 S and 1200 W.

**Maintenance:**

The proposed HOA management company that will provide initial and ongoing maintenance is Community HOAM. They are located at 95 W 100 S #389 Logan, UT 84321, and phone is 435-752-5154. HOAM is an experienced management company and they provide services for project such as Blackhawk Condo's, Aspen Meadow's, Brookhaven and others. You can find specifics at <http://communityhoam.com>, or contact Burke Neilson at (435)232-5355.

Note: Please see supplemental letter provided by HOAM

**Proposed Park Phasing:**

We propose the park to be developed as per Nibley City code, in that we will develop the same percentage of park space in ratio to completed homes. The project will be done in three phases, the first to include the HOA managed park. Phase two will include the remainder of the open space on the west side of Meadow Ln, and Phase three will include the east park that will act as an extension to Firefly Park. With the east park, we will include the bathroom, pavilion, picnic tables, trees, shrubs and sidewalks as shown in the latest plat designs on 02/27/2020.

**Parking Enforcement:**

Parking will be managed by HOAM, and contracted through a third party parking enforcement company utilizing towing and booting options to maintain consistency and protection for the city and homeowners.



## UNITY IN ASSOCIATION MANAGEMENT

95 West 100 South #389 • Logan, Utah 84321 • 435-752-5154

February 10, 2020

### **Re Management Services for Firefly Estates.**

Dear: Nibley City Council

Community HOAM has contracted with the developers of the proposed Firefly Estates to handle the management of the Homeowners Association. At Community HOAM we specialize in management of common interest communities and manage over 24 communities like Firefly Estates. We help our communities run their best by providing the education, tools, and a system that allows them to plan for current and long-term maintenance, enforce the rules, and protect the interest of all community members.

#### **Financial Management**

We help communities establish and follow a budget that includes funding a reserve fund with the help of a reserve study (Required for all completed communities by Utah law 57.8A.211). Without proper planning communities can find themselves collecting just enough money to handle their day to day operations without planning for the future. We have helped many communities start off on the right foot, or if they have fallen behind, we can help them correct course.

#### **Proper Maintenance**

Our service includes regular walkthrough inspections to look for issues with maintenance. This allows us to be proactive in keeping the community beautiful and safe. We always use licensed and insured contractors to insure maximum protection of the HOA and its members.

#### **Rule Enforcement**

Consistency is key when it comes to properly enforcing the rules in any HOA. We believe the educating homeowner of the rules is the first most important step. This is done through policy notices, proper signage, and warning letters. Notices and warnings are followed up with violation fines if they continue to go unresolved. Parking is one of the most common issues in any HOA community. We handle parking by contracting with a professional parking enforcement company. This is necessary because with parking it may be impossible to know who owns a car that is parked in violation, leaving no way to enforce the violation through traditional letters and fines.

We believe that common interest communities can be a great asset to any city, providing affordable housing for first time home buyers and allowing access to features and amenities that would not otherwise be available. If you have any questions please feel free to contact me at [burke@communityhoam.com](mailto:burke@communityhoam.com) or (435) 752-5154

Sincerely

Burke Nielsen  
Community HOAM LLC

EXHIBIT "B"

LEGAL DESCRIPTION

**BEGINNING** at a point 16.5 feet East and 24.75 feet South of the center of Section 17, Township 11 North, Range 1 East, Salt Lake Base and Meridian; running thence South 552.75 feet; thence East 788.06 feet; thence North 552.75 feet to a point 24.75 feet South of the quarter section line; thence West 788.06 feet to the place of beginning.

**ALSO; BEGINNING** at the Northwest corner of the Northwest Quarter of the Southeast Quarter of Section 17, Township 11 North, Range 1 East, Salt Lake Base and Meridian; running thence South 35 rods; thence East 53 1/2 rods, more or less, to canal; thence South along canal 15 rods; thence East along canal 26 1/2 rods to the quarter section line; thence North 50 rods to the North line of quarter section; thence West 80 rods to the place of beginning.

**EXCEPTING THEREFROM** the following: **BEGINNING** at a point 16.5 feet East and 24.75 feet South of the center of Section 17, Township 11 North, Range 1 East, Salt Lake Base and Meridian; running thence South 552.75 feet; thence East 788.06 feet; thence North 552.7 feet to a point 24.75 feet South of the quarter section line; thence West 788.06 feet to the place of beginning.

Tax Parcel No. 03-008-0001