



After recording return to:
Brigham City Corporation
Attn: City Recorder
20 N. Main
Brigham City, UT 84302

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this 26 day of November, 2019, by and between BRIGHAM CITY CORPORATION, a municipal corporation organized pursuant to the laws of the State of Utah (“City”), and TNU Properties, LLC, an Idaho limited liability company (“Developer”).

RECITALS

WHEREAS, Developer owns that certain real property at approximately 129 North 1200 West, Brigham City, Box Elder County, Utah, designated as parcel number 03-108-0099 by the Box Elder County Recorder’s Office, with the legal description attached hereto and incorporated by reference at Exhibit “A” (the “Subject Property”); and

WHEREAS, Developer desires and intends to develop the Subject Property in an initial phase, and in future phases: the initial phase being the east 10-acres (plus/minus) of the Subject Property (“Initial Phase”), and the future phases being the west 20-acres (plus/minus) of the Subject Property (“Future Phases”); and

WHEREAS, Developer will initially and presently develop and put to use Initial Phase for Developer’s intended purposes; and

WHEREAS, Developer will later develop and subsequently put to use Future Phases for to-be-determined site development purposes; and

WHEREAS, a portion of the master planned roadway as depicted in the Brigham City adopted General Plan – Transportation Element attached hereto as Exhibit “B” traverses through the Subject Property, specifically not within the area of Initial Phase, but in and through the area of Future Phases (the “Roadway Portion”); and

WHEREAS, pursuant to City’s ordinances, namely Sections 29.01.070, 29.01.150, 29.05.160, and 29.06.050 (as amended), Developer possesses, at its cost and expense, the obligation and the responsibility for the Roadway Portion: (i) to grant and dedicate to City the right-of-way area sixty (60) foot right-of-way (the “Right-of-Way”) and (ii) to construct and install curb, gutter, sidewalk, road base, asphalt and applicable utilities for the distance of the property in accordance with the City Public Works Standards applicable at the time such improvements are constructed and installed (the “Requisite Improvements”); and

WHEREAS, Utah Code, Section 10-9a-102(2) permits City to enter into development agreements it considers “necessary or appropriate for the use and development of land within the

municipality”, and to use development agreements to fulfill land use purposes including the “governing uses, density, open spaces, structures, buildings, ... transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements” while providing “fundamental fairness in land use regulation”, and balancing “the foregoing purposes with a landowners private property interest”; and

WHEREAS, City Code, Section 29.01.050 authorizes City to enter into a development agreement “to set forth the specific requirements, elements and any other aspects of a development, including vesting of zoning and uses, aesthetic standards and requirement”; and

WHEREAS, both City and Developer determine and agree the dedication of the Right-of-Way and the construction and installation of the Requisite Improvements are not appropriate, practical or reasonable at this time, but may be in the future; and

WHEREAS, City supports Developer’s application for the improvement and use of the Subject Property in Initial Phase and multiple phases: (i) the initial and present development and use of Initial Phase (the east 10-acres (plus/minus) of the Subject Property) for Developer’s intended purposes, and (ii) the later and subsequent to-be-determined site development purposes of Future Phases (the west 20-acres (plus/minus) of the Subject Property), with the deferral of the dedication of the Right-of-Way and the construction and installation of the Requisite Improvements, all of which is subject to and conditioned upon Developer’s compliance with the terms of this Agreement, to include the time at which the dedication of the Right-of-Way and the construction and installation of the Requisite Improvements will be required of and performed by Developer; and

WHEREAS, City, acting pursuant to its authority under Utah Code and its ordinances and in furtherance of its land use policies and interests, makes certain determinations with respect to Developer’s proposed development of the Subject Property to include the deferral of the dedication of the Right-of-Way and the construction and installation of the Requisite Improvements, which certain determinations are found to be in conformance with its current land use goals and ordinances provided the Subject Property is developed as required in this Agreement, and, City, in the exercise of its discretion, elects to approve this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree with one another as follows.

1. **Recordation of Agreement; Covenants Running with the Land.** This Agreement shall be recorded in the public records of the Box Elder County Recorder’s Office. The terms, conditions, covenants and agreements of this Agreement shall: (i) run with the land of the Subject Property and shall be binding upon Developer, its successors and assigns as to Future Phases of the Subject Property, and (ii) shall be an encumbrance to and associated with the to-be-determined site development purposes of Future Phases of the Subject Property, and (iii) shall inure to the benefit of City, its successors and assigns.

2. **Deferral of Requisite Improvements of Roadway Portion.** The dedication of the Right-of-Way and the construction and installation of the Requisite Improvements of the Roadway Portion traversing through Future Phases are deferred, and Developer shall have no

responsibility or obligation to dedicate the Right-of-Way or construct or install the Requisite Improvements of the Roadway Portion until the first to occur of the following events (each, a "Trigger Event"):

- the development of the immediate north adjacent property requiring public right-of-way access to, over and through Future Phases; or
- the development of the immediate south adjacent property requiring public right-of-way access to, over and through Future Phases; or
- the to-be-determined site development purposes of Future Phases requires public right-of-way access from the north or from the south to, over and through Future Phases.

Upon the occurrence of a Trigger Event, Developer shall have one-year from the date of the Trigger Event to complete the Requisite Improvements of the Roadway Portion.

3. Site Development of Future Phases and Reservation of Dedicated Right-of-Way. In the event Developer undertakes the to-be-determined site development and use of Future Phases prior to a Trigger Event, Developer shall through the to-be-determined site development and use of Future Phases make reservation of the Right-of-Way to, over and through Future Phases, by and through the grant and recordation with the Box Elder County Recorder's Office of an appropriate easement for future public right-of-way, as depicted in the Brigham City adopted General Plan – Transportation Element attached hereto as Exhibit "B". Notwithstanding the foregoing and anything to the contrary in this Agreement, Developer reserves the right to make application, and may make application, to City for realignment of the Roadway Portion traversing through Future Phases; provided, however, Developer expressly acknowledges and stipulates that the City does not make any representations, agreements or covenants as to its consideration and decision of such application, including whether such application will be approved or denied.

4. Dedication of Right-of-Way and the Construction of Requisite Improvements. Upon a Trigger Event, Developer shall, all at its sole cost and expense, construct and install the Requisite Improvements, and shall grant and dedicate to City the Right-of-Way and the Requisite Improvements.

5. No Imposition of Lien; Requirement of Financial Assurances for Requisite Improvements. City shall neither impose nor seek to impose a lien or further encumbrance on the Initial Phase of the Subject Property for the dedication of the Right-of-Way or the construction and installation of the Requisite Improvements. At such time Developer undertakes to-be-determined site development of Future Phases prior to a Trigger Event, City will require Developer to enter into an escrow agreement and establish an escrow account, or provide other satisfactory security as hereafter mutually agreed by City and Developer, for the costs and expenses to construct and install the Requisite Improvements. The Developer acknowledges and agrees the City may impose a lien as an alternative security for the Requisite Improvements only after a triggering event and the Developer fails to enter into an escrow agreement and establishes an escrow account.

6. **Notice.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for who intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the Parties as follows:

To City: Brigham City Corporation
Attn: Community and Economic Development Department
P.O. Box 1005
20 North Main
Brigham City, Utah 84302
Telephone: (435) 734-6619

To Developer: TNU Properties, LLC
Attn: William A. "Bill" Stevens
4695 S. 1900 W., Suite 8
Roy, Utah 84067
Telephone: (602) 373-3884

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained. Any party may change its address by giving written notice to the other party in accordance with the provisions of this section.

7. **Default.** If either party defaults in any term or condition of this Agreement, the party in default shall be responsible to pay all costs of enforcement of this Agreement, including costs of court or any attorney's fees which are reasonably incurred.

8. **Binding.** This Agreement is binding on and shall inure to the benefit of City, Developer and their respective successors and assigns.

/// Signatures Appear on the Following Pages ///

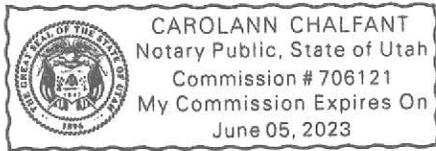
DEVELOPER



William A. Stevens, Member
TNU Properties, LLC

State of Utah)
 : ss
County of Box ELDER)

On this 3RD day of DECEMBER, 2019, William A. Stevens, member, for and on behalf of TNU Properties, LLC, personally appeared before me, the undersigned notary public in and for said state and county, being duly sworn, acknowledged to me, that he is the member of TNU Properties, LLC, an Idaho limited liability company, and the within and foregoing instrument was signed on behalf of said company, and said member did duly acknowledge to me that said company executed the same.



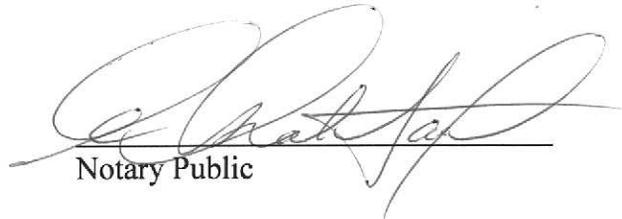
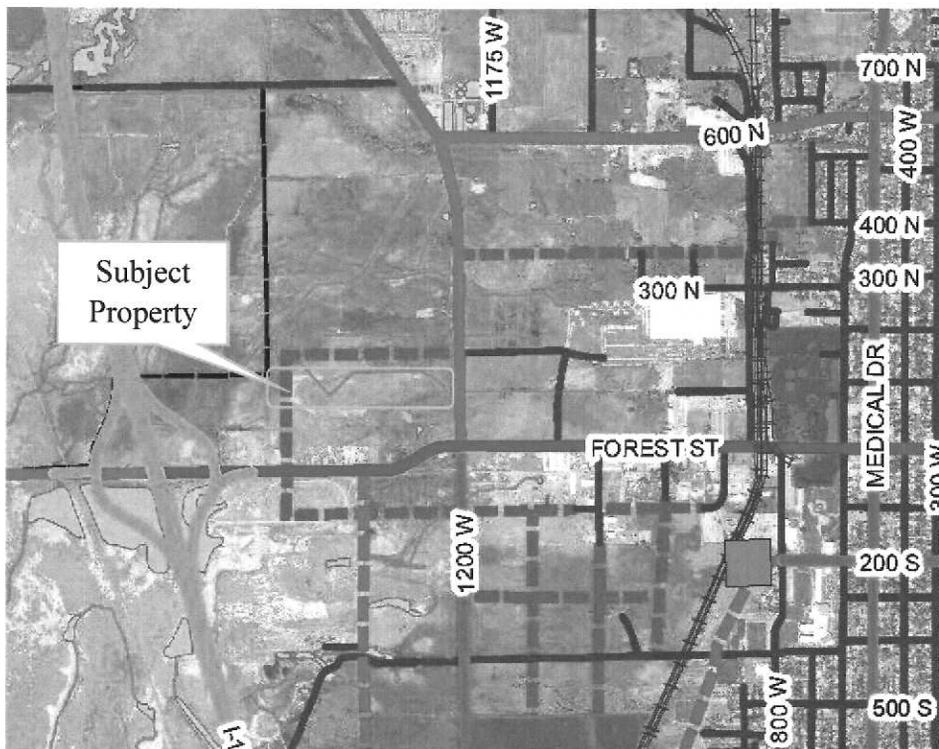

Notary Public

EXHIBIT "A"
(the "Legal Description")

PARCEL #: 03-108-0099

LEGAL : A TRACT OF LAND LOCATED IN THE SE/4 OF SEC 15, T 09N, R 02W, SLBM, HAVING A BASIS OF BEARING OF S 89°54'19" E AS DETERMINED BY GPS OBSERVATIONS UTILIZING LEICA CONTROL NETWORK BETWEEN THE MONUMENTED LOCATION OF THE SW CORNER (HAVING RECORD AND MEASURED NAD83 LAMBERT STATE PLANE COORDINATES OF N = 3709987.3701 E = 1485917.2927 U.S. FT UTAH NORTH ZONE) AND THE SOUTH QUARTER CORNER (HAVING RECORD AND MEASURED NAD83 LAMBERT STATE PLANE COORDINATES OF N = 3709982.981 E = 1488554.9216 U.S. FT UTAH NORTH ZONE) BEING DESCRIBED AS FOLLOWS: BEGINNING AT A FENCE POST BEING LOCATED 876.70 FT N 00°04'56" W AND 29.46 FT S 89°55'04" W FROM THE MONUMENTED SE CORNER OF SAID SECTION 15 (SAID POINT BEING ON THE WEST R/W LINE OF 1200 WEST STREET AND SAID SE CORNER HAVING RECORD LAMBERT STATE PLANE COORDINATES OF N = 3709978.5617 E = 1491232.2959 U.S. FT UTAH NORTH ZONE). THENCE N 89°29'55" W 2640 FT TO THE NORTH-SOUTH QUARTER SECTION LINE, SAID POINT BEING EVIDENCED BY AN EXISTING FENCE POST; N 00°16'57" E 498.90 FT, ALONG OR NEAR AN EXISTING FENCE LINE TO A FENCE POST; S 89°30'03" E 2640.00 FT ALONG OR NEAR AN EXISTING FENCE LINE, TO A FENCE POST REPRESENTING THE WEST R/W LINE OF 1200 WEST STREET; S 00°16'57" W 499.00 FT, ALONG THE WEST BOUNDARY OF SAID 1200 WEST STREET AS DESCRIBED BY WARRANTY DEED RECORDED AS ENTRY NUMBER 297293 BK 1143, PG 1192 ON 11/30/2010, TO THE POINT OF BEGINNING.

EXHIBIT "B"
(the "Roadway Portion")



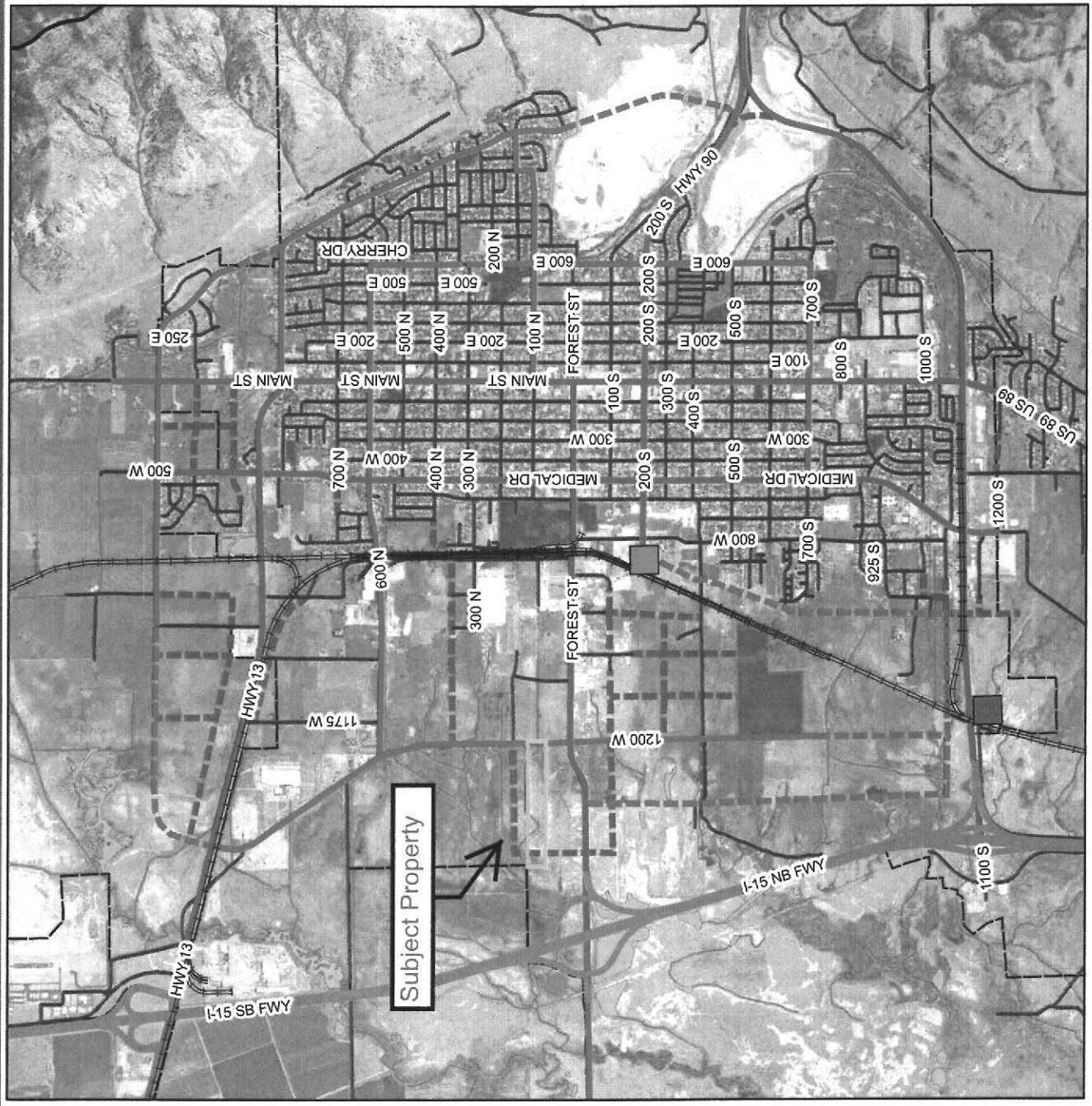
- Freeways ———
- Principal Arterial ———
- Minor Arterial ———
- Proposed Minor Arterial - - - -
- Collector ———
- Proposed Collector - - - -
- Local Streets ———
- Proposed Local Streets - - - -

*See the following attached sheet for the overall General Plan Transportation Element Plan

TRANSPORTATION MASTER PLAN



- UTA Station Option at 1100 S
- UTA Station Option at 200 S
- ══ Railroads
- ══ Freeways
- ══ Principal Arterial
- ══ Minor Arterial
- ══ Proposed Minor Arterial
- ══ Collector
- ══ Proposed Collector
- ══ Local Streets
- ══ Proposed Local Streets
- Brigham City



Small Town

BIG FUTURE