



\*W2992364\*

EN 2992364 PG 1 OF 16  
LEANN H KILTS, WEBER COUNTY RECORDER  
22-JUL-19 12:35 PM FEE \$1.00 DEP DC  
REC FOR: NORTH OGDEN CITY

## SUBDIVIDER'S ESCROW AGREEMENT

Agreement made this 22nd day of July, 2019,  
between North Ogden City, a municipal corporation of the State of Utah,  
located in Weber County, Utah, (the "City"), and **SEC 070, LLC**,  
of Salt Lake County, Utah, (the "Subdivider") and **Cottonwood Title**,  
Of Davis County, Utah (the "Escrow Agent").

## RECITALS

1. City and Subdivider have entered into a Developer's Agreement, dated **22nd of July, 2019**, attached hereto as Exhibit A, for the subdivision and construction of improvements on certain land located in the City to be known as **Barker Depot (formerly known as North Ogden Commercial Square)** and has requested formal approval and acceptance thereof by the North Ogden City Council.

2. Due to financial limitations, the Subdivider is unable to install the improvements required by the Subdivision Ordinance of the City upon the entire proposed subdivision. Subdivider has, therefore, requested the City to permit development of the Subdivision in accordance with the Subdivision Ordinance of the City whereby the Subdivider may make payments upon the proposed subdivision by filing necessary deposits in escrow to cover the improvements.

3. Subdivider now desires to enter into this Escrow Agreement as security for his compliance with the ordinances, rules, regulations, requirements, and standards of the City and of the Developer's Agreement.

## AGREEMENT

NOW THEREFORE, the Parties hereto mutually agree as follows:

1. Appointment of Escrow Agent. Cottonwood Title is hereby appointed Escrow Agent, and as Escrow Agent shall hold, in a separate escrow account, the sum reflected in paragraph 2 hereof, subject to the terms and conditions hereinafter set forth.

2. Deposits in Escrow. The Subdivider shall deposit with Escrow Agent the sum of **\$404,195.00** representing 110% of the entire cost of all improvements enumerated in paragraph 2 of the Developer's Agreement, a copy of which is attached hereto, marked Exhibit A and incorporated herein by this reference. The cost of the improvements shall be determined by the City Engineer for each off-site improvement item.

3. Application of Escrow Funds. It is agreed by all parties to this agreement that the sum of money indicated in paragraph 2 of this agreement shall be used exclusively for the purposes of paying for the costs of materials and the construction and installation of all improvements required by the City Subdivision Ordinance. The undersigned further agrees that the money held in the Escrow Account shall be distributed to appropriate contractors and subcontractors only upon written authorization by an authorized officer of the City. Such written authorization shall be made upon the City stationary and will bear the City's corporate seal indicating review and approval by the City.

4. Retention of Escrow Funds. A sum equal to 10% of the escrowed amount or **\$36,745.00** shall remain with the Escrow Agent for a period of one year after conditional acceptance by the City, pursuant to the terms of Exhibit A.

5. Application and Return of 10% Security. All demands by the City to perform corrections or completion of improvements, if not performed or completed in accordance with City Ordinance, rules and regulations, shall be made by certified mail, with a copy also sent to the Escrow Agent. If the defect

or default is not corrected or improvements completed within 30 days following service of such demand, the City may recover the defect or complete improvements and charge the Subdivider such costs, unless Subdivider requests in writing, served by certified mail, with a copy likewise served upon the Escrow Agent by certified mail, a hearing before the North Ogden City Council within the aforementioned 30 day period of time respecting the alleged defects or incompleteness. The Escrow Agent, upon receiving reasonable proof from the City of the defect and that the City has incurred the cost of correcting the defect, pay to the City from the Escrow Account the cost of correcting the defect, and the Escrow Agent shall be held harmless by the parties for its payments to the City.

6. Release of Escrow. One year after the accepted improvements and the improvements remain substantially free from latent defects, the City shall certify such fact to the Escrow Agent, who shall release to the Subdivider any money still held in the Escrow Account and the Escrow Agent shall be discharged of its obligations to the City.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

NORTH OGDEN CITY, a  
Municipal Corporation,  
State of Utah



Attest:

By: [Signature]  
Mayor

S. Annette Spendlove  
City Recorder

SEC 070, LLC  
By: [Signature]  
Subdivider

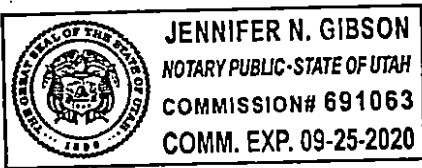
COTTONWOOD TITLE INSURANCE AGENCY  
By: [Signature]  
Escrow Agent  
Print name Jim C. Markes  
Phone # 801-991-1317

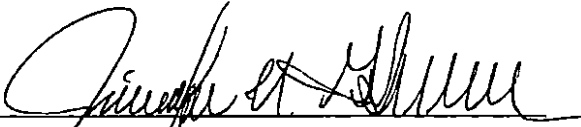
Approved as to Form:

[Signature]  
North Ogden City  
Attorney

State of Utah }  
                                  §  
County of Weber }

On this 19<sup>th</sup> day of July, 2019, personally appeared before me, Jim C. Morris FBO Cottonwood Title Insurance Agency, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to on this instrument, and acknowledged that he/she/they executed the same.



  
Notary Public

**Exhibit A: Developer's Agreement**

**DEVELOPER'S AGREEMENT WITH NORTH OGDEN CORPORATION**

This Agreement entered into this \_\_\_ day of \_\_\_\_\_, 2019, between **SEC 070, LLC**, County of Weber, State of Utah, or its assigns, hereinafter referred to as Developer, and **NORTH OGDEN CITY CORPORATION**, a municipal corporation of the State of Utah located in Weber County, hereinafter referred to as the City, hereby agrees as follows:

1. **FINAL.** Developer has obtained approval of a final plat from North Ogden City for the subdivision of, and construction of improvements on, certain land in North Ogden City to be known as **Barker Depot (formerly known as North Ogden Commercial Square)**. Developer has presented to the North Ogden City Planning Commission and the North Ogden City Council a proposed final plat for the subdivision of, and construction of improvements, on the subdivision. On **January 24, 2018**, a Notice of Decision was sent and is attached hereto for convenience as Exhibit "A" (the "Notice of Decision"). As consideration for the granting of said approval and acceptance, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

2. **COMPLIANCE WITH SUBDIVISION STANDARDS.** Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- A. Rough grading and finish grading and surfacing of streets.
- B. Curbs, gutters, waterways, and driveway approaches.
- C. Sanitary sewers, including laterals to property line of each lot.
- D. Street drainage and drainage structures.
- E. Water lines, including laterals to each property line of lot.
- F. Fire hydrants.
- G. Sidewalks and walkways.
- H. Traffic control signs.
- I. Street signs with numbers.
- J. Screening when required.
- K. Chip and seal coat on new streets.
- L. Monuments.
- M. Fencing.
- N. Pressure irrigation, including laterals to each property line of lot.
- O. 10% Contingency Fund.

Said improvements and any others designated shall be done according to the specifications and requirements of the City. All work shall be subject to the inspection of North Ogden City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer and his/her decision shall be final and conclusive. For convenience a plat map is attached as Exhibit "B".

Developer agrees as consideration for City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines.

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

3. TIME FOR COMPLETION AND EXTENSION OF TIME. All of the said off-site improvements shall be fully installed and completed within two (2) years from the date of the recordation of the Final Plat. If not completed within two (2) years, the Developer may apply to the Planning Commission and the City Council for an extension of time of one year with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.

4. SECURITY FOR COMPLIANCE. As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the city and of Developer's agreements herein stated, Developer has delivered to the City an acceptable Escrow Agreement for **Barker Depot**, and agrees to hold \$ 404,195.00 (which represents the cost of all required improvements as determined by the City Engineer plus 10% contingencies) in escrow for the use of the city in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this agreement, the escrow agreement and all City codes and ordinances. For convenience the Escrow Agreement is attached as Exhibit "C". The decision of the City as to whether an improvement needs to be installed, constructed, completed or replaced will be final.

Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums deposited in escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney's fees.

The 10% of above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the last improvement is "conditionally accepted" by the City or until one (1) year after the time the



last improvements needing repair or placement is again accepted. At the end of the one year period the said 10% shall be returned to Developer provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them into conformity with City standards, Developer will pay the difference to the City on demand. The city shall not issue any building permits until the improvements needing repair, replacement, etc., are completed and again accepted.

5. APPLICABILITY OF ORDINANCE. This agreement does not supersede, but implements the North Ogden City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

6. SUCCESSORS ENFORCEMENT. The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

7. NO REVISION OF REQUIREMENTS. Except as set forth herein, the terms of this agreement shall not be construed as amending or modifying any requirements of the ordinances of North Ogden City, or supersede or supplement any conditions of approval by the City Staff, Planning Commission, Engineer, or any other approving or advisory body which has already given approvals of **The Ultimate Express Car Wash**. Developer is still required to comply with any conditions previously imposed by the Planning Commission.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement this \_\_\_\_\_, 2019.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature, Manager



NORTH OGDEN CITY CORPORATION

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Mayor

ATTEST:

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City Recorder



**NORTH OGDEN CITY**

EH 2992364 PG 12 OF 16

SETTLED 1851

## NOTICE OF DECISION

January 24, 2018

Ryan Forsyth  
Leading Tech Construction  
1835 South Highway 89  
Perry, Utah, 84302

Re: North Ogden Commercial Square Subdivision, Final Approval

The North Ogden City Planning Commission met on January 24, 2018 and made a motion to grant final approval for the proposed North Ogden Commercial Square subdivision, located at the Southeast corner of 2600 North and the proposed 300 East.

The approval by the Planning Commission is subject to the following conditions, which were specified in their motion:

- Correcting ownership information for the parcel to the west of 300 East on the plat.
- The applicant providing record of approval from UDOT for the intersection of 300 East and 2600 North prior to recording of the plat.
- Conditions specified in the Technical Committee Review Meeting Letter (unless superceded by the Staff Report addressing final approval for this subdivision).
- Minor adjustments to the plat being allowed, if additional right of way is needed for any road widening required by UDOT, and that this issue be delegated to Staff.

Sincerely,

Brandon Bell, CNU-A

Associate Planner  
505 East 2600 North  
North Ogden, UT 84414  
[bbell@nogden.org](mailto:bbell@nogden.org)  
(801) 737-2216



EXHIBIT "C" TO DEVELOPER'S AGREEMENT  
 WITH NORTH OGDEN CORPORATION  
 (Project Costs and Reimbursements)



# NORTH OGDEN CITY

— SETTLED 1851 —

EN 2992364 PG 14 OF 16

Lorin Gardner  
 City Engineer  
[lgardner@nogden.org](mailto:lgardner@nogden.org)

North Ogden Commercial Square 1/02/2019 SUMMARY		
	Original Total	Remaining
<b><u>Mobilization</u></b>	\$3,000.00	\$3,000.00
		<b>\$3,000.00</b>
<b><u>SWPPP</u></b>		
Clear and Grub 300 East Street	\$2,000.00	\$2,000.00
Silt Fence	\$3,500.00	\$3,500.00
Truck Entrance	\$2,100.00	\$2,100.00
Inlet Protection	\$500.00	\$500.00
		<b>\$8,100.00</b>
<b><u>Sanitary Sewer</u></b>		
582 LF of 8" main	\$20,370.00	\$20,370.00
2-4' Manholes	\$5,000.00	\$5,000.00
1-5' Manhole (includes saw cut and patch)	\$7,500.00	\$7,500.00
1-6" lateral	\$800.00	\$800.00
		<b>\$33,670.00</b>
<b><u>Storm Drain</u></b>		
418 LF of 15" RCP	\$14,630.00	\$14,630.00
5-Catch Basins	\$10,000.00	\$10,000.00
1-4'x8' Tie in Clean out Vault	\$12,000.00	\$12,000.00
Remove exiting SD grate and replace w/lid (2600 North)	\$1,000.00	\$1,000.00
		<b>\$37,630.00</b>
<b><u>Culinary Water Line</u></b>		
725 LF of 8" main	\$15,950.00	\$15,950.00

Saw cut and patch UDOT Road	\$25,000.00	\$25,000.00
4 valves	\$6,400.00	\$6,400.00
1-Fire Hydrant	\$5,000.00	\$5,000.00
1-1" lateral	\$800.00	\$800.00
Tee in 2550 North Street	\$1,200.00	\$1,200.00
Hot Tap in 2600 North	\$1,200.00	\$1,200.00
		<b>\$55,550.00</b>
<b><u>Secondary Water</u></b>		
650 LF of 6" main	\$10,400.00	\$10,400.00
1-valve	\$1,500.00	\$1,500.00
1-blow off	\$1,000.00	\$1,000.00
1-connection	\$1,200.00	\$1,200.00
		<b>\$14,100.00</b>
<b><u>Curb and Gutter</u></b>		
1300 LF curb and gutter	\$32,500.00	\$32,500.00
		<b>\$32,500.00</b>
<b><u>Sidewalk</u></b>		
6 foot wide sidewak - 700 LF	\$18,900.00	\$18,900.00
4- Handicap Ramps	\$14,000.00	\$14,000.00
		<b>\$32,900.00</b>
<b><u>Road Surface</u></b>		
18" Structural Fill	\$30,000.00	\$30,000.00
14" UBC	\$52,500.00	\$52,500.00
4" Asphalt	\$49,500.00	\$49,500.00
Remove existing curb and gutter on 2600 North	\$3,500.00	\$3,500.00
Remove existing sidewalk on 2600 North	\$3,000.00	\$3,000.00
		<b>\$138,500.00</b>
<b><u>Miscellaneous</u></b>		
Street Lights	\$6,500.00	\$6,500.00
Street Signage and Striping	\$5,000.00	\$5,000.00
		<b>\$11,500.00</b>
<b>TOTAL IMPROVEMENT COSTS</b>	<b>\$367,450.00</b>	<b>\$367,450.00</b>

10% GUARANTEE		\$36,745.00
TOTAL ESCROW AMOUNT		\$404,195.00

SUBDIVISION COST ESTIMATE APPROVAL

*Lorin Gardner*

Lorin Gardner  
City Engineer

1/2/2019

Date