

## **19.48 Transfer of Development Rights**

### **19.48.010 Definitions**

**Agritourism:** tourist related activities that support agriculture such as tours, events, farm to table restaurants, fruit and vegetable stands, etc.

**Conservation Easement:** an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open land.

**Constrained and Sensitive Land:** Land which is generally unbuildable without engineered ground modifications, or which contains features including, but not limited to Federal, State, or municipally designated wetlands, water bodies, floodplains, slopes greater than 20%, faults, canals, and other geologically or environmentally sensitive features that require mitigation, special insurance, or permits from government authorities to allow development.

**Deed of Severance:** an instrument executed by a property owner and Nibley City by which theoretical developments rights are severed from a Sending Property. A Deed of Severance may be combined with a Conservation Easement. A Deed of Severance shall be in substantially the same form as shown in Exhibit\_\_\_\_.

**Deed of Transfer:** by the owner of a theoretical development right transferring development rights from a sending area to a receiving property. A Deed of Transfer shall be in substantially the same form as shown in Exhibit\_\_\_\_.

**Determination of Eligibility:** a process performed by the City Planner or designee that determines the number of transferrable development rights possible to be eligible for transfer from a Sending Property.

**Development Rights:** the right of the owner of a parcel of land, under land development regulations in Part 3 of this Title as of date ordinance becomes effective or upon annexation, whichever is later, to place that parcel and the structures thereon to a particular use or to develop that land and the structures thereon to a particular area, density, bulk, or height.

**Net Developable Land:** Net Developable land shall include the total area of the proposed development minus land that is required by Nibley City Ordinance to be dedicated to the City, including, but not limited to:

1. Public access rights-of-way, including roadways and sidewalks
2. Land required to be dedicated along waterways
3. Preservation lands with infrastructure installed to City standards by the developer as part of the development process (public and private parks, trails, etc.)
4. Constrained and Sensitive Land, as defined herein
5. Easements, lands dedicated to the City for preservation space but without public rights of access, and other utility or general rights-of-way without public access.
6. Constrained and Sensitive Land, land dedicated along waterways, and other natural landscape or open space land may be considered net developable land when calculating for density if such land can be enhanced with trails, public access, picnic areas, park amenities, or other improvements.

**Receiving Area:** an overlay zoning district established by Nibley City designated as an area in which purchased development rights may be used.

**Receiving Property:** a lot or parcel within a receiving area and within which development rights are increased pursuant to a transfer of development rights affixed to the property.

**Sending Area:** one or more areas identified by this ordinance and rezoned with the Transfer of Development Rights Sending Overlay Zone as an area from which development rights are authorized to be severed and transferred to a receiving area.

**Sending Property:** a lot or parcel within a sending area from which development rights are authorized to be severed.

**Severance of Development Rights:** the process by which development rights from a sending property are severed pursuant to this ordinance.

**Transfer of Development Rights:** the process by which development rights from a sending property are affixed to one or more receiving properties.

**Transferable Development Rights (TDRs):** all or that portion of development rights that are transferred or are transferable.

**Transfer of Development Rights Certificate or TDR Certificate:** a certificate issued by the Nibley City Planner or designee that indicates a number of Transferable Development Rights that have been authorized for a Sending Property, which may be transferred to a Receiving Property.

#### **19.48.020 Transfer of Development Rights Sending Overlay**

The Transfer of Development Rights Sending Overlay Zone is intended to preserve areas in Nibley City that have an agricultural or natural open space use. This intent is accomplished through a voluntary program called Transfer of Development Rights (TDR). This TDR program creates new theoretical development rights and allows for the transfer of those development rights in accordance with provisions contained in this Overlay zone. These provisions are intended to shift development potential and/or rights to areas that are more appropriate for residential development.

- A. The purposes of this Transfer of Development Rights Program, or TDR Program, include, but are not limited to:
1. Protect and enhance private property rights by enabling the transfer of potential development rights.
  2. Maintain the rural heritage of Nibley City.
  3. Promote the public health, safety, and general welfare of Nibley City by establishing procedures, methods, and standards for the transfer of development rights.
  4. Establish a procedure enabling Nibley City and its landowners to voluntarily sever development rights from a sending property.
  5. Establish procedures for the formal transferring of development rights from a sending property, tracking those, and then to establish the use of those transferred development rights on a receiving property.
  6. Establish certain incentives for attaching development rights to receiving properties.
  7. Preserve open space, scenic views, agricultural, riparian and critical/sensitive lands.
  8. Protect lands, resources and structures of aesthetic, architectural, recreational, and historic significance.
  9. Assist in shaping the character and direction of the development of Nibley City.

B. Permitted Uses within Sending Areas after a Deed of Severance and conservation easement is recorded. Uses not listed are not allowed:

1. Agricultural and horticultural uses, including grazing of animals in compliance with NCC 19.34 Animal Land Use Regulations, raising crops, wholesale nurseries, and associated buildings that are specifically needed to support active, viable, and permitted agricultural and horticultural operations. Wholesale nurseries must obtain an operating permit and business license from the City and must comply with all fencing and maintenance requirements of this ordinance.
2. Public rights of way and easements, including quasi-public utility easements
3. Commercial horse riding, training and boarding stables.
4. Silviculture, in keeping with established standards for selective harvesting and sustained yield forestry
5. One (1) single-family dwelling and one Accessory Dwelling Unit on parcels with 20 or more acres.
6. Municipal facilities required for local service and/or recreation needs.
7. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conserved land.
8. The creation and Transfer of Development Rights in accordance with this chapter
9. Restoration, maintenance, enhancement of native vegetation.
10. Publicly accessible recreational lands and facilities including trails, parks and natural lands.
11. Agritourism
12. Conservation of open land in its natural state, e.g., meadows, tree stands, wetlands, forestland.

C. Conditional uses within Sending Areas:

1. Home Occupations as per the definition in 19.04 for existing and permitted residences.
2. Seasonal fruit, vegetable, tree, and hay retail sales in structures of less than 500 square feet when at least some of the products being sold are raised on the premises. Subject to having access, parking, and any utility needs approved by the City.

**Commented [JJ1]:** Policy - note that Home Occs are a CUP in all zones - change to CU?

D. Sending Areas Identified.

1. Sending Areas are property that have been zoned with the Transfer of Development Rights Sending Overlay Zone, which overlay zone confers special rights and obligations as set forth in this chapter in addition to the underlying zoning regulations. Once a Deed of Severance and conservation easement is recorded, no uses other those expressly permitted herein are permitted, regardless of the underlying zoning. The Transfer of Development Rights Sending Overlay Zone may be applied to agricultural lands and open spaces as shown on the Official Zoning Map of Nibley City. For agricultural parcels, Sending Areas shall be no smaller than ten (10) acres. For planned City parks or areas of historical significance, Sending Areas shall be no smaller than five (5) acres. For areas identified as sending areas along the Blacksmith Fork River, an undisturbed area at least 150' in depth from the high-water mark and at least 200' in length or a trail easement at least 200' in length shall be eligible as a Sending Area, as long as it is located parallel to the River and covers the length of the subject property from property line to property line. Connecting parcels smaller than the minimum may be considered on a case by case basis,

**Commented [RP2]:** Cover seems wrong, unless the intent is to just blanket allow sending areas in all ag/open space areas.

Is the intent to just allow all sending zones if the property is right? Or do you want to rezone the property to allow sending zones?

by the City Council where such connections provide a continuous, usable trail segment.

2. A property owner may apply to have their property be designated as a Sending Area and rezoned to receive the Transfer of Development Rights Sending Overlay Zone through the City's rezoning process set forth in 19.02.
3. Where a property is partially contained within a Sending Area, only the portion of the property contained within the Sending Area may be used for the purposes of determining transferable development rights (TDRs).
4. A Deed of Severance and a Conservation Easement shall be recorded on the Sending Area property from which potential development rights were severed, and the property can thereafter only be used as outlined in this section. The conservation easement requires the formal commitment from a non-profit, Land Trust, or the City for long term management of the sending property. All applicable fees, including stewardship fees, for the transfer must be paid prior to recording the Deed of Severance and Conservation Easement.
5. Any landowner within the Transfer of Development Rights Sending Overlay Zone may apply to have potential development rights calculated and created for their property based on formulas contained herein. The entire property shall be submitted for calculation of potential development rights at the time of application with the City.
6. All Sending Areas and property within the Transfer of Development Rights Sending Overlay Zone are eligible for a determination of potential development rights, provided that properties owned by the State or Federal agencies and existing conservation subdivisions shall not be eligible for TDR credits or severance of potential development rights.

**Commented [RP3]:** We should use this phrase throughout to identify this as a specific zone that must be applied for and then granted by the City.

E. Determination of Transferable Development Rights.

1. The City Planner or designee shall establish and maintain a system for monitoring the determination, severance, ownership, assignment, and transfer of development rights.
2. The record owner of property within the Transfer of Development Rights Sending Overlay Zone shall file a Determination of Eligibility Application, with an associated fee, to determine the number of development rights available to be severed from a sending property shall be filed with the City.
3. The following information shall accompany the application:
  - a. A map that includes the following:
    1. The boundary map of the subject property.
    2. A legal description including the acreage of the property.
    3. Current zoning.
  - b. Use of the property.
  - c. Title policy or title documentation.
  - d. Existing water rights needed to continue the current use on the property. Total water rights available to the property.
  - e. Applicable fees.
  - f. For agricultural parcels, commitment to farming by the owner or a lease for 10 years
  - g. Annexation status, if applicable
  - h. Slope and floodplain mapping

4. Nibley City shall determine the number of development rights using the following formula, and rounded to the nearest whole number:
  - a.  $TDRs = A \times B$  for agricultural property or  $TDR = A \times OSA$  for open space properties
  - b. Where TDR means Transferrable Development Rights, A means the total area (acres) of the property, B means the allowable potential development rights on an agricultural property, OSA means the allowable potential development rights on an open space property.
  - c. For agricultural parcels, the per acre potential development units to transfer shall be 3.
  - d. For open space parcels from the Blacksmith Fork area, the per acre potential development units to transfer shall be 4. If only a trail easement is offered, it shall be eligible for a minimum of 1 credit. All parcels participating in the TDR program along Blacksmith Fork shall provide conservation easements and/or trail easements from property line to property line. Parcels or areas offered and located further than 150' from the high water mark of the Blacksmith Fork River shall only be eligible for 3 credits per acre.

F. Severance of Development Rights.

1. Any proposed severance of development rights may be initiated only upon application (Eligibility Application) to the City by the record owners of the sending properties. Once an Eligibility Application/determination is completed, a TDR Certificate shall be issued. The issuance of a TDR Certificate alone does not constitute a severance of development rights, and no development rights can be transferred solely on the basis of a TDR Certificate.
2. Nibley City may not require property owners to sever development rights as a condition of the development of any property.
3. A severance of development rights occurs after the owner of the sending property receives a signed TDR Certificate with the number of allotted TDRs from the City and records a Deed of Severance. The Deed of Severance must transfer development rights to one or more parties, which may include the grantor, and may, but is not required to, affix development rights to one or more receiving properties.
4. The Deed of Severance must be executed by the property owners of the development rights being severed, and by any lien holders of such property.
5. No Deed of Severance may be recorded under this ordinance unless the Deed of Severance contains a copy of the TDR Certificate signed by the City indicating the number of TDRs being severed.
6. The Deed of Severance must contain a Conservation Easement, both of which shall run with the land and must assure that the prohibitions against the use and development of the sending property will bind the landowner and every successor in interest to the landowner. Such conservation easements shall include a legally binding commitment letter from a non-profit, local Land Trust, or the City.
7. The Deed of Severance and Conservation Easement shall be recorded in the office of the Cache County Recorder. Upon recordation of the Deed of Severance:
  - a. The TDRs are severed from the sending property.
  - b. The conservation easement shall be in compliance with the permitted uses in the Transfer of Development Rights Sending Overlay.
8. The Deed of Severance shall be in a form substantially similar to the Deed of Severance

attached as an exhibit to this ordinance and must otherwise comply with the requirements of this ordinance. Any changes to the deed attached as an exhibit in a particular case shall be in a form that is approved by the Nibley City Attorney.

#### **19.48.030 Transfer of Development Rights Receiving Overlay**

The creation of the Transfer of Development Rights Receiving Overlay Zone and designation of Receiving Properties is intended to preserve the areas in Nibley to retain its rural heritage by designating areas that could receive density that is transferred from a Sending area.

This TDR program creates development rights and allows for the transfer of development rights in accordance with provisions contained in the Overlay. These provisions are intended to shift existing development potential or rights to areas that are more appropriate for residential development.

- A. Permitted Uses in Receiving Areas are limited to those uses which are permitted in the underlying zoning districts or as modified in below.
- B. Permitted Uses that include written additional standards – such standards shall still apply.
- C. Receiving Areas Identified.
  1. Receiving areas shall be designated on the official Zoning Map of Nibley City and shall function as overlay zones, such that all the provisions of the underlying zone shall apply, unless altered by the provisions of the overlay.
  2. Where a property is partially contained within a Receiving Area, only the portion of the property contained within the Receiving Area may be used for the purposes of applying transferable development rights (TDRs).
  3. A property owner may apply to have their property be designated as a Receiving Area and rezoned to receive the Transfer of Development Rights Receiving Overlay Zone through the City's rezoning process set forth in 19.02.
  4. The City Council may designate additional areas as a Receiving Area through the City's rezoning process. The Zoning Map should be updated upon designation. For future receiving area designations, the Planning Commission and City Council, in accordance with City Code, shall consider the ability of the property, utilities, nearby roadway networks, transportation system capacities and options, and other land use characteristics to accommodate additional density on the property.
  5. A receiving property that brings TDR credits to their property may only use the development rights permitted in accordance with the existing zoning regulations applicable to the receiving property and as shown in the table below:

| Base Zoning                                       | Base Density                         | Receiving Area<br>Allowable Density Increase              |
|---------------------------------------------------|--------------------------------------|-----------------------------------------------------------|
| R-1, R-1A, R-2, R-2A<br>Zones                     | As per zone                          | Up to 50% increase over the existing<br>zone requirements |
| R-PUD eligible areas                              | 5 units per net<br>developable acre  | Up to 15 units per net developable acre                   |
| R-M eligible areas                                | 10 units per net<br>developable acre | Up to 20 units per net developable acre                   |
| Commercial mixed use<br>Buildings within C or C-N | As per existing zone                 | Up to 15 units per net developable acre                   |

**Commented [JJ4]:** Policy - suggesting a change in base density to the R-PUD and housing types allowed in the zone

**Commented [LR5]:** These thresholds depend upon where the R-M ordinance changes land.

|       |  |  |
|-------|--|--|
| zones |  |  |
|-------|--|--|

6. Procedure for Calculating Allowed Number of Housing Units: The Allowed Number of Units including the density bonus for transferrable development rights shall be determined as follows. The developer shall follow the process outlined below to determine allowable number of units of the proposed subdivision and use these properties in developing the subdivision plats. All calculations and measurements shall be clearly documented in order and following the process outlined below and submitted with the preliminary plat application. All calculations will be based on the parcel's current zone at the time of application and the associated Lot Standards.

- a. Provide to the City the total area contained within the subdivision plat.
- b. Provide to the City the total area being dedicated to rights-of-way.
- c. Provide to the City the total acres of Constrained and Sensitive Land.
- d. Provide the City the total Net Developable Land area as defined within this section.
- e. State the area of proposed Open Space Land.
- f. Calculate Open Space Ratio.
- g. Calculate the Base Number of Lots per zone:
  - 1) Base Number of Lots R-1 = Net Developable Land / 1 acre
  - 2) Base Number of Lots R-1A = Net Developable Land / .75 acre
  - 3) Base Number of Lots R-2 = Net Developable Land / 0.5 acre
  - 4) Base Number of Lots R-2A = Net Developable Land / 0.32 acre
  - 5) Base Number of Lots R-PUD eligible areas = Net Developable Land / 0.2 acre
  - 6) Base Number of Lots R-M eligible areas = Net Developable Land / 0.1 acre
- h. Determine density bonus based upon the following: number of TDRs to be transferred to the project / Base number of Lots = Bonus Density multiplier
- i. Total allowed lots = Base number of lots + Base number of lots multiplied by the Bonus Density multiplier with the limits noted above.

- D. Properties designated as receiving areas and with proof of transferred development credits, as shown in City and County records, shall be vested in the density of the underlying zone plus the additional development credits up to the limits shown in "e" above. Properties designated as receiving areas that are within R-PUD or R-M eligible areas shall be vested in the density of the R-PUD or R-M zoning designation plus additional development credits up to the limits shown in "e" above. Transfer of Development Rights to Receiving Properties shall comply with the following:

1. Any proposed transfer of development rights may be initiated only upon completing an Eligibility application by the owners of the sending properties, holders of a TDR Certificate, or owners of the receiving properties.
2. Nibley City may not require property owners to transfer or receive a transfer of development rights as a condition of the development of any property, however no increases in density beyond what the existing zone allows shall be given without proof of transferrable development credits from a sending property.
3. The record owner of receiving property within the Transfer of Development Rights Receiving Overlay Zone shall file an application for a determination of eligibility to determine the number of transferrable residential development rights available to be

transferred and affixed to one or more receiving properties in compliance with this ordinance. Such application shall include:

- a. A completed determination of eligibility application and TDR Certificate from the sending property.
  - b. A tax map, plat or site plan outlining the boundaries of the property for each lot, tract or parcel as described in the deed.
  - c. The existing zoning of the property.
  - d. A title policy or other title documentation for the receiving property including a legal description of the receiving property.
  - e. A copy of a survey plat of the proposed receiving parcel prepared by a surveyor licensed in the State of Utah.
  - f. Water shares or rights necessary to support the new project as provided in NCC 21.12.020.
  - g. A statement of the number of residential development rights proposed to be transferred and affixed as residential development rights to one or more receiving properties, and calculations upon which the number is based.
  - h. All applicable fees.
  - i. A signed conservation easement agreement covering the sending property with a certified Land Trust, non-profit organization or Nibley City
  - j. Any additional information required by Nibley City, shown in the application, as necessary to determine the number of residential development rights that qualify for transfer.
4. The City shall provide a written statement of the maximum number of TDRs available to be transferred and affixed to one or more receiving properties.
    - a. Each development project must have a minimum of 10 TDR credits or one half ( $\frac{1}{2}$ ) TDR credit per net developable acre of the development in the receiving zone, whichever is greater.
  5. A transfer of development rights occurs when the owner of the development rights records a Deed of Transfer against the receiving property in the land records of Cache County.
  6. The Deed of Transfer shall be executed by the sending area property owners of the development rights being transferred, and any lien holders of such property owners, and shall identify the development rights being severed, and the sending properties and/or the receiving properties, as applicable.
  7. No Deed of Transfer may be recorded among the land records of Cache County unless the Deed of Transfer contains a copy of the signed TDR Certificate by the City Planner indicating the number of residential development rights being transferred and/or affixed to one or more receiving properties.
  8. Upon recordation of the Deed of Transfer, the transferable development rights are conveyed to one or more parties and/or are affixed to one or more receiving properties stated in the Deed of Transfer.
  9. The Deed of Transfer shall be in a form substantially similar to the Deed of Transfer attached as exhibit "C" to this ordinance and shall otherwise comply with the requirements of this ordinance and any changes to the deed attached as an exhibit in a particular case shall be in a form that is approved by the Nibley City Attorney.



10. Any transfer of development rights to a receiving property pursuant to this ordinance only authorizes an increase in maximum residential density over the base density as per the table in “d” above.

11. The existing zoning district regulations may be reduced/modified in terms of the following table:

|                                                            | R-M Eligible Areas            | R-PUD Eligible Areas                                                                                                                     | R-1            | R-1A           | R-2            | R-2A          |
|------------------------------------------------------------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------|----------------|---------------|
| Minimum lot area <sup>1</sup> (Single-family) <sup>2</sup> | 4,500 sq. ft.                 | 4,500 sq. ft.                                                                                                                            | 14,000 sq. ft. | 12,000 sq. ft. | 10,000 sq. ft. | 6,000 sq. ft. |
| Minimum lot width <sup>3</sup>                             | 50'                           | 50'                                                                                                                                      | 100'           | 80'            | 70'            | 65'           |
| Minimum front yard setback (principal use) <sup>4</sup>    | 7'                            | 7'                                                                                                                                       | 20'            |                | 12'            |               |
| Minimum garage front setback <sup>5</sup>                  | 20'                           | 20'                                                                                                                                      | 25'            |                | 22'            |               |
| Minimum side yard, interior setback                        | 5'                            |                                                                                                                                          | 10'            |                | 8'             |               |
| Minimum side yard, street setback                          | 15'                           |                                                                                                                                          | 20'            |                | 15'            |               |
| Minimum rear yard setback <sup>6</sup>                     | 10'                           |                                                                                                                                          | 20'            |                | 15'            |               |
| Parking                                                    | 10% parking minimum reduction | 10% parking minimum reduction                                                                                                            | Not applicable |                |                |               |
| Unit Types & Unit Split                                    | Not applicable                | A minimum of 20% percent of the units must be single-family detached. Remaining units may be flexible attached and/or multi-family units |                |                |                |               |
| Minimum project size                                       | Not applicable                | 20 acres                                                                                                                                 |                |                |                |               |

12. Developments in R-PUD eligible areas – housing types may include flexible attached units

<sup>1</sup> Lot bonus increase is only granted a maximum per table in 19.48.030 C 5 and it is expected that each development will have a variety of lot sizes and not all lots will be the minimum size.

<sup>2</sup> Two-family housing is permitted per Nibley City Code 19.20. Minimum lot size per two-family home is 9,000 sq. ft or minimum area per zone in TDR ordinance, whichever is greater.

<sup>3</sup> Lot width is measured at the front yard setback line.

<sup>4</sup> The building home setback includes the front of the home, living spaces, and porches, but not garages.

<sup>5</sup> The garage is intended to be setback further than the home.

<sup>6</sup> Minimum alley or rear loaded setbacks are 5' if garage is located on the rear and is accessed from the alley.

with building lengths no greater than 150'. Projects with bonified TDR credits, shall, when the application meets all City standards, be approved after appropriate administrative processing for a subdivision or conditional use.

13. Proposals for use of TDR credits within the R-PUD eligible areas as currently shown in NCC 19.32.030, shall become administrative and not require the rezone process in order to apply TDR credits to the project in order to allow for density which is greater than 50% greater than the underlying residential zoning designation. R-PUD projects shall follow the development standards and approval process of NCC 19.32, except as provided in this chapter.

When Recorded, return to:  
Nibley City  
Attn: City Planner  
455 West 3200 South  
Nibley, UT 84660

Affected Parcel No(s). \_\_\_\_\_

### **Deed of Severance and Conservation Easement**

This Deed of Severance and Conservation Easement ("Deed") is made this \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("Grantor") and Nibley City, a Utah municipal corporation ("Holder").

### **RECITALS**

WHEREAS Grantor is the sole owner in fee simple of certain real property, which is more particularly described in Exhibit A, attached hereto and incorporated by this reference ("Property");

WHEREAS Grantor desires to sever the development rights from the Property, which rights may be transferred to other receiving property within Nibley City pursuant to Chapter 19.48 of the Nibley Municipal Code TDR Program;

WHEREAS Grantor desires to convey and dedicate a conservation easement created pursuant to Utah Code Ann. §57-18-1 *et. seq.* on the Property to Holder; and

WHEREAS Holder desires to accept the dedication of conservation easement to further the stated goals of the TDR Program;

NOW, THEREFORE, Grantor and Holder, for and in consideration of the foregoing do hereby agree as follows:

### **Severance of Transferable Development Rights**

The development rights associated with the Property are hereby severed and converted to Transferable Development Rights (TDRs). The TDRs severed from the Property are eligible to transfer to other places within Nibley City consistent with the TDR Program and are evidenced by that certain Certificate of Transferable Development Rights No. \_\_\_\_\_. Further development of the Property is prohibited except as in accordance with the TDR Program.

### **Conservation Easement**

In consideration of the TDRs granted and the severance of the development rights from the Property, Grantor does hereby grant and convey, pursuant to and in accordance with Utah Code Ann. § 57-18-1 *et. seq.*, in perpetuity, to Holder, its assigns and successors in interest, a conservation easement in said real property of the Grantor of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon said real property of the Grantor, which estate, interest, easement and servitude will result from the covenants and restrictions set out below and hereby imposed upon the use of said property of said Grantor, and to that end and for the purpose of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors and assigns, with Holder and its assigns to do and refrain from doing, severally and collectively, upon the Grantor's said property, the various acts hereinafter mentioned. Grantor commits by this easement to \_\_\_\_\_ use for a period of at least ten years via a lease or continued ownership. A non-profit organization, land trust, or the City hereby

commits to long term management of the Property in accordance with the Nibley City TDR Program and the rights, limitations, and restrictions set forth in this Deed. Grantor and/or developer has provided evidence of commitment by said entity and payment of any associated fees. The managing entity is:

Name:

Entity Type:

Physical Address:

Signature of Managing Entity: \_\_\_\_\_

Name and Title of Signer: \_\_\_\_\_

The restrictions hereby imposed upon the use of said property of the Grantor, and the acts which said Grantor so covenants to do and refrain from doing upon its said property in connection therewith are and shall be as follows:

1. The easement property herein described shall be kept in a manner consistent with the TDR Program.
2. Except as allowed by the TDR Program, there shall be on or in the easement property no fillings, excavating, removal of topsoil, sand, gravel, rock, minerals, or other materials nor any building of roads or change in the topography of the land in any manner, other than that caused by the forces of nature, or as reserved hereafter.
3. Herbicides and pesticides can be sprayed, when it is necessary for the raising of crops. Fencing will be allowed where necessary for farming operations or confining livestock.
4. No power lines with voltage in excess of 12kV may be erected, nor any interest in the easement property shall be granted for this purpose. The Grantor reserves the right and easement on the real property to maintain and repair existing telephone, electric, water wells, or other utility lines or mains needed to provide for the needs of the Grantor, its successors or assigns. The area needed to repair said facility shall be the minimum necessary to accomplish the task as agreed upon in writing by the Grantor and Grantee. Upon completion, the area shall be restored to its previous state or as near as practical.
5. The land shall at all times be kept free of garbage, trash, and inoperable machinery; and no other unsightly material shall be allowed to accumulate or be stored thereon.
6. Each and every other activity or construction which might reasonably endanger the natural, agricultural, or scenic state of the easement property is forbidden.
7. Nibley City reserves the right to periodically inspect said property for violations of the easement property, and if upon sixty (60) days advance written notice the Grantor has not eliminated said violations, Nibley City may remove or eliminate, at the expense of the landowner, any violation by Grantor of the easement. A Nibley City authorized representative may enter upon said lands for the purpose of inspection. Said easement is not a public easement.
8. Nibley City reserves the right to post or clearly mark the boundaries of said easement.

The conservation easement granted hereunder and the covenants heretofore made are subject to the following rights of the Grantor which are expressly reserved hereunder.

1. Except as expressly limited herein, the Grantor reserves for itself, its heirs, successors and assigns, all rights as owner of the easement property, including the right to use the easement property for all ownership purposes not inconsistent with this easement or the TDR Program,

including agricultural uses or other uses allowed by the TDR Program.

2. The right to build structures for agricultural use and occupancy subject to following applicable rules of the TDR Program, building codes, and setback regulations.
3. The lands of the Grantor, herein above referred to and to which the provisions of this instrument apply, are situated in Nibley City, Cache County of Utah, the State of Utah, and are more particularly described as follows:
  - a. See Attached "Exhibit A: Property Description".

TO HAVE AND TO HOLD unto Nibley City and its assigns forever. The covenants agreed to and the restrictions imposed, as aforesaid, shall be binding upon the grantor, its heirs, successors, and assigns, and each of them, and shall constitute a servitude upon the above described land.

IN WITNESS WHEREOF, the Grantor has hereunto set hand on the day and year first above written,  
Signed and acknowledged in the presence of the notary public below:

\_\_\_\_\_  
Printed Name of Grantor

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Date

CACHE COUNTY, STATE OF UTAH

Before me, a notary public in and/or said county and state, personally appeared the above-named Grantor, who acknowledged that he/she did sign the forgoing instrument and that the same is his/her free act and deed whereof I hereunto set my hand and official seal this day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT A: PROPERTY LEGAL DESCRIPTION**

## TRANSFERABLE DEVELOPMENT RIGHTS CERTIFICATE

### Certificate of Transferable Development Rights

TDR Certificate Number: #

This document certifies that:

1. Owners of real property located in Nibley, Utah, have filed a Determination of Eligibility Application with the Nibley City Community Development Department to determine whether the property is eligible for the creation of Transferable Development Rights.
2. The Nibley City Planner has determined that the property is eligible for the creation of Transferable Development Rights in accordance with Chapter 19.48 of the Nibley City Municipal Code.
3. The Nibley City Planner has determined the number of Transferable Development Rights that the property is eligible for in accordance with Chapter 19.48 of the Nibley City Municipal Code.
4. The owners of the property have signed a Deed of Severance and a Conservation Easement or trail easement has been established with \_\_\_\_\_.
5. This Certificate represents the creation of Transferable Development Rights that will become valid and enforceable in accordance with Chapter 19.48 of the Nibley City Municipal Code upon the lawful and proper recordation of the Deed of Severance and Conservation Easement.
6. The following number of Transferable Development Rights are created and severed from the property identified by the Parcel ID Number below and further described by the attached legal description.
7. The Transferable Development Rights represented by this Certificate are eligible to be transferred to Receiving Areas in Nibley City in accordance with Chapter 19.48 of the Nibley Municipal Code.

Transferable Development Rights granted: \_\_\_\_\_

Property from which Transferable Development Rights originated (Cache County Parcel ID Number):

\_\_\_\_\_

\_\_\_\_\_  
Signature of City Planner

\_\_\_\_\_  
Date

**Property Legal Description:**

## DEED OF TRANSFER

### Deed of Transfer

When Recorded, return to:  
Nibley City Planner  
455 West 3200 South  
Nibley, UT 84660

Affected Parcel No.: \_\_\_\_\_

Deed of Transfer Number: \_\_\_\_\_

Name(s) of Owners: \_\_\_\_\_

This document certifies that:

1. Owners are the holders of a Certificate of Transferable Development Rights (TDR Certificate) No. \_\_\_\_\_, which evidences transferable development rights (TDRs) eligible for transfer to a receiving property consistent with Nibley City pursuant to Chapter 19.48 of the Nibley City Municipal Code.
2. Owners have filed a Determination of Eligibility Application with the Nibley City Community Development Department to determine whether the TDRs are eligible to be transferred to receiving property within Nibley City.
3. The Nibley City Planner has determined, in accordance with Chapter 19.48 of the Nibley City Municipal Code, that \_(number) TDRs are eligible to be transferred to property located at \_\_\_\_\_, County Parcel No(s). \_\_\_\_\_ (Receiving Property).
4. This Certificate represents the transfer of TDRs that will become valid and enforceable in accordance with Chapter 19.48 of the Nibley City Municipal Code upon the lawful and proper recordation of this Deed of Transfer.
5. Up on recordation of this Deed of Transfer, the TDRs associated with TDR Certificate No. \_\_\_\_\_ shall be extinguished. Holder of the TDR Certificate shall surrender the TDR Certificate before this Deed of Transfer is issued.

Transferable Development Rights: \_\_\_\_\_

Cache County Parcel ID Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of City Planner

\_\_\_\_\_  
Date

**Property Legal Description:**

#### **19.08.010 Establishment Of Zones**

For the purpose of this title, the city is divided into the following zones and districts in which land uses shall be limited as specified in this title:

Agricultural zone (A)  
Rural estate zone (R-E)  
Residential zone low density (R-1)  
Residential zone low density (R-1A)  
Residential zone medium density (R-2)  
Residential zone medium density (R-2A)  
Residential zone-high densitymixed use (R-M)  
Commercial zone (C)  
Neighborhood commercial zone (C-N)  
Industrial zone (I)  
Floodplain overlay district-zone (FP)  
Residential Planned Unit Development Overlay Zone (R-PUD)  
Transfer of Development Rights Sending Overlay Zone (TDR-S)  
Transfer of Development Rights Receiving Overlay Zone (TDR-R)

Formatted: Font: Kern at 12 pt

Classification will be determined on the basis of location, topographical features and other reasonable considerations to guide the orderly physical development and ensure neighborhood compatibility and stability of the city in accordance with the Nibley General Plan.

#### **19.32.040 Area And Density Regulations**

- A. Minimum development size: The minimum total area for an R-PUD shall be 40 acres
- B. Housing Types: Only single-family homes and town homes are allowed in the R-PUD in residential areas, except as allowed in the Town-Center Area. The density shall be based on Net Developable Acres of the development as follows:
  1. Equal to or less than 5 units per Net Developable Acre a. Single Family Home R-PUD must contain a minimum of 50 units.
  2. A Mix of Single Family and Townhomes: Equal to or less than 10-5 units per Net Developable Acre. Up to 60% of dwelling units can be townhomes. a. A Mix of Single Family and Townhomes R-PUD must contain a minimum of 120 units.

#### **19.32.080 Development Standards**

These standards are intended to create R-PUD developments that will establish permanent neighborhoods and provide a sense of community. To meet the intent of this section, the following provisions shall be applied to all new multi-family residential and mixed-use developments. For exterior remodels, these standards shall be required. Commercial areas of an R-PUD must comply with Nibley City Commercial design standards for commercial developments.

- A. Townhome, Patio Homes, and Condominium Architectural Standards
  1. General Design Concepts. New development shall be designed for its specific context within Nibley City. Developments shall possess a similar design theme, and the site shall be designed such that the overall development is cohesive. Building architecture, exterior materials, and colors shall coordinate.
  2. All facades shall include architectural treatments to provide visual interest and to differentiate individual units. These design standards shall be applicable to all sides of a building, with each façade (front, rear, and side) being required to meet the terms of this Section.
  3. Building Materials. The majority of each façade (51% or more of the wall area excluding windows and doors) shall be constructed of the following hard surface building materials:



brick, stone, stucco, treated or split face decorative block (CMU), fiber cement siding, concrete, composite siding, or other durable building material as approved by the City Council. EIFS or untreated concrete block (CMU) may be allowed as an accent or secondary material only. The Planning Commission may approve metal as an exterior building material and as a primary material on a case-by-case basis if an applicant can show that the type of metal is of a high grade and provides architectural quality to a building.

4. Vertical Separation. Buildings in excess of one (1) story in height shall exhibit architectural detailing that establishes a vertical separation between lower and upper stories. This may be accomplished by a mid-façade cornice or trim, a change in material, style or color, a façade step-back or roof pitch with dormer windows, or other methods.

~~4-5.~~ Building Length: Building length shall not exceed 150 feet.

- ~~5-6.~~ Building Entrances. Building entrances shall have porches and shall be oriented toward the street or an open space area and provide connecting pedestrian access between the street, parking or open space areas.

~~6-7.~~ Variation. Townhome dwellings units shall be designed with architectural wall variations spaced at intervals of thirty (30) to fifty (50) feet in linear width, depending on the size of the building. The following architectural features shall be incorporated into the design of the building:

- a. Change in building materials;
- b. Building projections measuring at least twelve (12) inches in depth based on the scale of the proposed building;
- c. Awnings and lighting, or another architectural variation as approved on a case-by-case basis that creates visual interest.

~~7-8.~~ Garages. Townhomes shall be designed oriented toward exterior public roads with rear loading garages accessed by a paved parking area or alleyway, except along Highway 165 and 89/91 as approved. Rear loading garages are highly encouraged for townhomes located on interior project roads with units oriented toward a road or common courtyard area. Front loading garages may be allowed for townhomes that do not have any portion of the building adjacent to a current or planned public road or street outside of the development. Multiple unit structures shall have garages incorporated into the primary structure. At least fifty percent (50%) of units shall contain a two-car garage. Detached garages are prohibited in R-PUDs