

MEMORANDUM OF UNDERSTANDING TO SETTLE PENDING LITIGATION AND ALL CLAIMS KNOWN AND UNKNOWN

This Memorandum of Understanding to Settle Pending Litigation and All Claims Known and Unknown (the "Agreement") is entered into by and between Mapleton City, Utah ("Mapleton" or the "City"), a municipal corporation and body politic, and Wendell A. Gibby and Trudy Gibby individually and as co-trustees of the UVRA, Inc., WAG Pension Trust; Wendell A. Gibby Trustee Utah Valley Radiology (sic) Assoc., Inc., Money Purchase Pension Plan fbo Wendell A. Gibby and MCBRS, LLC (collectively, the "Gibby Parties") (the Mapleton and Gibby Parties are collectively referred to herein as the "Settling Parties") as of this 15<sup>th</sup> day of May, 2007.

WHEREAS, the Settling Parties are opposing parties in several lawsuits consisting of the following: (1) Case No. 05010068 Utah 4<sup>th</sup> Dist. Ct. pending before Judge Pullan (historical right of way and eminent domain); (2) Case No. 2:05-cv-632 DB U.S. Dist. Ct. Dist. of Utah pending before Judge Benson (civil rights); (3) Case No. 070100482 Utah 4<sup>th</sup> Dist. pending before Judge Pullan (rezone challenge); (4) Case No. 060402859 Utah 4<sup>th</sup> Dist. pending before Judge Howard (Dogwood Dr.); and

WHEREAS, 2007 legislative bill known as House Bill 334 proposed before the Utah State Legislative that would impact some of the above litigated matters; and was deferred by reason of the oral understanding preceding this Agreement; and

WHEREAS, the Gibby Parties have applied for a subdivision approval within Mapleton; and

WHEREAS, the Settling Parties have reached an agreement in principle to resolve all of the disputes claimed in the above lawsuits, and which would settle all claims between the parties, known and unknown; and

WHEREAS, the agreement in principle will require Mapleton to exercise its police power for purposes such as rezoning certain lands in the City; and

WHEREAS, the police powers of the City cannot be circumvented by agreement, and therefore, the parties desire to allow Mapleton sufficient time to exercise its police powers with respect to the land use laws contained within the Utah Code and the City Code; and

NOW THEREFORE, for good and valuable consideration, including the resolution of pending litigation, the Settling Parties hereby agree and covenant as follows:

1. The Gibby Parties will expeditiously, meaning no later than June 1, 2007, but in all events by July 1, 2007, submit all materials necessary to comply with Utah State law and all current applicable City Ordinances, Mapleton will bring forward an ordinance to rezone the 60+/- acres of the Gibby Parties' land to other than in an environmentally restricted zone to a zone comparable to an RA-1 zone development restrictions which are on an area with a slope less than 30%, which is included in the 124+/- acres of land owned or controlled by the Gibby Parties within the CE-1 zone

to allow for a total density on the Gibby Parties' land of 47 separate residential units with clustering of the homes within the 60 +/- acres and a plat to incorporate such development.

2. Mapleton will forthwith approve the Gibby Parties' application to move the power lines farther to the east, as per the previously filed application. A permit will be brought forward for the relocation of the power line that traverses the property at the developer's expense.
3. Upon approval of the plat described herein, the Gibby Parties agree to provide an easement for a trail from the north and south property lines of the Gibby Parties' property across the west escarpment of the property in substantial compliance with plats previously submitted by the Gibby Parties during the legislation session in 2007 to Mapleton, consistent with City's trail easement on the north across the adjoining Roundy property and connecting on the south to either the Forest Service or the City property. The Gibby Parties shall choose the location of the trail easement through the Gibby Parties' property.
4. Upon approval of the rezoning and plat approval described herein, the Gibby Parties will grant an easement, at no cost to the City, for its water main that is to be placed in a public right-of-way in a location to be determined by Mr. Gibby and approved by the City Engineer. The location of the proposed easement will be communicated to the City within the next 30 days except for where the water main is in a public street, the water main easement across the Gibby Parties' property shall be restricted to City employees for maintenance or repair of the water main. The City will provide a satisfactory mitigation plan and be responsible for any pipeline rupture or damage to private property. The City will bear the costs of the water main. It is agreed that culinary water needs of the Gibby Parties' property will be supplied from the water main that will be placed in the public right-of-way described above.
5. The development of the Gibby Parties' property must comply with the written objective standards already adopted by the City, and other than changes contemplated in paragraph 1, no conditions outside of the written objective development standards already adopted by the City will be imposed on the Gibby Parties' development.
6. Mapleton agrees to cooperate with a future land exchange, if any, between the Gibby Parties and the U.S. Forest Service which owns land immediately to the south of the Gibby Parties' subject property.
7. The Gibby Parties agree to use their best efforts to assist Mapleton City to complete the actions described in paragraphs 1 and 2 above before September 1, 2007. Any delay up to one month by the Gibby Parties in making submissions shall grant the

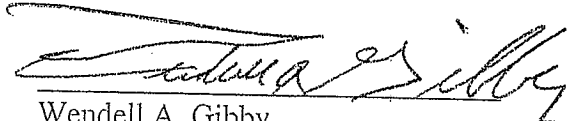
City a corresponding extension of time to complete the actions described in paragraphs 1 and 2 up to one month.

8. The City will work in good faith with the developer of the Gibby Parties' property to ensure that adequate public facilities are available.
9. The City and the developer of the Gibby Parties' property shall work in good faith to achieve an attractive and functional development.
10. The City agrees that Dogwood Drive needs to be widened to the Gibby Parties' property to achieve safe traffic flow to accommodate the development of the Gibby Parties' property no to exceed 56' to the same width as the developers' design for the Gibby Parties' development. The City will widen the street at the City's expense.
11. Upon completion prior to September 1, 2007 of the rezoning described in paragraph 1, and the permit issued for the moving of the power poles described in paragraph 2, the Settling Parties hereto agree as follows:
  - A. The Gibby Parties agree to settle and dismiss with prejudice the above litigations and all claims known and unknown against Mapleton and all individuals named in the above litigation and bear their own costs and attorney's fees.
  - B. Mapleton agrees to settle and dismiss with prejudice the above entitled litigation and all claims known and unknown against the Gibby Parties and bear their own costs and attorney's fees.
12. The Gibby Parties will take all measures to assist Mapleton to efficiently process any development requests and will submit all development requests with ample time, meaning no later than June 1, 2007, but in all events by July 1, 2007, to allow the City to complete approvals contemplated by paragraphs 1 and 2.
13. The Gibby Parties agree to work in good faith to heal rifts within the community.
14. Mapleton agrees to work in good faith to heal rifts within the community.
15. Mapleton agrees to expedite development requests from the Gibby Parties meaning no later than June 1, 2007, but in all events by July 1, 2007 to complete the applications contemplated herein prior to September 1, 2007.
16. Upon receiving the rights of way for the trail and water main described herein, Mapleton agrees to publicly declare that the Gibby Parties' property is private property, and the public is not allowed to trespass, vandalize, or cross said property,

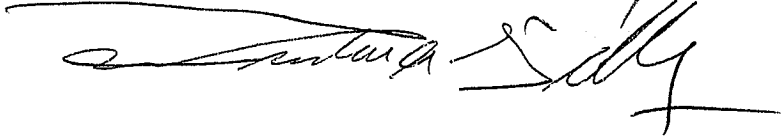
except where the City shall obtain rights of way, and that violations of the Gibby Parties' property rights will be prosecuted by the City.

17. The Settling Parties agree to fully cooperate and to execute any and all supplementary documents and to take all additional actions that may be reasonably necessary to give this Agreement full force and effect. The Settling Parties hereby authorize their counsel to do the same.
18. The Settling Parties understand and agree that this Agreement is entered into for the purpose of resolving doubtful and disputed claims and is not an admission of liability of any of the Settling Parties as any liability is expressly denied.
19. In any action brought to enforce, construe or rescind this Agreement, or any document required hereby, the state or federal courts of the State of Utah shall have exclusive jurisdiction over, and venue with respect to, each party. This Agreement shall be governed and construed in accordance with the laws of the State of Utah. In any action brought to enforce, construe, or rescind this Agreement, or any document required hereby, the prevailing parties shall be entitled to the recovery of reasonable attorney's fees and reasonably incurred costs and expenses of litigation.
20. This Agreement shall be binding upon the successors, assigns, administrators, and executors of the Settling Parties.
21. This Agreement is being executed in multiple counterpart originals and shall be deemed fully executed and binding when all of the parties hereto have executed one counterpart of this Agreement. This Agreement shall then have the same force and effect as if all signatures appeared on the same original.
22. In entering into this Agreement, the Settling Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Agreement, that the terms of this Agreement have been completely read and explained to them by their attorneys, and that the terms of this Agreement are fully understood and voluntarily accepted by them.
23. The individuals executing this Agreement represent and warrant individually that they are duly authorized and empowered to enter into this Agreement on behalf of themselves or their respective principals.

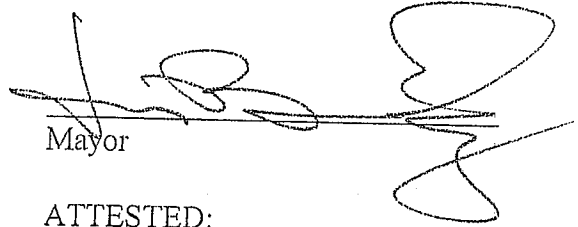
On Behalf of the Gibby Parties



Wendell A. Gibby

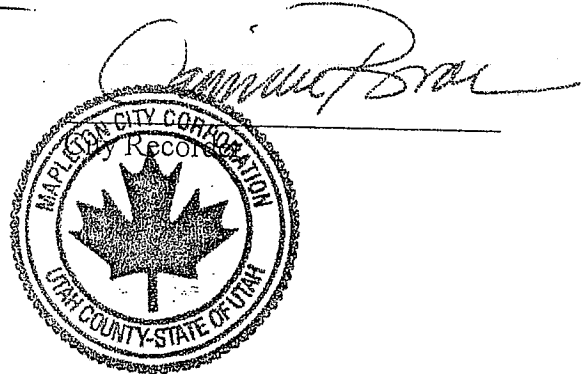


On Behalf of Mapleton City, Utah



Mayor

ATTESTED:



RESOLUTION NO. 2007-25

RESOLUTION APPROVING THE MEMORANDUM OF  
UNDERSTANDING TO SETTING PENDING LITIGATION AND ALL  
CLAIMS KNOWN AND UNKNOWN

WHEREAS, Mapleton City, Utah County, Utah (the "City"), and Wendell A. Gibby and Trudy Gibby individually and as co-trustees of the UVRA, Inc., WAG Pension Trust; Wendell A. Gibby Trustee Utah Valley Radiology (sic) Assoc., Inc., Money Purchase Pension Plan fbo Wendell A. Gibby and MCBRS, LLC (collectively, the "Gibby Parties") (the City and Gibby Parties are collectively referred to herein as the "Settling Parties"; and

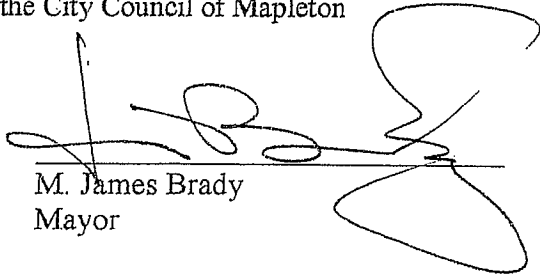
WHEREAS, the Settling Parties are presently involved in 4 lawsuits identified in a Memorandum or Understanding to Settle Pending Litigation and all Claims Known and Unknown (the "MOU"); and

WHEREAS, the City desires to enter into the MOU and has received assurances that the other parties thereto desire the same; and


WHEREAS, the Settling Parties have reached an agreement in principle to resolve all of the disputes claimed in the lawsuits, and which would settle all claims between the parties, known and unknown.

NOW THEREFORE, BE IT RESOLVED by the City Council of Mapleton, Utah, that the Mayor is authorized to enter into and sign the MOU and the City Recorder is authorized to attest to the same and apply the City seal and thereby the City will agree and covenant to follow the terms of the Memorandum of Understanding to Settle Pending Litigation and all Claims Known and Unknown. The Mayor is further authorized to enter into and sign all needful and helpful documents to carry out or complete the transactions contemplated by the MOU and the City Recorder is authorized to attest to the same and apply the City seal.

APPROVED AND ADOPTED this May 15, 2007 by the City Council of Mapleton City, Utah County, Utah.

  
M. James Brady  
Mayor



  
Michelle Brown  
City Recorder