

SUBDIVISION AGREEMENT
AND
COVENANT RUNNING WITH THE LAND
(STONE CREEK - PHASE 2)

THIS AGREEMENT is entered into this 8 day of August, 2018 by and between Heber City (the "City") and DM Marketing (the "Developer").

WHEREAS, the Developer has proposed a plat for a 22 lot subdivision, Stone Creek ("Phase 2"), in the Planned Community Zone in Heber City, located at approximately 1300 East and 700 North, Heber City, Utah, and described in Exhibit A;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Development shall comply with the approved Master Plan and Master Plan Agreement, in regard to total number of units, density, general configuration, phasing, open space requirements and uses, and improvements, and shall develop the property pursuant to these provisions as well as all other agreements, provisions or requirements associated but not in conflict with this Agreement and Development. The approved master plan for Stone Creek consists of 60 Acres, 125 residential units, and minimum of 30% total open space, pursuant to the PC Zone Amendment, Section 18.61.090 D.8. The 125 unit calculation derives from an allowable density of 2 units per acre, or 120 units total, plus 5 permitted bonus lots pursuant to Section 18.61.020 E.3.
2. Developer shall, prior to recording Phase 2, transfer to the City all required water rights necessary for Phase 2.
3. Developer shall construct, prior to completion of Phase 2, a master planned 8-inch pressurized irrigation line in the Bypass connector road to the CUP pond to access irrigation service for the Stone Creek development.
4. All storm drainage facilities within and serving the development shall be private and maintained by the (Stone Creek Home Owner's Association) SCHOA, including swales, ponds, berms, pipes, manholes, street inlet boxes, etc.
5. City will operate and maintain all irrigation, culinary water, and sewer facilities within the private development, up to and including the water meter vaults, irrigation boxes, and sewer cleanouts on the road right of way line serving each lot per City Standards and Code.
6. City shall have unrestricted easements and the right of travel along all city utilities for operation, maintenance, and replacement of said utilities. The City shall not be liable for any damages to private structures resulting from lack of maintenance or plowing of private streets which would prohibit City's timely repair of damaged utilities. The City agrees that all repair work will conform to city standards including street repairs. The Developer and SCHOA agree not to charge the City a fee for access, maintenance, and repair of said utilities, such as a road cut fee.
7. Developer and SCHOA will prohibit structures, fencing, and grade changes along or across all utility easements without written City approval.

8. Developer and SCHOA shall disclose to prospective purchasers and include on each recorded plat the following soils information. "A geotechnical report for the subdivision is available in the Heber City Planning Office. This report provides recommendations for construction to address specific soils in the area. Builders are advised to review this report and follow those recommendations, and to consult with a geotechnical engineer if soil conditions are different than described in the report.
9. Development shall provide City with a noxious weed control plan approved by the Wasatch County Weed Control Board prior to recording the Phase 2 subdivision plat and implement approved measures prior to project acceptance by the City.
10. Landscaping of open space within each phase of the development shall be constructed as shown on the landscaping improvement plans, including top soil, ground cover, irrigation systems, and trees. Landscaping of the open space shall be completed for each phase by the developer prior to issuing more than 50 percent of the building permits for said phase.
11. SCHOA shall maintain its designated trails within the subdivision, and have the right to make its trail system open for public use at its discretion.
12. If agreed to by Red Ledges, primary access during construction of the subdivision shall be through the Red Ledges Bypass road at 580 North on the east side of the subdivision, with secondary access through the 675 North and 900 North entrances. Developer shall inform contractors and subcontractors of the construction access locations, and place appropriate construction access signs at these entrances; a construction access prohibited sign shall be placed at the north end of 1300 East.
13. Infrastructure improvement costs shall be paid by, and be the sole responsibility of, the Developer, their assigns, transferees or successors as owners or developers except as outlined above.
14. Developer shall execute a performance agreement and provide a cash bond or letter of credit acceptable to the City to guarantee completion of the City's public improvements.
15. This agreement shall not be enforceable by 3rd parties.
16. Upon the full and complete performance of all of the terms and conditions of this Agreement by the Developer, their assigns, transferees or successors, and upon the City's approval of the improvements and acceptance of the subdivision as complete, which shall not be unreasonably withheld, the City agrees to take over and assume responsibility for those areas shown on the recorded subdivision plats as dedicated to the public and begin issuing building permits. The Developer agrees to construct and the City agrees to maintain such public improvements without assessment for the construction of the improvements as set out in the plans and specifications. Nothing contained herein shall be construed in any way to render the City liable for any charges, costs, or debts for material, labor, or other expenses incurred in the initial making of these public improvements.
17. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding. This Agreement may not be enlarged, modified or altered except in writing approved by the Parties.

18. This Agreement shall be a covenant running with the land, and shall be binding upon the Parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.
19. In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for either party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the prevailing party in the controversy shall be entitled to recover its reasonable attorney's fees incurred by such party and, in addition, such reasonable costs and expenses as are incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year this agreement was first above written.

DATED this 8th day of August, 2018.

HEBER CITY:

By: Kelleen Potter
 Kelleen Potter ~~Alan W. McDonald~~, Mayor

ATTEST:

Amy Budge
 Heber City Recorder



DM Marketing, Developer:

By: [Signature]

STATE OF UTAH)

: ss.

COUNTY OF WASATCH)

On this 8th day of August, 2018, personally appeared before me the above named authorized representative of Developer, who duly acknowledged to me that Developer is the owner in fee of the land in Stone Creek Phase 2 and executed the same as such.

[Signature]
 NOTARY PUBLIC



