

SUBDIVISION AGREEMENT  
AND  
COVENANT RUNNING WITH THE LAND

**(Brookside Subdivision Phase 2, 3, 4A, and 4C)**

THIS AGREEMENT entered into this 31<sup>st</sup> day of DECEMBER, 2020 by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer".

WHEREAS, the Developer/petitioner has proposed the Brookside Subdivision Phase 2 (25 units), Phase 3 (29 Units), Phase 4A (10 units), and Phase 4C (10 Units);

WHEREAS, unique circumstances warrant an agreement between the parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. With respect to Exhibit A (the approved final subdivision plats), the Developer shall, prior to beginning any construction and/or recording each subdivision plat, whichever occurs first, transfer to the City all required water rights necessary for development in the form of diversion water rights acceptable to the City. Developer shall also contribute an amount equal to seven (7) years' worth of irrigation company assessments to the City for any "Supplemental" (Timpanogos Class D) water rights that are transferred.
2. Plat recordation and construction of phases. Issuance of building permits and acceptance of individual phases is dependent upon the completion and acceptance of certain improvements in another phase:
  - a. Phase 2 must be completed and accepted by the City prior to recording Phase 4A plat and/or issuing building permits in Phase 4A.
  - b. Center Creek Park improvements and the Mill Road street and landscaping improvements along the frontage of Phase 3 and 4C must be completed and accepted by City prior to issuing building permits in Phase 3 and Phase 4C.
3. Center Creek Park shall be landscaped as proposed by developer in Exhibit C and maintained in perpetuity by the Home Owners Association.
4. All trails shall be dedicated for public use.
  - a. Developer shall grant to City, an exclusive, perpetual, irrevocable easement for the purpose of creating, maintaining and using a public trail over the property on Parcels C and D in Phase 3, and in the Center Creek Park in Phase 4A.
  - b. The trails shall be unavailable and inaccessible to motorized vehicles, except for maintenance or emergency use. The trails shall be available for public use and constructed to an appropriate standard for walkers, runners, joggers, hikers, cyclists (both mountain and road), skateboarders, disabled users, wheelchairs, equestrians, skiers, in-line skaters and baby movers.
  - c. The easement, rights, and obligations granted or created hereby are appurtenant to the Property, and shall constitute covenants running with the land, and shall inure to the

- benefit of and also be binding upon grantors and its successors and assigns of the Property.
- d. The Developer and City intend that the use of the Property be for a Recreational purpose as defined in Section 57 Chapter 14 of the Utah State Code Annotated, and for Recreational Activity under the Recreation Land Use Immunity Act as defined in Section 78B-4-509 of the Utah State Code Annotated.
  - e. Developer and City agree that, following the dedication of the easement, Developer and its assigns shall be responsible for and shall maintain the Trail and Property in all respects, including but not limited to trail surfacing, landscaping, irrigation, and weed control. This obligation may be transferred to the Home Owner's Association.
  - f. In the event Developer or the Home Owners Association fail to maintain the recreational facilities, the City may (but is not obligated to) maintain them.
5. Lots affected by the FEMA 100 Year Flood Zone shall build the lowest finished floor elevation no less than one foot above the 100 Year Flood Elevation. Flood Elevation Certificates and/or a LOMAR may be necessary. This affects Lots 19, 20, and 43 in Phase 2; Lots 44, 45, 71, and 72 in Phase 3; Lots 83 - 92 in Phase 4A; Lots 73 - 82 in Phase 4C. Additionally Lots 77 - 92 are prohibited from altering the existing topography or installing or constructing any fence, building, or other structure or obstacle in the FEMA Flood way shown on the plat along the rear of said lots. Any such modifications shall be removed or corrected at property owner's expense.
  6. Water to this project will be provided by a water line installed by a prior developer in Mill Road. Developer shall deposit with City prior to plat recordation, \$37,520 (1,410ft x \$26.61) for Phase C, and \$9,393 (353ft x \$26.61) for Phase 4A to reimburse prior developer for this projects share of said water line.
  7. Prior to recording the final plats, developer shall submit the following:
    - a. Updated Title Report.
    - b. Tax clearance from the County Assessor.
    - c. Record of Survey Map.
    - d. Property Owner's Association Documents shall be recorded with each plat to establish a home owner's association to be responsible for the maintenance of common areas and application of fencing limitations.
  8. Developer agrees to abide by nationally accepted best management practices for Storm water Pollution Prevention and obtain and necessary state or federal permits for such.
  9. Developer will provide a copy of their noxious weed control plan approved by the Wasatch County Weed Control Board prior to recording plats and implement approved measures prior to project acceptance by the City.
  10. All aforementioned improvements shall consist of frontage improvements of curbs, sidewalks, pavements, inlets, planting of trees and placing of monuments, as required and consistent with Heber City Standards, including but not limited to required subdivision improvement requirements.
  11. All public streets shall be dedicated to Heber City and be slurry sealed per Heber City's Standard Specifications during the warranty period.

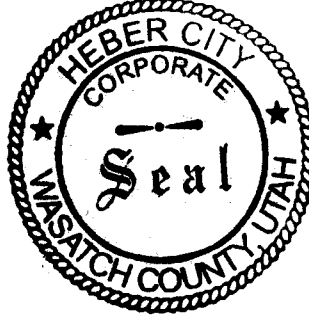
12. All improvement costs will be paid by the Developer, their assigns, transferees or successors as owners or Developers. The Developer shall be obligated to disclose and notify in writing its immediate successors in ownership or Developers of the requirements of this Agreement.
13. Developer shall execute a performance agreement and provide a cash bond or letter of credit acceptable to City guaranteeing the public improvements related to each subdivision phase.
14. The parties agree that the improvements will be required at the time of development, and that no building permits shall be issued until essential facilities as defined in Heber City's code are complete.
15. 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 approval of the improvements, the City agrees to take over roads as shown on the field map and those areas shown on the recorded subdivision plats as dedicated to the public, and maintain them as public works and public highways of the City without assessment for the construction of improvements as set out in the plans and specifications. Nothing contained here 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 making of these improvements.
16. In the event there is a Failure to Perform under this Agreement and it becomes reasonably necessary for any 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 losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
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; and this Agreement may not be enlarged, modified or altered except in writing approved by the parties.
18. Time is of the essence of this Agreement. In case any party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.
19. 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.

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

DATED this 3<sup>RD</sup> day of DECEMBER, 2020.

HEBER CITY:

By: Kellean Potter  
Kellean Potter, Mayor



ATTEST:  
Trina W. Locke  
Heber City Recorder

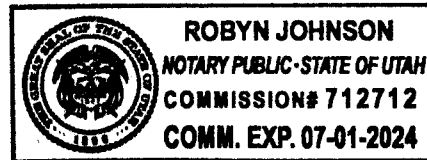
OWNER, [Signature]

By: Jeremy Ackley  
Owner/Manager

STATE OF UTAH )  
: ss.  
COUNTY OF WASATCH )

On this 3rd day of DECEMBER, 2020, personally appeared before me the above named Owner, who duly acknowledged to me that he is the owner in fee and executed the same as such. *JEREMY ACKLEY  
MANAGER OF MILLHAVEN  
CONSTRUCTION*

[Signature]  
NOTARY PUBLIC



**EXHIBIT A: LEGAL DESCRIPTION****Phase 2 Legal Description**

BEGINNING AT A POINT LOCATED SOUTH 89°50'38" WEST 426.78 FEET AND SOUTH 31.84 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S00°21'12"E 217.75 FEET; THENCE N89°56'12"E 62.32 FEET; THENCE S00°10'15"E 537.91 FEET; THENCE S00°03'36"E 64.00 FEET; THENCE S00°10'15"E 407.98 FEET; THENCE N63°41'05"W 66.03 FEET; THENCE S26°18'55"W 118.32 FEET; S55°49'33"E 18.62 FEET; THENCE S34°10'27"W 64.00 FEET; THENCE N55°49'33"W 200.12 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 180.00 FEET; THENCE 50.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°13'53", WITH A CHORD BEARING AND DISTANCE OF N47°42'37"W 50.82 FEET; THENCE N39°35'40"W 234.11 FEET; THENCE N50°30'50"E 64.00 FEET; THENCE N64°53'54"E 132.13 FEET; THENCE N00°10'15"W 319.99 FEET; THENCE N00°04'45"W 64.00 FEET; THENCE N00°10'10"W 238.00 FEET; THENCE WEST 30.60 FEET; THENCE N00°10'15"W 252.48 FEET; THENCE N00°06'08"W 69.54 FEET; THENCE EAST 282.19 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 9.793 ACRES, OR 426,602 SQUARE FEET,

**Phase 3 Legal Description**

BEGINNING AT A POINT LOCATED SOUTH 89°50'38" WEST 363.23 FEET AND SOUTH 249.69 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE S00°10'15"E 537.91 FEET; THENCE S00°03'36"E 64.00 FEET; THENCE S00°10'15"E 407.98 FEET; THENCE N63°41'05"W 66.03 FEET; THENCE S26°18'55"W 118.32 FEET; THENCE S33°40'48"W 64.00 FEET; THENCE S55°49'33"E 402.67 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 180.00 FEET; THENCE 107.90 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°20'42", WITH A CHORD BEARING AND DISTANCE OF S72°59'54"E 106.29 FEET; THENCE N89°49'03"E 34.32 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE 20.43 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°02'36", WITH A CHORD BEARING AND DISTANCE OF S45°09'40"E 18.39 FEET; THENCE N89°49'45"E 36.92 FEET; THENCE N00°24'01"W 1,410.38 FEET; THENCE S89°56'12"W 364.97 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 11.907 ACRES, OR 518,654 SQUARE FEET,

**Phase 4A Legal Description**

BEGINNING AT A POINT LOCATED SOUTH 89°50'38" WEST 492.52 FEET AND SOUTH 1399.42 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE S34°10'27"W 100.00 FEET; THENCE S55°49'33"E 250.00 FEET; THENCE S53°20'23"E 240.41 FEET; THENCE S88°37'54"E 90.88 FEET; THENCE N00°05'21"W 121.80 FEET; THENCE N89°49'03"E 19.98 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 13.00 FEET; THENCE 20.43 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°02'36", WITH A CHORD BEARING AND DISTANCE OF S45°09'40"E 18.39 FEET; THENCE N89°49'45"E 36.92 FEET; THENCE S00°24'01"E 353.76 FEET; THENCE S89°54'39"W 38.84 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 13.00 FEET; AND TO WHICH POINT A RADIAL LINE BEARS S89°54'39"W THENCE 20.40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°55'06", WITH A CHORD BEARING AND DISTANCE OF S44°52'12"W 18.37 FEET; THENCE S89°53'57"W 35.02 FEET; THENCE N00°05'21"W 77.07 FEET; THENCE N50°47'03"W 53.51 FEET; THENCE N37°01'52"W 51.33 FEET; THENCE N44°45'38"W 50.22 FEET; THENCE N55°40'01"W 200.94 FEET; THENCE N46°42'02"W 109.41 FEET; THENCE N62°07'43"W 66.98 FEET; THENCE N67°06'55"W 100.16 FEET; THENCE S26°04'29"W 100.43 FEET; THENCE N63°55'31"W 30.00 FEET; THENCE N26°04'29"E 100.04 FEET; THENCE N63°56'15"W 100.00 FEET; THENCE N58°54'02"W 93.87 FEET; THENCE N83°32'03"W 178.60 FEET; THENCE SOUTH 145.00 FEET; THENCE WEST 23.49 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE 20.38 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°50'33", WITH A CHORD BEARING AND DISTANCE OF N45°04'43"W 18.36 FEET; THENCE N00°09'27"W 576.29 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 13.00 FEET; THENCE 20.43 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°02'47", WITH A CHORD BEARING AND DISTANCE OF N44°51'57"E 18.39 FEET; THENCE N89°50'10"E 37.33 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 70.00 FEET; AND TO WHICH POINT A RADIAL LINE BEARS S00°09'27"E THENCE 61.77 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 50°33'47", WITH A CHORD BEARING AND DISTANCE OF S64°52'34"E 59.79 FEET; THENCE S39°35'40"E 298.73 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 180.00 FEET; THENCE 50.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°13'53", WITH A CHORD BEARING AND DISTANCE OF S47°42'37"E 50.82 FEET; THENCE S55°49'33"E 200.12 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 5.531 ACRES, OR 240,920 SQUARE FEET.

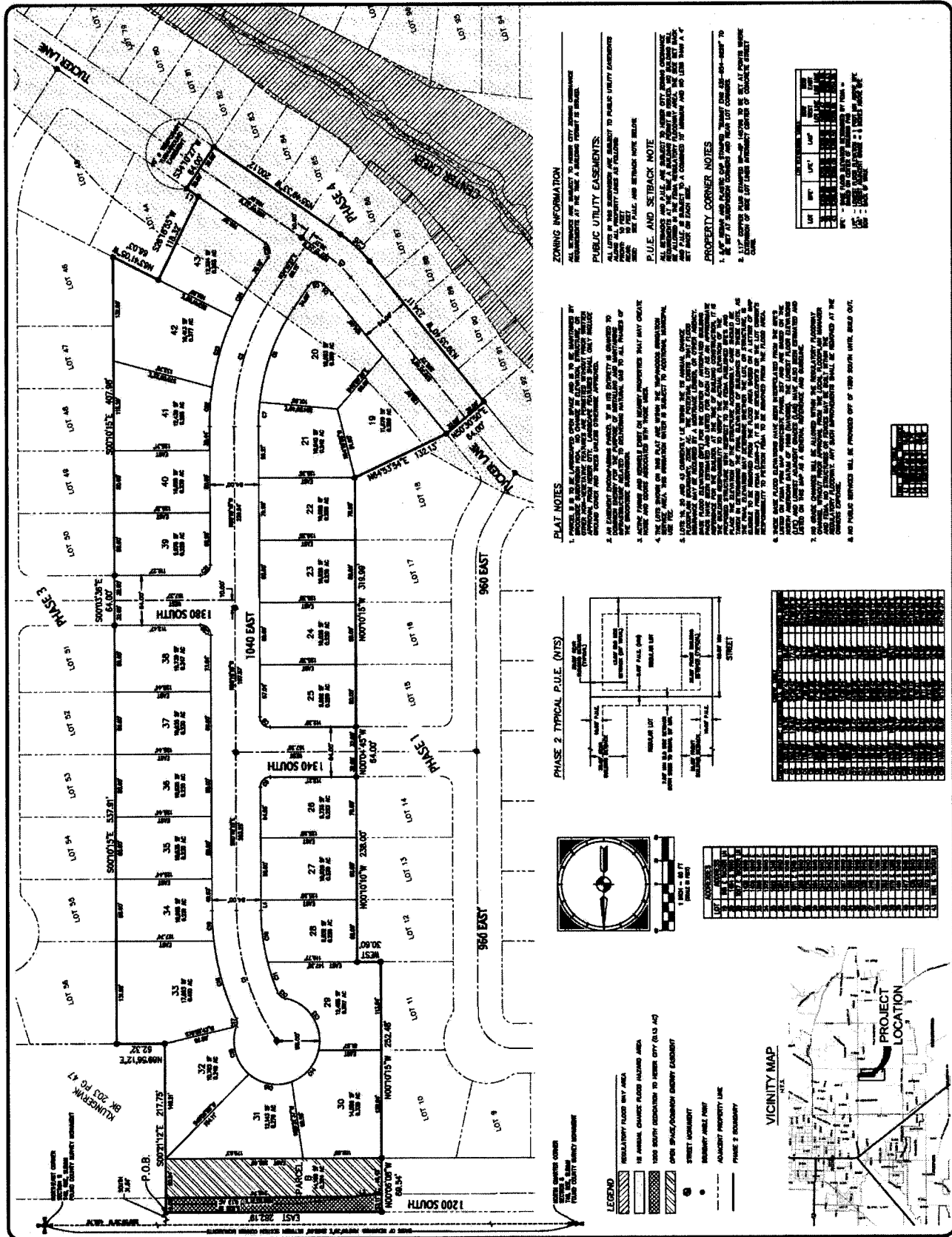
**Phase 4C Legal Description**

BEGINNING AT A POINT LOCATED SOUTH 89°50'38" WEST 492.52 FEET ALONG THE SECTION LINE, AND SOUTH 1,399.42 FEET FROM THE WASATCH COUNTY SURVEY MONUMENT FOR THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE S55°49'33"E 384.60 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 180.00 FEET; THENCE 107.90 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°20'42", WITH A CHORD BEARING AND DISTANCE OF S72°59'54"E 106.29 FEET; THENCE N89°49'45"E 14.34 FEET; THENCE S00°05'21"E 121.80 FEET; THENCE N88°37'54"W 90.88 FEET; THENCE N53°20'23"W 240.41 FEET; THENCE N55°49'33"W 250.00 FEET; THENCE N34°10'27"E 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 1.32 ACRES, OR 57,522 SQUARE FEET,

EXHIBIT B: PHASE 2



**ZONING INFORMATION**  
 ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO PUBLIC UTILITY EASEMENTS AS SHOWN ON THIS PLAN. A RECORD COPY OF THESE EASEMENTS IS FILED IN THE PUBLIC UTILITY EASEMENT RECORDS AT THE CITY ENGINEER'S OFFICE.

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**P.U.E. AND SETBACK NOTE**  
 ALL SETBACKS AND P.U.E. ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE. SETBACKS AND P.U.E. ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE. SETBACKS AND P.U.E. ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE. SETBACKS AND P.U.E. ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE.

**PROPERTY CORNER NOTES**  
 1. LOT 11 AND 12 ARE ADJACENT TO LOT 10 AND 13. ALL CORNER MARKERS ARE TO BE MAINTAINED AND REPLACED AS NECESSARY.  
 2. LOT 11 CORNER MARKERS ARE TO BE MAINTAINED AND REPLACED AS NECESSARY.

**PLAT NOTES**  
 1. THE LOTS SHOWN ON THIS PLAN ARE SUBJECT TO THE IBERIA CITY ZONING ORDINANCE. ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE. ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE. ALL LOTS IN THIS SUBDIVISION ARE SUBJECT TO IBERIA CITY ZONING ORDINANCE.

2. ALL CORNER MARKERS ARE TO BE MAINTAINED AND REPLACED AS NECESSARY. ALL CORNER MARKERS ARE TO BE MAINTAINED AND REPLACED AS NECESSARY. ALL CORNER MARKERS ARE TO BE MAINTAINED AND REPLACED AS NECESSARY.

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