

When recorded return to:

Heber City Corporation
Attn: City Recorder
75 North Main Street
Heber City, UT 84032

Parcel No. 00-0007-8563

Ent 557301 Bk 1509 Pg 639-648
Date: 20-MAR-2025 1:33:12PM
Fee: \$40.00 Check Filed By: CO
MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: KRUGER PAUL

DEVELOPMENT AGREEMENT (Wellberg/Kruger Subdivision)

THIS DEVELOPMENT AGREEMENT entered into this 11th day of February, 2025, by and between **Heber City**, a Utah municipality ("City"), and **RHK Holdings, LLC**, a Utah limited liability company (collectively "Developer" or "Owner"). Developer and City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Developer is the owner of an approximately 305 acres of real property located at east of the Red Ledges subdivision (the "Property"). A legal description of the Property is attached hereto as Exhibit A; and

WHEREAS, the Developer desires to develop the Property into two single family residential lots; and

WHEREAS, the City, acting pursuant to its authority under Utah Code Ann. §10-9a-101, *et. seq.*, in compliance with the Heber City Land Use Code, and in furtherance of its land use policies, goals, objectives, ordinances and regulations, has made certain determinations with respect to the Property, and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals and objectives of the City, and to promote the health, safety and general welfare of the public.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. **Zoning.** The property shall be used and developed consistent with the requirements of the Mountain Community Zone (MCZ), except as set forth in this Agreement.
2. **Density.** Developer shall be entitled to develop no more than two single family residential lots on the Property, consisting of one lot of approximately 50 acres and one lot of

approximately 221 acres (together the "Lots"), provided that the exact size of each lot shall be determined by the Developer.

3. **Trail Land.** In accordance with the Development Agreement for the Red Ledges subdivision, Red Ledges is required to complete a public access back country trail that will be located on approximately 30 acres of the Property that abuts the Red Ledges subdivision. Accordingly, prior to approval of any building permit for the Lots, Developer shall convey to Red Ledges either fee title to, or a permanent easement and right-of-way over, the approximately 30 acres necessary for Red Ledges to construct the trail.
4. **Roads and Access.** Developer acknowledges that the Lots will be accessed through private roads within the Red Ledges subdivision, and Developer is solely responsible for to obtain permission to access through Red Ledges. All roads within the Property shall be privately constructed and maintained roads that service only the Lots. Except for emergency vehicle access, in no event shall Developer or the owners of the Lots grant access to third-parties to utilize the private roads within the Property for the purpose of accessing adjacent properties without the written consent of Heber City.
5. **Utilities.** Developer shall be responsible for the cost of installing all utilities for the Property. Water and sewer service for the Property shall be provided through the Twin Creeks Special Service District, or through a private well and/or septic tanks in compliance with all applicable state and local regulations.
6. **Vested Rights.** The Parties intend that this Agreement grants to Developer all rights to develop the Project in fulfillment of this Agreement, the City's current laws (the "Vested Laws"), and the zoning of the Property. The Parties specifically intend that this Agreement grant to Developer the "vested rights" identified herein as that term is construed in Utah's common law and pursuant to Utah Code Ann. § 10-9a-509 (2024).
7. **Exceptions to Vested Rights.** The vested rights are subject to the following exceptions:
 - a. Agreed to Regulations. City's future laws or other regulations to which the Developer agrees in writing;
 - b. State and Federal Compliance. City's future laws or other regulations that are enacted or required to comply with State or Federal laws or regulations;
 - c. Development Review Processes. Amendments or changes to the City's application processes, review criteria, required application materials or submittal checklists that are generally applicable, and do not materially impact (i) the ability of Developer to develop the Project in accordance with this Agreement or (ii) the overall cost of development;
 - d. Safety Codes. Any City's future laws that are updates or amendments to building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic

Control Devices or similar standards that are enacted to meet legitimate concerns related to public health, safety or welfare;

- e. Engineering Standards. Amendments or changes to the City's Engineering Standard Drawings and Specifications provided that the amendments or changes (i) do not materially impact the ability of Developer to develop the Project in accordance with this Agreement, (ii) do not materially impact the overall cost of development, and (iii) are not enacted as a means to reduce or limit the ability of Developer to develop the Lots in accordance with this Agreement.
- f. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, or similarly situated persons and entities;
- g. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;
- h. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 (2024) et seq.;
- i. Planning and Zoning Modifications. Changes by City to its planning principles and design standards such as architectural or design requirements, setbacks or similar items so long as they don't materially impact the ability of Developer to develop the Lots in accordance with this Agreement; and
- j. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. § 10-9a-509(1)(a)(ii)(A) (2024).

8. **Default.** Any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of ten (10) calendar days following the receipt of written notice of such failure from the other party shall constitute a "Default" under this Agreement.

8.1 Notice. Any notice of default ("Default Notice") shall: (1) specify the claimed event of Default; (2) identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in Default; (3) identify why the claimed Default is claimed to be material; and (4) specify the manner in which said failure may be satisfactorily cured.

8.2. Cure. Following receipt of a Default Notice, the defaulting Party shall have thirty (30) days in which to cure such claimed Default (the "Cure Period"). If more than 30 days is required for such cure, the defaulting Party shall have such additional time as is

reasonably necessary under the circumstances in which to cure such Default so long as the defaulting Party commences such cure within the Cure Period and pursues such cure with reasonable diligence. City may, in City's sole discretion, withhold permits or approvals during any Cure Period.

8.3. Developer's Exclusive Remedy. Developer's sole and exclusive remedy under this Agreement shall be specific performance of the rights granted in this Agreement and City's obligations under this Agreement. **IN NO EVENT SHALL CITY BE LIABLE TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS, OR ANY DEVELOPER, PROPERTY OWNER OR OTHER PARTIES UNDER THIS AGREEMENT, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES.**

8.4 City's Remedies Upon Default. In addition to all other remedies available at law or in equity, City shall have the right to withhold all further reviews, approvals, licenses, building permits and other permits for development of the Property in the case of a Default by Developer, until the Default has been cured. City shall further have the right to draw on any security posted or provided in connection with the Property and relating to remedying of the particular Default.

8.5 Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record in a public meeting that a Default by Property Owners materially impairs a compelling, countervailing public interest and that any delays in imposing a remedy to such a Default would also impair a compelling, countervailing public interest, the City may impose the remedies of Section 14.4 without any further requirements or obligations to the Property Owners. The City shall give Notice to Property Owners in accordance with the City's Vested Laws of any public meeting at which an emergency Default is to be considered and Property Owners shall be allowed to attend such meeting and address the Council regarding the claimed emergency Default..

9. **Fees.** Developer shall be required to pay all permit fees, building permit fees, inspection fees, impact fees or other fees imposed by the City as set forth in the City Code and the City's consolidated fee schedule.
10. **Entire Agreement.** This Agreement, including its Exhibits, 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. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and of the Developer.
11. **Time is of the essence.** 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.

12. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue for a period of ten (10) years. Unless otherwise agreed between the City and the Developer, the Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the dedications, easements, deed restrictions, licenses, building permits, or certificates of occupancy granted prior to the expiration of the term or termination of this Agreement shall be rescinded or limited in any manner.
13. **No Third-Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.
14. **Recording.** This Agreement shall be recorded with the Wasatch County Recorder as soon as reasonably practicable and no later than thirty (30) days after a binding vote of the City Council approving the Agreement. The City Recorder shall cause to be recorded, at the Developer's expense, a fully executed copy of this Agreement in the Official Records of the County of Wasatch no later than the date on which the first plat for the Project is recorded.
15. **Notices.** Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (1) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United State mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses as set forth below:

The City:

Heber City Manager
75 N Main Street
Heber City, UT 84032

Developer

16. **Insurance and Indemnification.** Developer shall defend and hold the City and its officers, employees and consultants harmless for any and all claims, liability and damages arising out of the negligent actions or inactions of such Developer, its agents or employees

pursuant to this Agreement, unless caused by the City's gross negligence or willful misconduct.

17. **Bodily Injury and Property Damage Insurance.** Developer agrees to and shall indemnify and hold the City and its elected and appointed boards, officers, agents, employees, and consultants harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) rising from or as a result of the death of any person or any accident, injury, loss or damage to any person or property directly caused by any acts done or omissions of Developer or its agents, servants, employees or contractors in connection with this Agreement, except for willful misconduct or negligent acts or omissions of the City or its elected or appointed boards, officers, agents, employees or consultants.
18. **Binding Effect.** If Developer conveys any portion of the Property or buildings to one or more owners or sub-developers, the property so conveyed shall have the same rights, privileges, and shall be subject to the same limitations and rights of the City, applicable to such properties under this Agreement prior to such conveyance, without any required approval, review, or consent by the City, except as otherwise provided herein.
19. **No Waiver.** Failure of any Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future date any such right or any other right it may have.
20. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the Parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Agreement shall remain in full force and affect.
21. **Other Necessary Acts.** Each Party shall execute and deliver to the other Party any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.
22. **Covenants Running with the Land and Manner of Enforcement.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of the individual lot in the Project shall have no right to bring any action under this Agreement as a third-party beneficiary. The City may look to the Developer, its successors and/or assigns, or the lot owners for performance of the provisions of this Agreement relative to the portions of the Projects owned or controlled by such party. The City may, but is not required to, perform any obligation of the Developer that the Developer fails adequately to perform. Any cost incurred by the City to perform or secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to the individual lots or units in the Project.

23. **Amendment.** Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in the specific lot, or other portion of the Project. Each person or entity (other than the City and the Developer) that holds any beneficial, equitable, or other interests or encumbrances in all or any portion of the Property at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 32. Each such person or entity agrees to provide written evidence of that subjection and subordination within fifteen (15) days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

24. **Waiver of Rights Under Utah Code Section 10-9a-532.** The Parties have been represented by an attorney throughout this process. Developer acknowledges that this Agreement does not restrict any of Developer's rights under clearly established state law or that Developer has been advised in writing of any such rights being restricted. As an essential term of this Agreement, Developer hereby waives any claim that any term of this Agreement is void, illegal, invalid, or unenforceable as the result of any failure on the City's part to disclose in writing any rights being restricted by 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 10th day of February, 2025.

HEBER CITY:

By: Heidi Franco
Heidi Franco, Mayor

ATTEST:

Brina N. Keele
Heber City Recorder



DATED this 10th day of February, 2025.

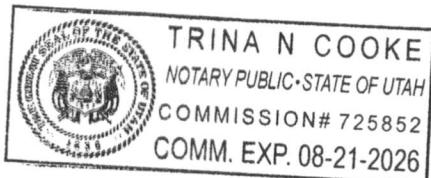
By: Heidi Franco
Title: Heber City Mayor

State of Utah)
:SS
County of Wasatch)

On this 4th day of February, in the year 2025, before me, Trina N. Cooke, a notary public, personally appeared Heidi Franco proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same.

Witness my hand and official seal

(Seal)



Trina N Cooke
Notary Public

RHK Holdings, LLC

By: 

Print Name: Paul Krueger

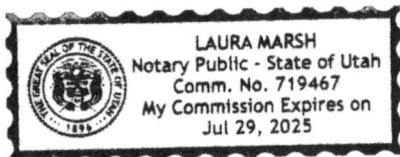
Title: Managing Member

STATE OF UTAH)
: SS.
COUNTY OF WASATCH)

On this 11 day of February, 2025, personally appeared before me

Paul Krueger, who duly acknowledged to me that (s)he had

authority to and did execute the foregoing document on behalf of RHK Holdings, LLC.



Laura Marsh
NOTARY PUBLIC

Exhibit A

Legal Description

A PART OF THE WEST ONE-HALF OF SECTION 26 & THE NORTHWEST ONE-QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE EASTERLY LINE OF THE M.A. BURNS ANNEXATION, RECORDED AS ENTRY #321725 OF OFFICIAL RECORDS, SAID POINT BEING NORTH 00°10'19" EAST 297.00 FEET ALONG THE SECTION LINE FROM THE WEST ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE CONTINUING NORTHERLY ALONG SAID ANNEXATION THE FOLLOWING TWO (2) COURSES: (1) NORTH 00°10'19" EAST 2456.77 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 26; (2) NORTH 00°02'33" EAST 5267.90 FEET TO THE NORTHWEST CORNER OF SAID SECTION 26, SAID POINT ALSO BEING LOCATED ON THE SOUTHERLY LINE OF THE HEBER CITY ANNEXATION OF RE INVESTMENT HOLDINGS LLC, RECORDED AS ENTRY #481607 OF OFFICIAL RECORDS; THENCE EASTERLY ALONG SAID ANNEXATION NORTH 89°21'35" EAST 538.50 FEET; THENCE SOUTH 28°37'00" EAST 3020.63 FEET; THENCE SOUTH 00°12'22" WEST 2644.87 FEET; THENCE SOUTH 00°10'19" WEST 2402.88 FEET; THENCE SOUTH 89°05'38" WEST 1980.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 307.17 ACRES