

When recorded return to:

Boyer Heber City, L.C.
Attn: Wade Williams
90 South 400 West, Suite 200
Salt Lake City, Utah 84101

SUBDIVISION AGREEMENT
AND
COVENANT RUNNING WITH THE LAND
(Heber Valley Station)

THIS AGREEMENT ("Agreement") is entered into this 30 day of July, 2008, by and between HEBER CITY, hereinafter referred to as "City" and BOYER HEBER CITY, L.C., and BOYER HEBER LAND, L.C., Utah limited liability companies, and/or its successors or assigns as "Developer".

WHEREAS, Developer has proposed a mixed-use subdivision (the "Project"), the Heber Valley Station Subdivision, in the Mixed Use Residential Commercial (MURCZ) Zone in Heber City; and

WHEREAS, the City annexed the property subject to certain conditions.

NOW, THEREFORE, the parties hereby agree as follows:

1. With respect to Exhibit A (the approved final subdivision plat), Developer shall, upon approval of specific uses and application for a building permit for an individual building), transfer to the City all required water rights necessary for common areas maintained within such portion of the Project. Developer shall receive credit for all existing water connections located anywhere within the Project, including but not limited to water connections located in the trailer park, RV Park, office building, hotel or residences originally located on the property.
2. Public and Private Improvements
 - a) Developer shall construct a 6 foot masonry fence along the northern and eastern perimeter of the property

line of the 1.98 acres of property located north of 1000 South. Developer will also install an irrigation system and landscaping of said area as proposed in the Wal-Mart Landscaping plan if the property is used for permanent storm water retention or held by developer for over 18 months. Developer may elect to retain ownership of said property, sell said property or otherwise manage the same. If Developer elects to donate said property to a non-profit organization other than an owners' association in the future, the City shall have the first right of refusal which right must be exercised within fifteen (15) days of the date that Developer notifies the City that it has elected to donate said property;

- b) Developer will enter into an easement or agreement with property owners or tenants with covenants and restrictions affecting land which will provide for the management and maintenance of common areas within the Project;
- c) Streets and utilities will be constructed to property lines of the Project;
- d) Developer shall construct an 8-foot wide asphalt master planned trail available for public use along the northern edge of the flood channel right of way through the Project, connecting the SR 189 sidewalk to the Industrial Park Way sidewalk;
- e) Developer shall construct to City standards, at no cost to the City, and dedicate rights of way as follows: (1) a 100 foot wide right of way for 1300 South along the boundary line of the Bellows property, and then an 84 foot right of way to Highway 89. The asphalt street width within 1300 South shall be 62 feet wide, (2) a 66 foot right of way for 1000 South with an asphalt street width of 44 feet, and (3) a 72 foot right of way for 300 West with an asphalt street width of 50 feet. Developer agrees to construct said roads without seeking additional reimbursement from the City and landscape and maintain the park strips in the 1300 South right-of-way as additional consideration for loss of functionality to the Daniels Road intersection;

- f) The final plat shall include the following note on all easements dedicated to Heber City for public improvements; i.e. drainage, water, sewer, etc."Heber City has the right of access through lots with these easements to maintain and repair said facilities. No cuts, fills, changes to topography, structures above or below ground; including but not limited to fences, decks, sheds, or footings of any kind, are allowed in these easements. Obstacles erected within these easements will be removed at the current lot owner's expense. The owners of Lots with easements are responsible for landscaping and irrigation of the easement areas as approved by Heber City. Fences constructed around the easements shall contain 12 foot wide gates to accommodate access by Heber City Corporation."
- g) Developer will complete the placement of overhead utility wires along Highway 40 and Highway 189, and underground lines within the Project pursuant to a separate agreement between Developer and Heber Power. Notwithstanding the foregoing, the power lines north of 1000 South will not be relocated by Developer;
- h) Developer will improve the south side of Highway 189 from Daniel Road to Highway 40 with asphalt, curb and gutter and a sidewalk (where existing right-of-way is insufficient for the construction of sidewalk, at the City's request, Boyer will be required to escrow adequate funds for any portion of sidewalk that is not installed) and on the north side of Highway 189 to Highway 40 along the frontage of the Project with utilities, asphalt, curb and gutter, and sidewalk, which improvements shall be approved by UDOT and Developer;
- i) The City and Developer will enter into a boundary line agreement, in the form attached hereto as Exhibit B, to eliminate the 10 foot gap between the Flood Control Channel and property to the north (the "Gap Property"). Such agreement will dedicate the Gap Property to Developer for the purpose of the trail landscaping and maintenance. Developer agrees to dedicate the Gap Property to the City, upon the City's request, should the Gap Property be needed for the future road or flood control purposes. Such

dedication shall be subject to existing Wasatch Irrigation and CUP rights of way;

- j) No individual lot or tenant within the Project shall directly access Highway 189 or Highway 40, except as shown and approved on the proposed improvement plans;
 - k) 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 and commercial developmental improvement requirements;
 - l) Developer shall execute a performance agreement and provide a bond guaranteeing the construction of all City improvements constructed by the developer;
 - m) Upon the full and complete performance of all of the terms and conditions of this Agreement by Developer, its assigns, transferees or successors, and upon approval of the improvements, the City agrees to take over roads as shown on the filed 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. Except as specifically noted, 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 original construction of these improvements, and
 - n) Developer shall also obtain written approval to proceed from UDOT and Wasatch County Water Efficiency Project prior to plat recordation.
3. The City will reimburse developer for the cost of designing and installing the improvements itemized below, which reimbursement shall be payable within fifteen (15) days after final acceptance by City and receipt of invoices from Developer demonstrating the actual cost (including but not limited to, design fees, engineering costs, construction costs including

mobilization, traffic management, general conditions, profit and overhead) incurred by Developer to install the improvements. If reimbursement is not made to Developer within such fifteen (15) day period, interest on the amount due shall accrue at the rate of ten percent (10%) per annum and, in addition to any other remedies available to Developer under Utah law, Developer shall have the right to offset the amount due together with any accrued interest against any future fees payable to the City by Developer.

- a) 30-inch sewer line from Main Street to Industrial Parkway, excluding surface improvement costs, but including all fill as required by the City or UDOT;
 - b) Replacement of existing flood channel box culvert under Highway 189, excluding surface improvement costs and extensions beyond existing length.
4. Integrated Development
- a) Density calculations shall include the entire Project for purposes of residential density.
 - b) Affordable housing requirements will be complied with by construction of actual units and not by paying a fee-in-lieu thereof. At least 10% of the for sale housing units shall be at a purchase price of Two Hundred Twenty-Four Thousand (\$224,000) dollars or less, which shall qualify for the affordable housing obligation pursuant to the Heber City Affordable Ordinance. Rental residential projects shall provide at least 10% of their units as affordable.
5. Fee Schedule
- a) Valley Station will not get a credit for any street improvements made above and beyond the initial subdivision project requirements, but all buildings within the commercial portion of the development will be assessed traffic impact fees based on a Shopping Center Land Use (820 of ITE Trip Generation Schedule 7th Edition).
6. 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.

- 7. 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 30th day of July, 2008.

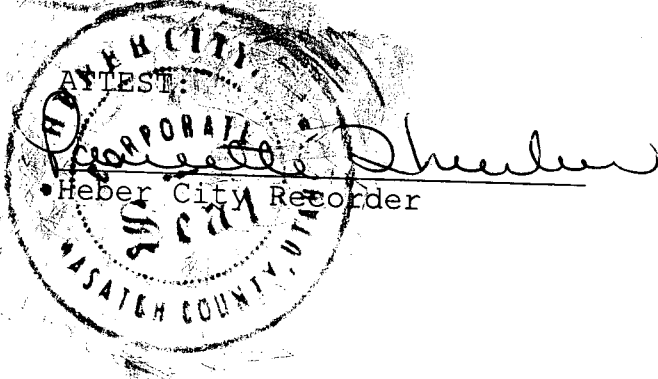
HEBER CITY:

By: [Signature]
David Phillips, Mayor

DEVELOPER:

BOYER HEBER CITY, L.C.
a Utah limited liability company

By: The Boyer Company
Its: Manager



[Signature]
By: Steven Ostler
Its: Manager

DEVELOPER:

BOYER HEBER LAND, L.C.
a Utah limited liability company

By: The Boyer Company
Its: Manager

[Signature]
By: Steven Ostler
Its: Manager

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

On this 30 day of July, 2008,
personally appeared before me Steven Ostler, who duly
acknowledged to me that he executed the foregoing as
Manager of The Boyer Company, the Manager of BOYER
HEBER CITY, L.C.

Misty Sandward
NOTARY PUBLIC



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HEBERLAND, L.C.

Misty Sandward
NOTARY PUBLIC



EXHIBIT "A"

Approved Final Subdivision Plat

EXHIBIT "B"
Boundary Line Agreement

(GAP DETERMINED TO NOT
EXIST. AGREEMENT NOT
NEEDED)

Exhibit "C"

A part of the Southwest Quarter of Section 5, the Southeast Quarter of Section 6, and the Northeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at a point being 106.22 feet South $0^{\circ}06'02''$ East along the Section Line from the Northeast Corner of said Section 7; and running thence South $0^{\circ}06'02''$ East 52.20 feet along the Section Line to the Northwesterly Line of U.S. Highway 189; thence along said Northwesterly Line of the Highway the following four courses: South $52^{\circ}11'22''$ West 309.67 feet to a point of curvature; Southwesterly along the arc of a 5769.58 foot radius curve to the left a distance of 169.20 feet (Central Angle equals $1^{\circ}40'49''$ and Long Chord bears South $51^{\circ}20'57''$ West 169.20 feet); North $87^{\circ}29'43''$ West 14.93 feet; and Southwesterly along the arc of a 5779.58 foot radius curve to the left a distance of 6.94 feet (center bears South $39^{\circ}36'03''$ East; Central Angle equals $0^{\circ}04'08''$ and Long Chord bears South $50^{\circ}21'53''$ West 6.94 feet) to a point on the North Line of the Heber City/Wasatch County Flood Control Channel Property; thence along said North Line the following two courses: North $89^{\circ}33'36''$ West 552.40 feet and South $89^{\circ}49'46''$ West 1110.28 feet to the Easterly Line of Industrial Parkway as it exists at 33.00 foot half-width; thence along said Easterly Line of Industrial Parkway the following three courses: North $40^{\circ}26'01''$ West 68.92 feet; Northwesterly and Northerly along the arc of a 1467.00 foot radius curve to the right a distance of 1035.78 feet (Central Angle equals $40^{\circ}27'15''$ and Long Chord bears North $20^{\circ}12'24''$ West 1014.41 feet) to a point of tangency; and North $0^{\circ}01'13''$ East 118.26 feet to the Southerly Line of the Heber City Research and Development Park as it is staked on the ground; thence along said Southerly Line the following three Courses: North $89^{\circ}57'12''$ East 616.24 feet; North $1^{\circ}59'06''$ East 49.99 feet; and South $88^{\circ}17'50''$ East 658.64 feet to the East Line of 300 West Street; thence North $0^{\circ}31'30''$ East 141.36 feet along said East Line of 300 West Street to the Southwest Corner of Lot 22, Bronson Lane Plat A Subdivision as it is staked on the ground; thence South $89^{\circ}42'28''$ East 696.27 feet along the Southerly Boundary of said Subdivision as it is staked on the ground to the Southeast Corner of Lot 14 of said Subdivision; thence South $0^{\circ}09'45''$ West 123.06 feet along an existing Boundary Line Fence; thence South $89^{\circ}27'54''$ East 12.90 feet; thence South 61.50 feet; thence East 584.09 feet; thence North $0^{\circ}48'00''$ East 10.00 feet; thence East 65.72 feet to the Westerly Line of State Highway 40 as it is monumented on the ground; thence South $0^{\circ}25'51''$ West 410.43 feet along said Westerly Line of the Highway; thence South $89^{\circ}49'46''$ West 207.33 feet; thence North $0^{\circ}10'14''$ West 25.50 feet; thence South $89^{\circ}49'46''$ West 93.44; thence South $0^{\circ}05'46''$ West 72.30 feet to a point of curvature; thence Southwesterly along the arc of a

240.00 foot radius curve to the right a distance of 162.62 feet (Central Angle equals $38^{\circ}49'20''$ and Long Chord bears South $19^{\circ}30'26''$ West 159.52 feet); thence South $37^{\circ}40'03''$ East 65.00 feet; thence East 17.36 feet; thence South $37^{\circ}48'38''$ East 158.94 feet; thence North $47^{\circ}26'38''$ East 28.61 feet to the Section Line and the point of beginning.

**Contains 2,737,476 sq. ft.
or 62.844 acres**

Also:

A part of the Northeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at a point on the Northwesternly Line of U.S. Highway 189 located 512.74 feet South $0^{\circ}06'02''$ East along the Section Line; and 464.03 feet South $89^{\circ}53'58''$ West from the Northeast Corner of said Section 7; and running thence South $49^{\circ}38'22''$ West 332.69 feet along said Northwesternly Line of the Highway; thence North $40^{\circ}21'38''$ West 96.16 feet to a point of curvature; thence Northwesternly along the arc of a 208.00 foot radius curve to the left a distance of 180.82 feet (Central Angle equals $49^{\circ}48'36''$ and Long Chord bears North $65^{\circ}15'56''$ West 175.18 feet) to a point of tangency; thence South $89^{\circ}49'46''$ West 568.14 feet; thence South $0^{\circ}20'11''$ East 11.31 feet; thence South $89^{\circ}50'30''$ West 434.17 feet to a point on the Easterly Line of Industrial Parkway as it exists at 33.00 foot half-width; thence North $40^{\circ}26'01''$ West 124.78 feet along said Easterly Line of Industrial Parkway to the Southerly Line of the Heber City/Wasatch County Flood Control Parcel; thence along said Southerly Line the following two courses: North $89^{\circ}49'46''$ East 1071.93 feet; and South $89^{\circ}33'36''$ East 22.94 feet; thence Southeasterly along the arc of a 292.00 foot radius curve to the right a distance of 241.90 feet (center bears South $2^{\circ}10'26''$ West; Central Angle equals $47^{\circ}27'56''$ and Long Chord bears South $64^{\circ}05'36''$ East 235.04 feet) to a point of tangency; thence South $40^{\circ}21'38''$ East 48.66 feet to a point of curvature; thence Southeasterly, Easterly, and Northeasterly along the arc of a 30.00 foot radius curve to the left a distance of 47.12 feet (Central Angle equals $90^{\circ}00'00''$ and Long Chord bears South $85^{\circ}21'38''$ East 42.43 feet) to a point of tangency; thence North $49^{\circ}38'22''$ East 215.79 feet to the Southerly Line of the Heber City/Wasatch County Flood Control Parcel; thence South $89^{\circ}33'36''$ East 4.22 feet along said Southerly Line; thence South $39^{\circ}13'45''$ East 14.75 feet to the Northwesternly Line of U.S. Highway 189 and the point of beginning.

**Contains 123,797 sq. ft.
or 2.842 acres**

Excepting therefrom the following described parcel:

A part of the Southwest Quarter of Section 5, and the Southeast Quarter of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 106.98 feet North 89°51'40" East along the Section Line; and 399.74 feet North 0°48'00" East from the Southwest Corner of said Section 5; and running thence West 172.00 feet; thence North 0°48'00" East 102.00 feet; thence East 55.00 feet; thence North 0°48'00" East 48.00 feet; thence East 117.00 feet; thence South 0°48'00" West 150.00 feet to the point of beginning.

Contains 23,158 sq. ft.
or 0.532 acres

Total Net Area Contains 2,838,115 sq. ft.
or 65.154 acres