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DOC # 20180034306

Agreement Page 1 of 8
Russell Shirte Washington County Recorder
08/21/2018 10:00:42 AM Fee \$ 0.00
By ST GEORGE CITY

Recorded at request of:
City of St. George



When recorded return to:
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-5-2-22-112

**DELAY AGREEMENT
FOR COMPLETION OF LANDSCAPING AND PUBLIC IMPROVEMENTS
(660 North Street)**

THIS AGREEMENT is entered into this 8 day of August, 2018, between the City of St. George, a Utah municipal corporation, hereinafter referred to as "City," and White Hills, LC, a limited liability company, hereinafter referred to as "Applicant," whose address is P. O. Box 580, Washington, Utah 84780. City and Applicant are herein collectively referred to as the "Parties."

RECITALS

WHEREAS, Applicant desires to obtain a building permit to develop property fronting 660 North Street as an expansion to L & W Supply located at 708 North 3050 East in the City of St. George, Utah, which is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference the "Property;" and

WHEREAS, the terms of the issuance of such building permit requires Applicant to dedicate the 145 linear feet of 66' wide public right of way and to install and complete the required landscape improvements per City ordinance 10-25-1, et. seq., and 10-11-4D, and to install and complete the following public improvements per City ordinance 9-2-3:

- A. 145 Linear Feet of Type HB30-7 Curb and Gutter (with Base Course);
- B. 4,640 Square Feet (32' wide) of 3" Thick Asphalt Pavement and 8" Thick Base Course;
- C. 725 Square Feet of 5' Wide Sidewalk (with Base Course);
- D. 530 Cubic Yards of Earthwork Grading;

for the expansion of L & W Supply at 660 North Street along the frontage of the Property in accordance with the City of St. George Standard Specifications for Design and Construction, (the landscape and public improvements shall collectively be referred to hereinafter as the "Improvements"); and

WHEREAS, City cannot grant such building permit or approval until Applicant agrees to the conditions set forth herein regarding completion of the Improvements.

NOW, THEREFORE, in consideration of the premises, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference.
2. **Installation of Improvements.** City agrees to permit Applicant to defer completion of the Improvements on 660 North Street until public improvements are constructed on the adjacent parcels along the same roadway, or until such time the City determines the Improvements should be installed.
 - a. The landscape improvements described above shall meet all City ordinance requirements, including, but not limited to 10-11-4D and 10-25-1 et. seq., as amended, and shall at least provide a minimum of five percent (5%) of the lot area maintained as landscaped area. At least half of the landscaped area shall consist of live trees, shrubs, and ground cover. Where feasible, a landscaped area adjacent to the public street shall be provided and planted with trees and shrubs. Applicants shall submit to the City a landscape and irrigation plan for review and approval.
 - b. The public improvements described herein shall include, but not limited to, 32-foot wide asphalt pavement and road base, concrete curb and gutter, and a five-foot concrete sidewalk, along the 660 North Street Property frontage of Applicant;
 - c. All Improvements shall be installed with other public improvements come to within 200 feet or less of the Property. Applicant shall complete the Improvements without further written notice, and in accordance with any timetable deemed appropriate by City; and
 - d. All Improvements shall be installed in accordance with any timetable deemed appropriate by City, after 30 days' written notice to Applicant.
3. **Time.** Unless otherwise expressly agreed above, City may require any or all of the Improvements to be partially or wholly completed, in any order, or pursuant to any timetable, deemed appropriate by City. Installation of Improvements by Applicant shall commence within 30 days of the date of the written notice or other time requested by City, and shall be completed within 90 days of the date of the written notice. Notwithstanding the provisions set forth above, if, prior to the deferred time period set out above, anyone applies to City for approval to develop the property adjacent to the Property described above, then City may require said deferred Improvements to be installed at the same time approval is given to develop the adjacent property.

4. **Cost of Improvements.** The cost of Improvements, their installation and completion, shall be completely and wholly borne by Applicant.
5. **Acceptance.** Applicant shall not be relieved from the obligation to install the Improvements until such installation has been performed to the satisfaction of City. Applicant expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Applicant from the obligation to comply with applicable City Ordinances and City of St. George Standard Specifications for Design and Construction, and all applicable requirements of the City necessary for approval of any development of Applicant's Property, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies, and procedures of the City, except as modified or waived in this Agreement.
6. **Reimbursement.** The Parties expressly agree that City may at any time, at its option, install or complete any or all of the Improvements. Should City exercise its option, Applicant shall reimburse to City, within 30 days of written notice to Applicant, all costs resulting from such installation and/or completion.
7. **Failure to Pay.** Should Applicant fail to install and complete the Improvements as required by City pursuant to the terms of this Agreement, or reimburse City as herein agreed, or otherwise fail to perform its obligations pursuant to the terms of this Agreement, Applicant recognizes City's right to recover the costs necessary to install the Improvements or obtain reimbursement therefor, through foreclosure proceedings on the Property described above.
8. **Special Improvement District.** If a special improvement district is proposed, which district would in whole or in part finance the installation of any or all of the improvements required under this Agreement, Applicant agrees not to oppose the forming of the special improvement district or the cost thereof. Applicant expressly acknowledges that its obligation for completion of or reimbursement for improvements which are the subject of this Agreement, but are not or will not be installed as part of the special improvement district, shall not be affected by said special improvement district.
9. **Notice.** All notices required herein, and subsequent correspondence in connection with this Agreement, shall be mailed to the following:

City of St. George	White Hills, LC
Attn: City Attorney	Attn: Scott Sandberg
175 East 200 North	P. O. Box 580
St. George, Utah 84770	Washington, Utah 84780
10. **Owner, Successors and Recording.** Applicant hereby represents and warrants that as of the date of recording of this Agreement, Applicant owns fee title interest to the Property and further hereby confesses judgment for itself, its heirs, representatives,

devises, assigns, and successors in interest for the total of any and all amounts expended by the City for the installation of the Improvements contemplated herein, and any expenses related thereto in accordance with the terms of this Agreement. The rights, duties and obligations herein shall inure to the benefit of, and be binding upon, the heirs, successors-in-interest, assigns, and transferees of the Parties, and subsequent purchasers of the Property. Any and all of the obligations of Applicant as outlined in this Agreement shall run with the land described in Exhibit A, and shall constitute an encumbrance thereon.

11. **Attorney's Fees.** If the City commences legal action to enforce or interpret any term of this Agreement, City shall be entitled to recover from Applicant, all reasonable attorney's fees, court costs, and any other costs incurred in connection with such action, whether at trial or on appeal.
12. **Construction.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected thereby, but shall remain in full force and effect.
13. **Survival.** It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
14. **Headings.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
15. **Counterparts.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
16. **Modification.** The terms and conditions of this Agreement may be amended or modified only by written agreement of the Parties.
17. **Authority of Parties.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated, and that this Agreement constitutes a valid and binding agreement.

APPLICANT: White Hills, LC



By: Scott Sandberg
Title: Manager



By: Susan Debenham
Title: Manager



By: Jerry Sandberg
Title: Manager

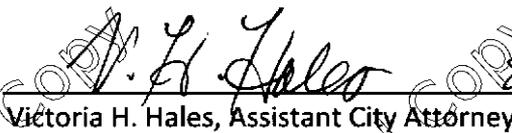
(Signature must be that of the recorded property owner(s) and must be notarized on the following page)

CITY

 8-10-18

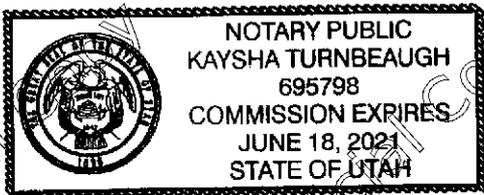
By: Development Services Manager Date
By Title: Carolyn Prickett
Development Services

Approved as to form:

 8/14/18
Victoria H. Hales, Assistant City Attorney Date

STATE OF UTAH)
)
) ss.
)
County of Washington)

On this 8 day of August, 2018, personally appeared before me Jerry Sandberg, who being by me duly sworn did say that s/he is the manager of White Hills, LC, a limited liability company, and that the foregoing instrument was duly authorized by the limited liability company at a lawful meeting duly held or by authority of its operating agreement and signed in behalf of the limited liability company.



Kaysha Turnbeaugh
Notary Public
My commission expires June 18, 2021

EXHIBIT A

LEGAL DESCRIPTION

S: 22 T; 42S R: 15W LAND LYING ELY 3050 EAST ST IN NW1/4 NE1/4 & SW1/4 NE1/4 SEC 22 T42S R15W. LESS: BEG N 89*41'06 E 640 FT ALG 1/4 SEC/L & N 0*52'17 W 290 FT FM CTR 1/4 COR SEC 22 TH N 0*52'17 W 265.24 FT TO RAD CUR 25 FT RGT; TH 39.03 FT ALG ARC CUR TO PTTNGY; TH N 89*41'06 E 415.24 FT; TH S 0*52'17 W 290 FT; TH S 89*41'06 W 440 FT TO POB. LESS: LAND IN 660 NORTH ST. LESS: BEG N 0*52'17 W 283 FT ALG CTR/L 3050 EAST ST & N 89*41'06 E 40 FT FM CITY SUR MONT AT INT SEC 660 NORTH & 3050 EAST STS TH N 89*41'06 E 290 FT; TH S 0*52'17 E 250 FT TO PT ON N LN 660 NORTH ST; TH S 89*41'06 W ALG N LN 660 NORTH ST 260.29 FT TO PT OF 30 FT RAD CUR RGT; TH NWLY ALG ARC CUR 43.83 FT; TH N 0*52'17 W 220.29 FT TO POB. LESS: BEG S 89*02'40 E 1056.88 FT ALG SEC/L & S 0*57'20 W 40 FT FM N1/4 COR SEC 22 ALSO BEING ON S BDRY 40 FT WIDE EAST; TH S 89*02'40 E 75 FT ALG S LN EASE; TH S 0*57'20 W 50 FT; TH N 89*02'40 W 75 FT; TH N 0*57'20 E 50 FT TO POB. LESS: SELY 4.53 AC

CONTAINS 32.37 ACRES