

## ASPEN POINTE ESTATES SECOND SUBDIVISION AGREEMENT

This Agreement, made the 6 day of January, 2012, between Heber City and Blackstone Aspen, LLC, (hereinafter referred to either as Developer).

### WITNESSETH:

WHEREAS, on the 18<sup>th</sup> day of May, 2006, Heber City and PSNet, Inc., as the original developer, of the Aspen Pointe Estates Subdivision in the R-2 Zone in Heber City, PSNet, Inc., entered into that certain Development Agreement, dated the above 18<sup>th</sup> day of May, 2006; and

WHEREAS, The Subdivision having not been completed by PSNet, Inc., Blackstone Aspen, LLC, as Developer, has determined to take responsibility for the completion of the Subdivision; and

WHEREAS, with the exception of Provision 1(t) of that said certain May 18th, 2006, Aspen Pointe Development Agreement, Heber City and Developer desire an agreement acknowledging and accepting responsibility for every term, provision and all requirements and conditions of that said Agreement referenced above; and

WHEREAS, additionally, the Parties desire to enter into an Agreement, whereby certain conditions and requirements for, and associated with, future subdivision and developmental approval with regard to this partially completed subdivision are acknowledged and further defined, understood, acknowledged and agreed upon; and

WHEREAS, the Subdivision is in an area controlled in part by the Heber City Standards and Specifications, which require curb and gutter and sidewalks; and

WHEREAS, the Developer desires and acknowledges that any obligations, responsibilities and covenants that he enters into shall run with the property of the Subdivision, and that this Agreement shall bind future development and any and all developers or owners to whom the property may be granted, transferred or sold; and

WHEREAS, the parties desire that this Agreement be recorded with the Subdivision recordings at the Wasatch County Recorder's office as notice to any and all future developers or owners of the obligations contained herein and associated with said Subdivision,

NOW, THEREFORE, the parties hereto in consideration of the premises mutually certify, acknowledge and agree as follows:

1. With the exception of Provision 1(t) of the above described Development Agreement, any and all provisions, terms, requirements and conditions of said described May 18, 2006 Development Agreement are hereby adopted and incorporated herein and made a part hereof, as Exhibit A, as if originally agreed to as between these two Parties.

2. Further, any and all provisions, terms, requirements and conditions of that certain Draft Punch List of September 2011, as Exhibit B; Signed Constructions Drawings dated 10/20/06 and 8/22/07; Performance Agreements; Reimbursement Agreements; Third Party Utility Agreements; CCR Agreements, and any and all other documents, items, lists, standards, agreements, requirements, rules or ordinances and laws or agreements associated or required with this Subdivision are also hereby adopted and incorporated herein and made a part hereof, as if originally agreed to as between these two Parties.

3. The Developer, its assigns, transferees or successors as owners or developers, shall complete all improvements and City requirements associated with the Subdivision, prior to City acceptance of the project, and prior to issuing building permits.

4. Said improvement costs will be incurred by the Developer, their assigns, transferees, or successors as owners or developers.

5. *All successors in ownership shall be bound by this Agreement.*

6. Any amounts over and above \$60,000.00 held in bond by the City, will be released in stages to the Developer, as the subdivision is completed and approved, to use toward the subdivision improvements for which those monies were originally acquired, designated, and held. Four lots within the Subdivision will be pledged as collateral and held as liened property by the City in consideration for reducing the Warranty Bond to \$60,000.00, which will be held by City for the duration of the project warranty period to guarantee the improvements as described in the Performance Agreement. The Developer assumes all financial responsibility to complete said subdivision and development, including but not limited to the improvements and any and all other responsibilities assigned to the Developer by the other documents and items referenced herein and specifically in Paragraph 2 of this Agreement. It is specifically required of the Developer to bond for the entire anticipated/estimated cost of construction. Specifically, Developer acknowledges that there will be a shortfall between the remaining bond monies amount and further required monies to complete the Subdivision, and Developer assumes and shall pay for any such shortfall and any financial amounts required to complete the Development.

7. The Developer shall be obligated to disclose and *notify in writing* its immediate successors in ownership or developers of the requirements of this Agreement.

8. The parties do not intend that the provisions of this Agreement shall extend beyond the scope of the subdivision and development improvement requirements of Title 17 of the Heber City Municipal Code, except as specifically stated herein.

9. *Satisfactory performance of the conditions of this Agreement relative to the improvements shall be evidenced and acknowledged in writing by the City Engineer's formal acceptance of the subdivision.*

10. 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 all public roads as shown on the recorded subdivision plat 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.

11. 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.

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

HEBER CITY

Blackstone Aspen, LLC

By: [Signature]

By: [Signature]

David R. Phillips, Mayor

Ross Stokes, Developer and Owner

ATTEST:

ATTEST:

[Signature]


Heber City Recorder

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STATE OF UTAH  
 COUNTY OF: Washington  
 ON THE 6th DAY OF January 2012  
 PERSONALLY APPEARED BEFORE ME  
ROSS D. STOKES SIGNER(S) OF THE ABOVE  
 INSTRUMENT, WHO DULY ACKNOWLEDGED TO ME THAT  
 HE/SHE/THEY EXECUTED THE SAME

[Signature]  
 NOTARY PUBLIC

NOTARY PUBLIC  
 Cara L Scott  
 607941  
 My Commission Expires  
 March 28, 2015  
 STATE OF UTAH



**EXHIBIT A**

~~Ent 368449 Bk 1037 Pl 1500-1502  
 Date: 19-APR-2011 11:50:20AM  
 Fee: None Filed By: JP  
 ELIZABETH PALMIER, Recorder  
 WASATCH COUNTY CORPORATION  
 CITY OF HEBER CITY~~

**DEVELOPMENT AGREEMENT  
 AND  
 COVENANT RUNNING WITH THE LAND  
 (Aspen Pointe Estates Subdivision)**

THIS AGREEMENT entered into this 18 day of May, 2006, by and between Heber City, hereinafter referred to as "City" and the undersigned as "Developer."

WHEREAS, the developer has proposed an 81 lot subdivision, the Aspen Pointe Estates Subdivision, in the R-2 Residential Zone in Heber City; and all of lots 1-81 aspen pointe

WHEREAS, the City annexed the property subject to certain conditions; and

WHEREAS, unique conditions exist resulting from the features on and around the property and the layout and design proposed by the developer; and

NOW, THEREFORE, the parties hereby agree as follows:

- 1) The Developer of the Property agrees:
  - a) with respect to Exhibit A (the approved final subdivision plat), the developer shall prior to recordation of that subdivision plat, transfer to the City 22.65 shares of Wasatch Irrigation Water;
  - b) provide verification to Heber City that the water and sewer capacity is sufficient for needs and impact of the development { and provide any over sizing required of offsite sewer and water mains;
  - c) with respect to City utility services, at owners expense, connect to the source of such existing services;
  - d) in lieu of providing a sewer easement along the Humbug Canal { the developer shall construct a sewer line in the streets draining to the southwest, connecting from 600 South to the southern extent of the property at the Humbug Canal;
  - e) improve 1200 East (Mill Road) along the Property frontage to a paving width of up to 50 feet of asphalt. The City will reimburse Owner the cost of over-sizing relating to the 1200 East Street; Improvements over a 36 foot wide street up to 14 feet of the 50 asphalt width);
  - f) dedication of the property within 1200 East and 600 South to meet the 72 foot Arterial ROW standard of the Masterplan;
  - g) install curb, gutter, and sidewalk along the West side of 1200 East and the south side of 600 South fronting the Property;

- h) Dedicate and construct 750 East, a 66 foot ROW, as shown on the Master Plan;
- I) Dedication and construction of master planned utilities within 600 South, 750 East, and 1200 East to the property boundaries;
- j) with regard to storm water containment, comply with the Heber City Source Protection Plan;
- k) The detention area on 800 South at approximately 730 South is dedicated to Heber City for detention of storm water for the Aspen Pointe Estates Subdivision, and shall be landscaped by the developer and maintained by a Homeowner's Association for the Aspen Pointe Estates Subdivision as a park;
- l) To dedicate sufficient land for a trail, and construct a trail along the Humbug Canal within the Property, consistent with the Heber City Master Plan;
- m) To provide and show on the subdivision plat, a temporary trail easement from the Humbug Trail to the public sidewalk along lot 25, which will be abandoned when the trail is connected through the RJ Property LC;
- n) To dedicate sufficient land for the establishment of maintenance access along the Humbug Canal within the Property, consistent with the Heber City Master Plan;
- o) Development of the Property is subject to any applicable reimbursement agreements resulting from agreements on properties of which the Property is a participant;
- p) Extend the 12 inch waterline in Mill Road to the southern edge of the property street frontage. The City shall participate in the costs in oversizing the waterline above 10 inches;
- q) The final plat shall note that lot 1, 32, 34, and 42 can not establish driveway access from 600 South;
- r) The final plat shall note that lots 6, 15, 57, 58, and 59 can not establish driveway access from 800 or 820 East;
- s) The development improvements shall comply with adopted Heber City Standards and Specifications and Chapter 17 and Chapter of 18 of Heber City Code as proposed and approved by the City in the improvement drawings proposed by the developer, including but not limited to burying the above ground power lines along Mill Road along the frontage of the development, and installation of street lights throughout the development;
- t) The developer shall comply with Chapter 18.102 of Heber City Code (the Affordable Housing Ordinance), through participation with the Wasatch County Housing Authority as proposed by the developer in Exhibit B; specifically the

developer shall provide receipt of \$22,680 paid to the Housing Authority and a recorded restriction of the affordable housing obligation prior to plat recordation, and receipt of \$22,680 paid at the closing of every tenth home thereafter until paid in full, for a total fee-in-lieu contribution of \$226,800;

- 2) 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.

DATED this 8<sup>th</sup> day of Aug., 2006.

HEBER CITY:

By: [Signature]  
David Phillips, Mayor



OWNER: PSNet, Inc.

By: [Signature]  
Chad Sayers President, PSNET, Inc

STATE OF UTAH )  
                          : ss.  
COUNTY OF WASATCH )

On this 15 day of June, 2006, 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.

[Signature]

NOTARY PUBLIC  
Notary Public, State of Utah  
KRISTIE OVERSON  
1062 W Stanley Glen Lane  
Taylorsville, UT 84123  
My Commission Expires 03-29-2009

# Wasatch County Housing Authority



March 30, 2006

Tony Kohler  
Heber City Planning Department  
75 North Main Street  
Heber City, UT 84032

Re: Affordable Housing Plan - PSNet, Aspen Pointe Subdivision

Dear Tony,

It is my understanding that Mr. Brent Overson and Rob McNeel of Overson Realty are currently requesting approval on behalf of PSNet for the development of Aspen Pointe Estates, located on what is known as the John Clegg property. The proposed plat includes 82 lots, equaling 8.2 ERUs dedicated to affordable housing per the Wasatch County Affordable Housing Ordinance.

The intention of Aspen Pointe Estates is to pay a fee-in-lieu for each required unit, totaling \$229,600 (\$28,000 per unit x 8.2 ERUs). Mr. Overson has committed to the following payment schedule of said fee-in-lieu:

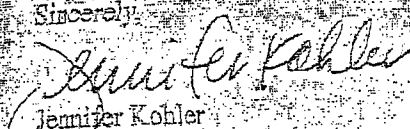
- \$22,960 (10%) paid at recordation of the approved plat
- \$22,960 paid at the closing of every tenth home thereafter until paid in full

The Wasatch County Housing Authority has indicated to Mr. Overson and Mr. McNeel that the developer must record a restriction on each of the 82 lots, with the understanding that as each 10<sup>th</sup> home is sold and payment of \$24,080 is received by Wasatch County Housing Authority, a release of restriction will be issued to and recorded by the developer.

The Wasatch County Housing Authority therefore offers its approval for recordation of Aspen Pointe Estates, pending receipt of the initial payment of \$22,960 and copies of the property restriction to be recorded with the approved plat.

If you have any questions, please contact me.

Sincerely,

  
Jennifer Kohler  
Wasatch County Housing Authority

**EXHIBIT B****Subject: Aspen Pointe Outstanding Items as of September 8, 2011**

The following is a list of items that need to be completed. This list was generated to the best of our knowledge, and there may be other items that arise as construction the project continues to be completed.

**Construction Punch-list Items:**

- The sewer lines need to be flushed and a video made with a camera.
- The sewer pipe transitions into the manholes need to be checked and corrected.
- All sewer manholes need to be pressure tested.
- The 600 South Sterling Battle sewer connection to existing manhole needs to be dug up and realigned properly at the manhole.
- Sewer connection to existing manhole on 600 S and Falkirk Meadows Road needs to be checked with video and inspected for straight alignment. The manhole is not finished yet. The existing pipe needs to be cut out and trough constructed.
- The offsite portion of the sewer line through Swift Creek needs to be installed. The easement recordation needs to be verified.
- The storm drain line on 600 South is not complete. The line needs to be run as shown on sheets C1.11, C1.12, and D-6 in the plans. This storm drain line needs to be ran from 680 East and connected into the canal at approximately 550 East.
- All storm drain boxes need to be grouted.
- The storm drain boxes need to be cleaned.
- The pond is approximately 40% complete. It still needs to be graded, inlet and overflow boxes installed, flared end sections, and drain rock installed with fabric including all items on sheet D-5 of the plans. A snout with box is not shown on the plans, but one should be added to the plan and installed for ground water/ canal, and pond protection. A manhole should be installed on the inlet line near the pond edge with a 3' deep sump from flow-line for snout installation.
- The trail needs to be completed including all signs, striping and items on sheet C3.3 of the plans. The trail on the plan shows 6" of road base only. However, as per the development agreement and the bond, the trail needs to be paved 8 feet wide 3" thick over 6" of roadbase. Weed barrier fabric needs to be placed beneath the roadbase per Heber City requirements.
- All items pertaining to the widening of Mill Road and the east end of 600 South (~50 feet on 600 South) needs to be completed, including but not limited to: curb & gutter, sidewalk, road widening, patch existing asphalt, overlay, box culvert extension (see sheet D-7 of the plans), relocation of electrical conduit on canal box, and undergrounding power. See sheet C1.10 of the plans for information.
- There are utility trenches along 600 South that have settled and need to be repaired.
- All Power on Mill Road needs to be underground and/or the cost of the undergrounding reimbursed to Heber Light and Power.
- The box culvert on Mill Road needs to be extended as per sheet D-7 of the plans. This includes but is not limited to necessary rip rap, clay dam protection on cut off wall, and water sealing of box culvert. A fence should also be installed along the top of the box headwall to protect the west edge of the sidewalk.
- Culinary water lines need to be flushed and have bacteria test re-done due to stagnant water possibilities.



- The valve boxes in front of the water cans need to be aligned properly.
- All fire hydrants need flags.
- PI system should be flushed and needs to be passed off by the irrigation company.
- A letter of acceptance needs to be submitted by the irrigation company.
- The broken curb and deficient curb throughout the project needs to be fixed.
- All utilities (sewer manholes, water valves, pi valves, storm drain manholes) need to be raised to grade. Some have already been raised with the paving, however there are some of these that need to be corrected concrete collars.
- Approximately 60% of the asphalt paving is not complete and needs to be finished.
- The roadbase for the asphalt needs to be finished. The roadbase is growing a great deal of vegetation. The vegetation needs removed including all the roots and organics. The base should be sprayed for weeds as well. Where all weeds need to be completely removed, some of the base may have to be wasted. Additional base may be needed, and it will all need to be proof rolled, recompact, graded, and tested.
- The temporary turn-around at the end of Sterling Battle should be installed as per the plans on sheet C2.1 and sheet C1.2
- All of the sidewalk needs to be completed with sleeves for pressurized irrigation. Handicap ramp are not completed either.
- A water service trench on 680 South has settled and needs to be fixed.
- There is a manhole on 680 South that is raised up and the asphalt around the manhole is lifted up around the manhole. There are no grade rings on the manhole. However this was an existing manhole, and we can watch it through the warranty period for issues.
- The asphalt is heaved near lot 11. This needed to be corrected.
- Streets lights need to be installed.
- Utility conduits behind the walk need to be installed.
- All third party dry utilities need to be installed including: gas, power, phone, and cable.
- Mobilization will need to be take place again with the new contractor.
- Address and street signs need to be completed. The base of signs need to be concreted two feet below the surface.
- Fencing needs to be installed on the back of the lots against the canal and as per the development agreement.
- Pond landscaping and irrigation needs to be installed.
- Slurry seal should possibly be bonded for, it is not yet completed.
- Property pins in the curb need to be installed.
- Survey monuments need to be installed.
- General cleanup needs to be done.
- 600 South and Mill Road needs to be striped.
- As-builts with mylars need to be obtained from Summit Engineers. We understand that Summit Engineering may need to be paid before they will release these plans. So we may need additional funds for the as-builts if we want the original mylars from Summit Engineering.
- There are sections of curb & gutter that may have not been put in to proper grade and/or have settled. The curb & gutter needs to be checked for accuracy.
- Reimburse through City prior reimbursement obligations:
- There is trench settlement along Stirling Battle that needs to be skin patched and corrected.
- The broken water meter boxes need to be fixed and set to grade.
- The PI boxes need to be set to grade.

- Triangular lids need to be put on all PI valves boxes. Some of them have been collared with round lids and will need to be corrected.
- Any items from the development agreement that are not specifically listed here need to be completed.
- The UPDES permit needs to be renewed, and a copy sent to the City. The contractor shall be required to follow all UPDES permit requirements.
- The property corners of the lots needs to be survey and marked per code.
- All sewer, water, and PI laterals need to be marked in the curb and at stub location per Heber City requirements
- This list is not all inclusive. A final walkthrough will need to be completed and miscellaneous items may need to be completed (i.e. fix chipped concrete, adjust hydrants to proper grade, clean out inlets, collar utility, asphalt patch settlement, etc).

The following is a list of Heber City Standards that should now be incorporated into this project:

- ~~All concrete sidewalk needs to be 6" thick~~
- ~~Sewer cleanouts should be added to the sewer services between the sidewalk and the curb & gutter~~

Other misc items to remember:

- Affordable housing modifications, City has agreed to release affordable housing requirements
- Modifications to the development agreement needed
- New performance agreement needed
- New warranty bond needed, or will City hold cash as warranty?
- Transfer ownership from Clarks to Stokes needed
- Resolve extension line agreements
- Resolve reimbursements from city for oversizing
- Escrow development fees for engineering and inspections
- Resolve pond maintenance
- Determine bond money that will be allowed to be released to Stokes/Contractor for construction and what lot collateral will be needed
- The City will lien four lots for collateral