

**FIFTH AMENDMENT - MEMORANDUM OF UNDERSTANDING REGARDING A
TIME LINE OF REQUIRED TRIGGER EVENTS FOR COMPLETION OF RED
LEDGES' PORTION OF THE EASTERN BYPASS AND CONNECTION ROAD and
THE ASSOCIATED PUBLIC PARK and TRAIL**

This Fifth Amendment - Memorandum of Understanding ("MOU"), dated as of the ____ day of **May, 2019**, is made by and between Red Ledges Land Development, Inc., a Florida Corporation, ("Red Ledges"), and Heber City, Corporation, ("Heber City, or City, or The City"), having offices at 75 N Main St, Heber City, UT 84032 ("City"), collectively hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, The Interlocal Agreement, (2007), and the Red Ledges Planned Community Master Plan Agreement (2007) read together, indicate that:

7. c. Red Ledges, at its own expense, will construct the Bypass Road pursuant to city standards; and when it is completed, Red Ledges will deed the underlying land to the City and the City will maintain the Bypass Road in perpetuity. Red Ledges shall plant and maintain the landscaping associated with the public park and Bypass Road in perpetuity..., and

7. f "Red Ledges will complete construction of the Bypass road and Connection Road within one year of final approval of Phase 1..." and

WHEREAS, The said Master Plan Agreement instructs that the following improvements will commence with Phase 5 of Red Ledges:

4. a. v. 2. Red Ledges Community Park irrigation and landscape improvements per the Conceptual Community Park Exhibit in the Master Plan, and

WHEREAS, The Fourth Amendment to Interlocal Agreement Regarding the "Red ledges" Property, provides that the Parties agreed that the completion date for construction of the Bypass and Connection road was extended through October 31, 2019, and that failure on the part of Red Ledges to initiate and finish construction of the Bypass and Connection Road by October 31, 2019, or subsequent granted extensions would constitute a breach of the Interlocal Agreement and the Fourth Amendment. It was further agreed that if that specific breach occurred, the City could choose to withhold any further phase approvals, until the Bypass and Connection Road was completed. (Page 1, paragraph 1 Extended Completion Date for the Bypass Road and Connection Road.), and

WHEREAS, On the 19th day of March, 2019, the City Council passed a Motion not to extend the completion date for construction of the Eastern Bypass Connection Road beyond October 31, 2019, without assurances agreeable to the City, and

WHEREAS, The Parties desire to capture and reduce to writing a time line of required, specific and certain trigger events for the completion of said Eastern Bypass and Connection Road as a City Standard Minor Collector Road, a public park and public trail and

WHEREAS, Red Ledges and the City desire to agree and sign an agreement in respect to a time line of said trigger events, including but not limited to occurrences, constructions, submissions, applications, inspections, respective obligations and duties, and expectations of each Party;

NOW THEREFORE, It is agreed as follows:

1. Subject to acts of God, or delay caused by the City or Heber Light and Power out of the control of Red Ledges, Red Ledges shall initiate and be responsible to complete construction, subject to approval of the City Engineer, with approval from the City Council, the Eastern Bypass & Public Trail, Public Park, and Connection Road identified, and made reference in the above mentioned Interlocal Agreement, (2007), and the Red Ledges Planned Community Master Plan Agreement (2007).

2. Unless otherwise agreed to in writing, the Parties anticipate and are expected that pursuant to and in accordance with this said time line and trigger events, the Eastern Bypass and Connection Road, and public trail, shall be completed on or before May 30, 2021.

3. In the event that the Eastern Bypass and Connection Road is not completed on or before May 30, 2021 or that any of the time line trigger events of this agreement are not met, in addition to all other remedies, sanctions and rights of enforcement contained in the Annexation Agreement, Interlocal Agreement, Development Agreement and Master plan Agreement, the Red Ledges Planned Community Master Plan Agreement (2007), and the First, Second, Third and Fourth Amendments to the Interlocal Agreement Regarding the "Red Ledges Property", and any other associated agreements or contracts pertaining to the Red Ledges Development and Annexation, and pursuant to this MOU, the City shall not grant any further approvals for the associated Red Ledges Development and Projects, including but not limited to subdivision approvals, plat approvals, plat amendments, either owned by Red Ledges or its assigns or successors. The decision of the City to withhold such approvals shall in no way limit or restrict the City from enforcing or seeking any and all other remedies at law, equity or identified or provided for in any of the above referenced Agreements associated with Red Ledges and Heber City and Wasatch County.

4. The time line of required trigger events for completion of Red Ledges' Eastern Bypass and Connection Road, and to which Red Ledges shall be required to adhere, or be declared in default of its obligations are as follows:

a. Completion and submission to the City of an executed surety bond and performance agreement approved by the City in an amount equal to 120% of the estimated total cost for the City to construct the Eastern Bypass and Connection Road, public park and public trail, on or before July 15, 2019. Except as otherwise set forth herein, the extent of Red Ledges to secure its, (Red Ledges'), performance under this Agreement, and other referenced Agreements herein, shall be limited to the amount of the Security (herein the "Proceeds"). All

incidental costs that may exceed the amount of the surety obligation herein, shall, notwithstanding, be available to the City from Red Ledges. Except as against surety, nothing in this Agreement, including but not limited to the surety's limit of liability shall prevent the City from seeking all and any remedies at equity or law against any and all other parties associated with such costs, damages or losses suffered by the City.

b. Completion and submission to the City of approved and complete road design and construction documents, approved by the City Engineer for the Eastern Bypass and Connection Road, Public Park, Public Trail, and dedication of Eastern Bypass including Public Trail & Public Park right of way to the City, on or before October 31, 2019. In addition, Red Ledges will dedicate easements to the City for all Red Ledges public trails upon default or the City's acceptance of such road and park. Furthermore, Red Ledges will convey the deed to the land for the Eastern Bypass Road and Public Park to the City upon default or the City's acceptance of such road and park.

c. Award of a construction contract and beginning construction, on or before March 1, 2020.

d. Completion of the road substructure, which for the purposes of this Agreement shall mean all improvements and underground utilities for the road except asphalt, curb and gutter, and trail on or before October 1, 2020.

e. Completion and City approval and acceptance of the road construction project, on or before May 30, 2021.

If, upon the City's written notice to Surety of Red Ledges' failure to perform as per the preceding time line, the proceeds are not remitted to City within thirty (30) days of demand, or the improvements are not installed within a reasonable time period determined by City, then Red Ledges acknowledges and agrees that City shall be allowed to proceed against Red Ledges without further notice for all City's costs of obtaining the Proceeds and/or completing the improvements.

5. Inasmuch as the Red Ledges development has now geographically entered Phase five (5), pursuant to aforementioned Agreements, and this Agreement, Red Ledges agrees to complete the Public Park adjacent to Center Street, and running adjacent along the western edge of the Eastern Bypass Road on or before October 1, 2020. Said Park shall be developed in accordance with the Conceptual Community Park Exhibit in the Master Plan and notwithstanding that Exhibit shall include at a minimum the following key elements:

a. Native & irrigated grasses with necessary topsoil for good growth south of the Stone Creek retention pond to existing Lake Creek trail. Park grade & elevations shall be similar to surrounding land & Bypass Road elevations with ability to add berms, sandstone rocks, and sculpting the land to add interest to the park.

Red Ledges will plant native grass and plants in all other areas of the park not dedicated to trails and irrigated grass turf. Red Ledges will place clean top soil of 1 to 3 inches

on an as needed basis on disturbed areas where top soils have been removed and plant native grass and plants in all other areas of the park not dedicated to trails and turf. Red Ledges will be responsible to assure the establishment & maintenance of the native grass and plants for two years after dedication of park to City.

b. A public, gravel trail system that runs around and through the interior of the Park, including around the retention pond. The design and location of park trails will be done with cooperation and approval of Heber City prior to construction. Red Ledges will locate, design and construct, with approval of Heber City. All public trails will be based on the *Second Amendment to Interlocal Agreement Regarding the "Red Ledges" Property* dated January 14, 2013; furthermore, the internal park trails will be governed by this 'Memorandum of Understanding.'

c. Two Family size covered picnic pavilions with electrical outlets and a minimum of ten feet irrigated grass around each pavilion including approximately 8 inches of clean top soil under irrigated grass. Electric metering will be assigned to City upon dedication of Park.

d. Pedestrian trail access to Timp Meadows/170 North to the west of Park with the City making necessary improvements to the Wasatch Canal. Red Ledges will contribute up to \$15,000 to City for costs of Canal Bridge by May 30, 2021.

e. Trail access and connections to Center St. and Eastern Bypass public trails.

f. At least 10 Park Benches.

g. 1 permanent unisex restroom with attendant lighting.

h. Asphalted public parking for onsite trail head and Public Park with nighttime lighting per standards of at least 15 parking spaces, which will be asphalted on or before May 30, 2021.

i. Minimum two water drinking fountains & faucet spigots in park area south of retention pond.

5.1. Except for the two-year native grasses & plants maintenance requirement, Heber City shall be responsible for the perpetual care and maintenance of said Public Park upon dedication. Heber City will accept responsibility for perpetual maintenance of pavilions, irrigated turf areas, parking area, public bathroom, all public trails located in the park, and all other areas of the park. City's maintenance responsibility will commence upon: 1) completion of all park amenities detailed in this MOU, and 2) dedication of all park property to Heber City on or before May 30, 2021. Said deed shall include a statement of reversion that the City will deed the land back to Red Ledges Community Association, Inc., if City chooses not to maintain public park as a park as is in perpetuity. In the event that the City chooses to deed land back to Red Ledges Community Association Inc., it will maintain the public park as is in perpetuity.

Perpetual maintenance of the public trails is to be the responsibility of Red Ledges including within Red Ledges and along the Eastern Bypass Road and Center Street trails.

6. Red Ledges agrees to complete the Public Trail that runs through the park adjacent to Center Street, and running adjacent along the western edge of the Eastern Bypass on or before May 30, 2021. Red Ledges will also grade and gravel the public trail on the southern edge of the Connection Road on or before May 30, 2021 per same width standards below. Said Public Trail on the Eastern Bypass Road shall be developed and completed pursuant to the trail plan or other such trail references appertaining to any aforementioned Agreements, this Agreement, and City standards, and shall include at a minimum the following:

- a. 8' wide asphalt, 3" thick, 6" road base, and weed barrier.
- b. Trail access, crossings, and connections to Red Ledges public trail system at Center Street and the north east corner of the Eastern Bypass and Connection Road.
- c. No vehicles or vehicular traffic shall be allowed on the Public Trail or associated amenities, except City, Red Ledges, or County maintenance vehicles.

6.1. Notwithstanding the Second Amendment to the Interlocal Agreement, clause 9; Red Ledges shall be responsible for the perpetual care and maintenance of said Public Trail and all public trails listed in the Second Amendment.

6.2 Any public accesses to said Public Trail shall be recorded.

7. Red Ledges agrees that all trails designated as public trails in the *Second Amendment* on private and public property, including trails within the public park, are available for general public use and not to be restricted to private only use.

8. Red Ledges agrees to finalize and complete the open space agreement with Wasatch County pursuant to aforementioned Agreements and this Agreement by June 15, 2020, pending county approval.

9. This Agreement is effective upon signature by the parties and will remain in effect unless and until terminated by mutual agreement.

10. This Agreement shall in no way supersede, replace or impose requirements or processes provided for by any local, state or federal land use laws or ordinances, or any other associated agreements or contracts pertaining to the Red Ledges Development and Annexation, some of which are mentioned herein.

11. AMENDMENTS This Agreement may be modified or amended only by written agreement among the parties hereto. Any terms or conditions not set forth in this Agreement, but expressly agreed to in a future MOU signed by the City and Developer shall be considered integrated into this MOU.

12. TERMINATION This MOU may be terminated at any time by mutual written agreement of all parties. Expiration or termination would affect only pursuit of new projects under the MOU. Projects completed or in progress will be governed by the specific individual agreements set forth herein as they apply to such projects.

13. AUTHORITY The City Manager and Mayor executing this MOU represent and warrant that they are signing this MOU with full approval of and authority granted by the Heber City Legislative Body.

14. REMEDIES In the event of any party's default under this Agreement the non-defaulting party or parties may, in addition, but not limited to any and all other remedies afforded them by local, state or federal law, or in the Agreements referenced and mentioned above herein, or this Agreement, sue for injunctive relief and/or damages. The prevailing party or parties shall recover their costs and attorney's fees.

IN WITNESS WHEREOF the foregoing has been confirmed and agreed to be effective the _____ day of May, 2019.

AGREED TO BY:

Matt Brower,
Heber City Manager
Heber City, Utah
On this _____ of May, 2019

Mayor Kelleen Potter,
Heber City, Utah
On this _____ of May, 2019

Red Ledges Land Development, Inc.,
Owner:

By: _____
Heber City, Utah
On this _____ of May, 2019