



RESOLUTION NO. 2016-12

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE OF ALL CLAIMS BETWEEN LONE PEAK INVESTMENT PARTNERS, LLC; GLACIER INVESTMENTS LEHI, LLC; AND LEHI CITY.

WHEREAS, there is a dispute between Lone Peak Investment Partners, LLC; Glacier Investments Lehi, LLC (Developer) and Lehi City with respect to the approval of a site plan for the Developer which resulted in the filing of that certain legal action now pending in the Fourth Judicial District Court for Utah County, State of Utah captioned Lone Peak LLC, et al. v. Lehi City, Case No 160400244 (Litigation); and

WHEREAS, without waiving or conceding their respective positions in the Litigation, it is the intent and purpose of the Parties to this Agreement to fully and completely settle, compromise and resolve all claims and controversies between them arising out of or in any way referring or relating to the Application and the Litigation as per the Settlement Agreement and Mutual General Release of all Claims attached as Exhibit A.

THEREFORE, BE IT RESOLVED by the City Council of Lehi City that the Mayor is authorized to sign the Settlement Agreement and Mutual General Release of all Claims as attached as Exhibit A.

Approved and Adopted by the City Council of Lehi City this 23rd day of February, 2016.

ATTEST

Bert Wilson, Mayor

Marilyn Banasky, City Recorder

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

Lone Peak Investment Partners, LLC, a Utah limited liability company, and **Glacier Investments Lehi, LLC**, an Alaska limited liability company, (collectively herein referred to as “**Developer**”), and **Lehi City**, a municipality and political subdivision of the State of Utah (“**City**”), (sometimes collectively referred to as the “**Parties**”), hereby enter into this Settlement Agreement and General Release of All Claims (the “**Agreement**”) as of this 23rd day of February, 2016, for the purpose of settling and resolving certain claims, controversies and disputes between them on the terms and conditions and for the considerations set forth below.

1. **Intent of the Parties.** There is a dispute between the Parties with respect to the approval of a site plan for the Developer, Application No. PL-14-8001 (the “**Application**”), which resulted in the filing of that certain legal action now pending in the Fourth Judicial District Court for Utah County, State of Utah, captioned **Lone Peak LLC, et al. v. Lehi City**, Case No. 160400244 (the “**Litigation**”). Without waiving or conceding their respective positions in the Litigation, it is the intent and purpose of the Parties to this Agreement to fully and completely settle, compromise and resolve all claims and controversies between them arising out of or in any way referring or relating to the Application and the Litigation.

2. **Court Approval and Dismissal of Litigation.** The Parties hereby agree that a stipulation and order shall be executed by counsel for the Parties and filed in the Fourth Judicial District Court, seeking approval of this Agreement, which shall be incorporated as part of the order of dismissal subject to approval of the Court, and dismissing the Litigation with prejudice and upon the merits, with all parties to bear their own costs and attorney’s fees.

3. **Approval of Site Plan Application for Developer.** As part of this Agreement, the City hereby grants approval of Site Plan Application No. PL-14-8001 for Developer with the following conditions:

1. All DRC Redline and Prior to Preconstruction Meeting comments from the December 2, 2015 review as shown in Exhibit A, attached hereto and incorporated herein by this reference.

It is further understood and agreed that while the City has reviewed and approved the Site Plan, Developer shall be required to comply with all other applicable requirements of the Lehi City Code with respect to the construction and operation of the project.

4. **General Release of Claims.**

As part of this Agreement, Developer, for and on behalf of itself and its agents,

indemnitors, insurers, successors, and assigns, hereby releases and forever discharges the City, together with its elected officials, appointed officials, employees, agents, indemnitors, insurers, successors, and assigns, from any and all claims, demands, liabilities, damages, causes of action, costs and expenses, including attorney's fees, arising out of or in any way related to the Application and the Litigation. The foregoing release shall be conditioned upon approval of this Agreement by order of the court prior to the dismissal of the Litigation.

5. **Integration.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and integrates all prior conversations, discussions or undertakings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the Parties hereto.

6. **Counterparts.** This document may be executed in one or more counterparts, which together shall constitute one and the same document.

7. **Amendment.** This Agreement or the rights and obligations contained herein may not be modified, superseded, or supplemented except by an instrument in writing signed by the parties hereto.

8. **Additional Acts.** The parties shall do such further acts and things and shall execute and deliver such additional documents and instruments as may be necessary or reasonably requested by a party or its counsel to obtain approvals or other benefits described herein.

9. **Authorization.** Each individual executing this Agreement does thereby represent and warrant to the other signers that the individual has been duly authorized to execute and deliver this Agreement in the capacity and for the party specified.

10. **Mutual Participation in Document Preparation.** Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event a dispute concerning the interpretation of any provision of this Agreement or any related item, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

11. **No Third-Party Beneficiary Interests.** Nothing contained in this Agreement is intended to benefit any person or entity other than the Parties to this Agreement; and no representation or warranty is intended for the benefit of, or to be relied upon by, any person or entity which is not a party to this Agreement.

12. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

WHEREFORE, the parties have executed the foregoing to be effective the date first appearing above.

[Signatures and Acknowledgments on Next Page]

LONE PEAK INVESTMENT PARTNERS,
LLC

By: _____
Its: _____

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this _____ day of _____, 2016, before me personally appeared, _____ known to me to be the person who executed the Settlement Agreement and General Release of All Claims herein in behalf of Lone Peak Investment Partners, LLC, and acknowledged to me that he/she executed the same for the purposes therein stated.

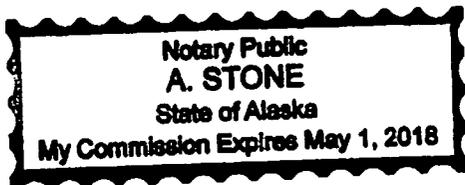
Notary Public

GLACIER INVESTMENTS LEHI, LLC, an
Alaska limited liability company

By: Robert B. Gray
Its: Manager

STATE OF ~~UTAH~~ Alaska)
: ss.
COUNTY OF ~~UTAH~~ Matsu)
3rd District

On this 19th day of February, 2016, before me personally appeared, Robert B. Gray known to me to be the person who executed the Settlement Agreement and General Release of All Claims herein in behalf of Glacier Investments Lehi, LLC, and acknowledged to me that he/she executed the same for the purposes therein stated.



A Stone 5-1-2018
Notary Public State of Alaska

Having been properly authorized by the City Council I, Mayor Bert Wilson, hereby execute this Agreement for and on behalf of the City.

LEHI CITY CORPORATION

By: _____
Bert Wilson, Mayor

Attest:

Marilyn Banasky, Lehi City Recorder

288683_1.docx

Exhibit "A"

Holiday Inn Express Site Plan DRC Redline Comments

Glacier Investments – Requests Site Plan review for Holiday Inn Express to be located at 3851 Thanksgiving Way in an existing Commercial zone.

DRC Members Present: Brent Thomas, Kerry Evans, Greg Allred, Todd Munger, Kim Struthers, Gary Smith, Mike Howell, Ross Dinsdale, Steve Marchbanks

Representatives of the Applicant Present: Todd Gardner and John Gray

Date of Plans Reviewed: 11/25/15

Time Start: 3:00 PM

Time End: 3:30 PM

DRC REDLINE COMMENTS:

Brent – Power:

1. From the junction box, show a 6" conduit stub to the south property line.

Kerry – Fire: No comments

Greg – Water/Sewer:

2. Keyed note K, E and R - label as hot tap tees.
3. On all 4 fire hydrants show a valve at the tee. Pull the fire hydrants away from the curb line.
4. Label the sewer lateral as "private". Change the note on the profile to indicate it as an 8". Recommend UDOT spec flow fill over the sewer lateral instead of concrete encasing.

Todd – Public Works: No comments

Kim – Planning:

5. Provide a calculation showing that the amount of landscaping and the width of the buffer meets the requirements from Chapter 12. Additional intermediate shrubs should be shown to meet the buffer requirement.
6. Suggest looking at the windows on the west side of the building to see if there are any window treatments that can be done to increase privacy to the adjacent residential properties
7. On the lighting plan, maximum height of the light poles is 20 feet to the top of light – lower poles to meet standard.
8. Only 0.2 foot candle spillover is allowed at the property line – adjust to meet standard. Consider LED lighting to help control light spillover.
9. On the building elevations, a maximum of 49% of the building materials can be EIFS (not counting windows, doors, and other entrances). This standard must be met independently on all 4 sides of the building. Also assure that wall variations spaced at 30-50 feet are met. Recommend earth tone paint colors that tie into the existing development instead of the bright orange. Must tie in the roof line elements of the existing Lone Peak retail buildings into the design of this building in order to meet the Commercial Design Standards.

Gary – Building/Inspections: No comments

Mike – Public Works: No comments

Ross – Engineering:

10. On the 8" PI line - provide a 20' easement.

Steve – Parks: No problems

PRIOR TO PRECONSTRUCTION MEETING:

1. Provide an engineer's cost estimate for the cost of all improvements.
2. Escrow or Letter of Credit Bond Agreement and Public/Private Improvement Agreement for all public and private improvements must be in place.
3. Provide a title report to be reviewed by Lehi City Attorney.
4. Need surveyor's and engineer's stamps on construction drawings.
5. New project startup form for Lehi City Storm Water
6. Written and recorded easement over the 8" PI/hydrant line

7. Written and recorded 10-foot PUE on the frontage of the property if there isn't one already recorded
8. Comments from Planning Commission approval

DRC GENERAL COMMENTS:

1. On the power, developer will install conduit; Lehi City Power will install all other required power infrastructure shown on the plans and charge the developer for the costs. These costs are separate from power impact fees that are paid with the building permit.
2. Developer is responsible to purchase, move or remove any existing RMP facilities.
3. Developer is responsible to furnish adequate rights of way or easements for construction of off-site power line extensions.
4. Once approved by the Planning Commission or City Council (whichever is applicable) plans may be submitted for check-off. Check-off plans consist of one 24x36 set of plans submitted to the Planning Department. When changes need to be made to a check-off set, revise the affected sheets only. Each new submittal will require a revision date on each new sheet.
5. Prior to the pre-construction meeting, Lehi City Staff will make copies of plans for the meeting from the check-off set and the developer will pay fees for the copies.
6. The approval of a development shall be effective for a period of two (2) years from the date the development is approved by the Planning Commission.
7. Signage will be approved through a separate application and review/approval process. Lot size is not large enough to allow for a pylon sign.
8. UDOT has plans to realign Thanksgiving Way and widen I-15 which could impact the proposed site plan.
9. Suggest providing architectural cross section view that includes the existing homes, fence, trees, building and grade differences.

THIS ITEM WILL BE SCHEDULED FOR PLANNING COMMISSION JANUARY 14, 2016